(2020) 06 NCLT CK 0016

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition No. CAA-35/(ND) Of 2020

Mstar Semiconductor India Private Limited	APPELLANT
Vs	
Mediatek India Technology Private Limited	RESPONDENT

Date of Decision : 24-06-2020

Acts Referred:
Companies Act, 2013 — Section 89, 133, 230, 231, 232

Citation : (2020) 06 NCLT CK 0016

Hon'ble Judges : P.S.N. Prasad, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : S.P. Singh Chawla, D.K. Singh, Tania Sharma

Final Decision : Disposed Of

Judgement

P.S.N. Prasad, J

1. This application has been filed by the applicant Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme") has been placed on record.

2. The "Transferor Company, Mstar Semiconductors India Private Limited was incorporated under the provisions of companies Act 2013, having its registered office situated at B-25, Sagar Apartments, 6 Tilak Marg, New Delhi- 110001.

3. The "Transferee Company, Mediatek India Technology Private Limited was incorporated under the provisions of companies Act 1956, having its registered office situated at 1568, Church Road, Kashmere Gate, New Delhi- 110006.

4. A perusal of the petition discloses that initially the First Motion application

seeking dispensation from convening the meetings of Shareholders of the Applicant companies was filed before this Bench vide CA (CAA) No. 13 (ND)/2020 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders of the Petitioner Companies were dispensed with, vide order dated 04.02.2020 passed by this Hon'ble Tribunal. There were no secured and unsecured creditors of the petitioner companies.

5. The Petitioner Companies were directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit dated 08.05.2020 affirming compliance and discloses that the petitioners have effected publication in The Indian Express' English Delhi edition as well as in 'Jansatta' Hindi Delhi edition both dated 12.03.2020. In addition to the public notice, notices were served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

6. Pursuant to the notice issued to the Regional Director, RoC, and Official Liquidator, they have filed their report and participated in the proceeding.

7. The Regional Director has filed its representation dated 12.05.2020 in which it is submitted that the proposed scheme of amalgamation inter alia that the Transferor Company is wholly owned Subsidary at Mediatek India Technology Private Limited (Transferee Company). Whereas, as per e-form MKGT-7 filed on MCA-21 portal on 21.11.2019, as on 31.03.2019, the Transferor Company is a wholly owned subsidiary of Mediatek Investment Singapore Pte. Ltd. a foreign entity. Therefore, it is not understood as to when, shares of Transferor Company changed hand and it became a wholly owned subsidiary of Transferee Company. Furthermore, the Transferor Company has not yet filed e-form MGT-6 regarding holding of one share by Ta Wei Ku a nominee of Transferee Company in terms of the provisions of section 89 of the Companies Act, 2013.

8. The petitioner Company in support of its contention had filed a rejoinder Affidavit dated 02.06.2020, wherein it reiterated the fact the Transferor Company became subsidiary of the Transferee Company on 26.09.2019. The copy of form SH-4 and copy of Board resolution of the Transferor Company in this regard was duly annexed. Further, the applicant submitted that the Transferor Company has already filed e-form MGT 6 regarding holding of one share by Mr. Ta Wei Ku as nominee of Transferee Company in terms of provision of section 89 of the Companies Act, 2013.

9. The Official Liquidator has filed its report dated 01.06.2020 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of all the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to

public interest.

10. That the Income Tax Department has filed its report for the Transferor company and has been placed on record which states that no objection has been raised against the scheme. However, in order to protect the interest of the Revenue it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.

11. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

12. Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013. The Audited Financial Statements for the year ended 31st March, 2019 of all the applicant companies have been filed.

13. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

i. It has also been affirmed in the petition that the Scheme is in the interest of the transferor company and the transferee company including their shareholders, creditors, employees and all concerned.

ii. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme.

1. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

2. 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 the petitioners.

3. 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, taxes 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.

4. THIS TRIBUNAL DO FURTHER ORDER

1. That the Transferor Company shall stand dissolved without following the process of winding-up; and

2. 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 Companies Act, 2013, be transferred to and vest in the transferee company.

3. That all the liabilities and duties of 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 become the liabilities and duties of the transferee company; and

4. That all proceedings now pending by or against the Transferor Company, be continued by or against the transferee company; and

5. That all the employees of the Transferor Company in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Company on the said date.

6. That Petitioner companies 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 all the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to all the Transferor Company registered with him 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; and

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

The petition stands disposed of in the above terms. Let copy of the order be served to the parties.