(2019) 08 NCLT CK 0092

In the National Company Law Appellate Tribunal

Case No : Company Application No. (CAA)-57/ND Of 2019

M/s. Param Exim Ltd. APPELLANT

Vs

M/s. KLA India Public Ltd. RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232, 232(3)(b)(i)

Citation : (2019) 08 NCLT CK 0092

Hon'ble Judges : Ina Malhotara, J

Bench : Single Bench

Advocate : Pradeep K. Mittal

Judgement

1. This Joint application has been filed by the Applicant Companies under sections 230 and 232 of the Companies Act, 2013 read with the Company

(Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving

the Scheme of Amalgamation, as contemplated between the Transferor Companies with Transferee Company.

2. Both the Transferor Company as well as Transferee Company have their registered offices which lie within the jurisdiction of this Tribunal.

3. As per averments made in the petition, the Transferor Company (Applicants No. 1) and the Transferee Company (Applicant No.2) had earlier filed

a joint application by way of first motion being C.A. No. (CAA) 57/ ND/2019 which was disposed off vide order dated 4th April, 2019 dispensing with

the meetings of the equity shareholders, secured and unsecured creditors of both the Companies.

The Scheme had been duly approved by the respective Board of Directors of the companies in their separate meetings held on 12.10.2018.

4. Copies of the Memorandum of Association and Articles of Association providing for such amalgamation along with their audited Balance Sheets as

on 31.09 2018, have been filed by each applicant company along with the report of the Statutory Auditor certifying that the Accounting Standards as

required u/s 133 of the Companies Act 2013 have been adhered to.

5. It has been stated on behalf of the Applicant Companies that the Scheme of Amalgamation is necessitated and justified on grounds that :-

a. The Transferor and Transferee Companies are closely held group Companies under common control and management and would result in

consolidation and pooling off their resources and business synergy;

b. Would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the

combined entity;

c. Would result in usual economies of a centralized and a large company holding elimination of duplicate work, reduction in overheads, better and more

productive utilization of human and other resource and enhancement of overall business efficiency;

d. Better utilization of professional expertise and other manpower resources.

The Appointed Date of the Scheme is 1st April, 2018.

6. So far as the Share Exchange Ratio is concerned, in terms of the scheme it has been determined in accordance with the Report on Valuation of

Shares & Share Exchange Ratio dated 12th October 2018, issued by Kawaljeet Singh & Co. Chartered Accountants, Rudrapur, as per the settled

principles of valuation.

As per the Valuation Report prepared by the Independent Chartered Account, the Transferee Company will issue 37.77 Equity Shares of the

Transferee Company of the face value of Rs. 10/- each credited as fully paid-up in the capital of the Transferee Capital to the Shareholders of the

Transferor Company whose names are recorded in its Register of Members on a date to be fixed by the Board of Directors of the Transferee

Company for every 1 Equity Share of Rs. 10/- each held by the Shareholders in the Transferor Company.

7. The applicant companies have now initiated the Second Motion. An affidavit dated 11.05.2019 discloses that the petitioners have effected

publication in the daily newspapers ""The Business Standard"" in English and in Hindi, both dated 07.05.2019, having circulation in Delhi, and inviting

objections, if any, to the proposed Scheme of Amalgamation. The affidavit further discloses that due notice of the proposed scheme had been served

on the Registrar of Companies, Regional Director, Northern Region, Income Tax Dept. and the Official Liquidator dated 14.06.2019 in compliance

with the order of the Tribunal.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector has appeared before us.

Additionally, it has been deposed vide affidavits that no objection to the proposed Scheme has been received by the applicant companies or their

counsel. The replies of the Regional Director, NR, MCA and the Report of Official Liquidator dated 14.06.2019 have been placed before us.

8. We have heard the counsels for the petitioners and also considered the representation made by the Regional Director, Northern Region. In the reply

filed by the Regional Director (NR), it has been confirmed that the Transferor and Transferee companies are regular in filing their statutory returns.

No prosecution has been filed, no complaints are pending and no inspection or investigation has been conducted in respect of the applicant companies.

The only observation made by the RD is the requirement u/s 232(3)(b)(i), which enjoins upon the applicant companies to file an application with the

Registrar along with the scheme, indicating the revised authorized capital and payment enhanced fees on the same, if applicable. The fees paid by the

Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital

subsequent to the amalgamation.

No Report has been received raising any observations to the sanction of the scheme by the OL and Income Tax Department.

9. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and

clearance given by the office of the Regional Director, OL and the Income Tax Dept, there appears to be no impediment in granting sanction to the

Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of

amalgamation shall be binding on the Transferor and the Transferee Companies and on all their respective shareholders and creditors. The Petitioners

shall also be bound to comply with the statutory requirements in accordance with law.

10. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction

granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons,

directors and officials of both the petitioner companies.

11. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from

payment of stamp duty, Statutory dues or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance

with any other requirement which may be specifically required under any law. The provision of sec 232(3)(), if applicable, shall be adhered to.

12. This tribunal doth further order that upon the scheme of Amalgamation by way of Merger coming into effect;

a. That Transferor Companies shall stand dissolved without being wound up.

b. That the entire business, properties and assets of the Transferor companies, be transferred Without further act or deed to the Transferee company

and accordingly the same shall, pursuant to section 232 of the Act, be transferred to and vest in the Transferee company, but subject nevertheless to

all charges now affecting the same;

c. That all the assets and liabilities including Income Tax and all other Statutory dues, if any, of the Transferor companies, be transferred without

further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the

liabilities and duties of the transferee company;

d. All employees of the Transferor Companies in service on the effective date shall become the employees of the Transferee Company on and from

such date without any break or interruption in service and upon terms and conditions not less favorable than those subsidiary with the Transferor

Company on that date. That all proceedings now pending by or against the transferor companies, be continued by or against the transferee company;

13. That petitioners shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of

Companies for registration and on such certified copy being so delivered, the transferor companies shall be dissolved and the Registrar of Companies

shall place all documents relating to the transferor company and registered with them and shall consolidate the files of the companies, is accordingly

duly approved and sanctioned in terms of the above.

14. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

15. The Transferor Company is directed to pay Rs. 1 Lakh to the Prime Minister's Relief Fund receipt of which shall be produced before the RoC at

the time of Submission of the Sanctioned Scheme.