(2021) 03 NCLT CK 0007

In the National Company Law Appellate Tribunal

Case No : Company Petition No. (CAA)-70(ND) Of 2020

M/s. Rapipay Fintech Holding Private — APPELLANT

Vs

Their Respective Shareholders And Creditors — RESPONDENT

Date of Decision : 01-03-2021

Acts Referred:
Companies Act, 2013 — Section 230, 230(2)(a), 231, 232, 232(4)

Citation : (2021) 03 NCLT CK 0007

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Anshu Bhanot, Karan Malhotra, Tania Sharma

Final Decision : Allowed

Judgement

The order is pronounced in the open Court today.

1. This Application has been filed jointly by the Transferor and Transferee Companies as indicated below under Section 230 to 232 of Companies Act,

2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for the purpose of approval of the Scheme of

Amalgamation, as contemplated between the Companies, their Shareholders and Creditors. The details of the Companies proposed to be amalgamated

are given in the following paragraphs.

2. That M/s Rapipay Fintech Holding Private Limited, (hereinafter referred to as (""Petitioner-1/Transferor Company-1"") was incorporated with CIN

No. U65990DL2019PTC345495 under the provisions of the Companies Act, 1956 on 05.02.2019, having its having its registered office at Flat No.

912-A, Ansal Bhawan, 16 Kasturba Gandhi Marg New Delhi-110001

3. That M/s Rapipay Fintech Private Limited, (hereinafter referred to as

(""Petitioner-2""/""Transferor Company-2"") was incorporated on 06.04.2009

with the name Virgosoft IT Services Private Limited. It is added that the name of the company was changed to the present name i.e., Rapipay

Fintech Private Limited and a fresh certificate of incorporation with CIN No. U72200DL2009PTC189149 was issued on 07.11.2017, having its

registered office at Flat No. 912-A, Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi-110001.

4. That the present Petition has been filed jointly by the Transferor and Transferee Companies. The 'Transferor' and 'Transferee' Companies together

are called 'Petitioner Companies' hereinafter. As per the averments, Registered office of both the Companies is in Delhi and hence, the jurisdiction lies

with this Bench.

5. The copy of the Scheme has been placed on record. As per the averments made on page 62 by the Petitioner Companies, the Scheme of

Amalgamation will, inter alia, achieve the following objectives :

â??i. Help in achieving improved operational efficiency and optimum advantages, and also to achieve greater efficiency and synergy in

operation by combining the activities of the Transferor Company with the Transferee Company.

ii. To consolidate the business at one place and effectively manage the Transferor Company and the Transferee company as a single entity,

which will provide several benefits including streamlined group structure by reducing the regulatory compliances, rationalizing costs, it is

intended that the Transferor Company be amalgamated with the Transferee Company. Such restructuring will lead to simplification of group

structure by eliminating multiple companies in similar business, thus enabling on core competencies.

iii. Under the fast changing and highly competitive environment, this amalgamation shall strengthen the business of the Transferor Company

and the Transferee Company by pooling up resources, business expertise, business processes and assets for common purpose and hence,

the optimum utilization...

6. From perusal of the records, it is seen that the Petitioner Companies had preferred the First Motion Application for seeking directions of this

Tribunal for dispensing with the meeting of Equity Shareholders, Secured

Creditors and Unsecured Creditors of both the Companies. This Tribunal

vide Order dated 24.06.2020 in the First Motion Application bearing No. CA(CAA) No. 47 (ND) 2020 had dispensed with the requirement of

convening the meetings of the equity shareholders of all the Petitioner Companies.

7. The 'Appointed date' for the Proposed Scheme of Amalgamation is fixed on 01st January, 2020 as mentioned on the Page 64 of the Petition.

8. That this Tribunal vide its order dated 24.06.2020 in CA(CAA) 47/ND/2020 had given direction to the Petitioner Companies for issuance of notices

to the Central Government, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities,

Official Liquidator, and to such other Objector(s), if any, and also for publication of the said Scheme in English and Hindi newspapers.

9. It is seen from the records that the Petitioners have duly filed an Affidavit affirming compliance of the order dated 24.06.2020 passed by the

Tribunal. A perusal of the Affidavit discloses that the petitioners have caused the newspaper publication as directed in the Daily Business Standard

(English) as well as in the Daily 'Business Standard' (Hindi) on 25.07.2020 in relation to the date of hearing of the petition. Further, the affidavit also

discloses that copies of petition were duly served on the Regional Director, Northern Region; Registrar of Companies, Delhi and Haryana; Official

Liquidator and Income Tax Department in compliance of the order.

10. It was submitted by the Petitioner Companies that the Official Liquidator and RD through their report dated 10.12.2020 had stated that they were

having certain objections to the Scheme. The same was recorded in the order dated 20.01.2021 passed by this Bench.

11. That it has been submitted that the queries raised by the RD & OL were duly replied by the Petitioner Companies. During the final hearing on

12.02.2021, the representative of RD & OL submitted that they were satisfied with the replies of the Petitioner Companies and they have no objection

to the proposed Scheme.

12. That despite service, there was no representation of the Income Tax Department, hence there right to file report stands closed.

13. That the Petitioner Companies through their Affidavits annexed at Page 501 to 506 in compliance of Section 230(2)(a) of Companies Act 2013

have deposed that there is no enquiry, inspection or investigation is initiated or any prosecution is pending against the Petitioner Companies.

14. In view of the aforesaid facts and upon considering the approval accorded by the shareholders of the Petitioner Companies to the proposed

Scheme and no sustainable objections having been raised by the Office of the Regional Director/RoC, Income Tax Department or any other interested

party, there does not appear to be any impediment in granting sanction to the Scheme. Accordingly, in sequel to the above, sanction is hereby granted

to the Scheme of Amalgamation under Section2 30 to 232 of the Companies Act, 2013. The sanctioned Scheme of Amalgamation shall be binding on

both the Transferor Company and Transferee Company (the Petitioner Companies) and their Shareholders. The Petitioner Companies shall remain

bound to comply with the statutory requirements in accordance with law.

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

granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons,

Directors and Officials of the /and Petitioner Companies.

16. Further, while approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption

from payment of Stamp Duty, Taxes or other statutory dues, 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. Further the approval of the Scheme would in no manner affect the tax

treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Petitioner Companies against tax

treatment in accordance with the provisions of Income Tax Act, 1961.

17. THIS TRIBUNAL FURTHER DIRECTS with respect to Transferor companies and Transferee company, that:

(i) Upon the sanction becoming effective from the Appointed date of amalgamation i.e., 1st January, 2020, the Transferor Companies shall stand

dissolved without undergoing the process of winding up.

(ii) That all the property, rights and powers of all the Transferor Company 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 for all the estates and interests

of the Transferor Companies therein but subject nevertheless to all charges now affecting the same.

(iii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to including

under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from

any governmental authorities, direct tax benefit/ exemptions/ deductions, shall, to the extent statutorily available and along with associated obligations,

stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits,

entitlements, incentives and concessions;

(iv) All contracts of the Transferor Company, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to

and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as

fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

(v) All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with

effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and

conditions no less favorable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the

level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement

benefits;

(vi) All liabilities of the Transferor Companies shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act,

2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be

the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or

against the Transferee Company, as if it had incurred such liabilities.

(vii) All proceedings now pending by or against the Transferor Company shall continue by or against the Transferee Company.

18. That the Petitioner Companies within thirty days of the date of receipt of this Order shall 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 Company shall be dissolved and the

Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company

and the files relating to all the Petitioner Companies shall be consolidated accordingly.

19. The Company Petition stands allowed in the above terms.