(2024) 04 NCLT CK 0028

In the National Company Law Tribunal

Case No : C.A.(CAA)/ 14 / MB /2024

Mugdha Investment And Finance Private Limited Vs

Date of Decision : 08-04-2024

Acts Referred:

Companies Act, 2013 — Section 230, 230(5), 232
Reserve Bank of India Act, 1934 — Section 45IA

Citation : (2024) 04 NCLT CK 0028

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi

Final Decision : Disposed Of

Judgement

1. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Arrangement between Mugdha Investment and Finance Private Limited ('First Applicant Company' or 'Demerged Company') and Dharmadhikari Enterprises Private Limited ('Second Applicant Company' or 'Resulting Company') and their respective shareholders under section 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and Rules framed there under as in force from time to time (the "Scheme").

2. The Learned Counsel for the Applicant Companies submits that the First Applicant Company is engaged in the business of investment, leasing and finance and has obtained registration certificate (Registration No. B-13.01374) from the Reserve Bank of India as a non-deposit taking Non-Banking Finance Company under section 45-IA of the Reserve Bank of India Act,1934. The Second Applicant Company is engaged in manufacturing and trading of Tungsten Carbide Powders, Tungsten Carbide Tools, Sintered products and finished products on the basis of specific requirements of customers.

3. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the First Applicant Company and Second Applicant Company in their respective meetings held on 7 November 2023 and 6 November 2023 have

approved the Scheme. The Board Resolution approving the Scheme for the Applicant Companies was annexed as "Annexure C and Annexure F" having pages no. 163 to 165 and page no. 250 to 255 to the Joint Company Scheme Application.

4. The Learned Counsel for the Applicant Companies submits that Appointed Date for demerger of First Applicant Company/ Demerged Company into the Second Applicant Company /Resulting Company is April 01, 2024.

5. The Learned Counsel for the Applicant Companies submits that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on date of filing of application is as under:

Particulars

Amount (in Rs)

Authorised Share Capital

5,00,000 equity shares of Rs. 10 each

50,00,000

45,00,000 10% Non-Cumulative Compulsory

Convertible Preference Shares of Rs. 10/- each

4,50,00,000

5,00,000 10% Non-Cumulative Redeemable

Preference Shares of Rs. 10/- each

50,00,000

TOTAL

5,50,00,000

Particulars

Amount (in Rs)

Issued, Subscribed and Paid-up Share Capital

2,10,000 equity shares of Rs. 10 each

21,00,000

45,00,000 10% Non-Cumulative Compulsory

Convertible Preference Shares of Rs. 10/- each

4,50,00,000

TOTAL

4,71,00,000

Second Applicant Company/ Resulting Company

Particulars

Amount (in Rs)

Authorised Share Capital

1,00,000 Equity shares of Rs. 10 each

10,00,000

TOTAL

10,00,000

Issued, Subscribed and Paid-up Share Capital

10,000 Equity Shares of Rs. 10 each

1,00,000

TOTAL

1,00,000

6. The Learned Counsel for the Applicant Companies further submits that the rationale for the Scheme is as follows:

• The demerger would enable greater/enhanced focus of management on the Remaining Business (especially on the strategic investment being held in Electronica Finance Limited), thereby facilitating the management to efficiently exploit opportunities and growth plans in asset financing and hire-purchase business sector.

• The structure (post-demerger) will provide independence and flexibility to the management of the Demerged Company and Resulting Company and Resulting Company in decisions regarding the use of their respective cashflows.

• Overall, the demerger, will enhance, operational efficiency and effectiveness by creating leaner and focused organization;

• The demerger will be beneficial to both Demerged Company and Resulting Company, their shareholders and all the stakeholders.

7. The Learned Counsel for the Applicant Companies submits that as regards the First Applicant Company/ Demerged Company, there are:

i. 2 (Two) Equity Shareholders, a list of which is annexed as “Annexure M1” having page no. 294 to the Joint Company Scheme Application; and

ii. 1 (One) Preference Shareholder, a list of which is annexed as “Annexure N1” having page no. 303 to the Joint Company Scheme Application.

The Equity Shareholders and Preference Shareholder have provided their consent affidavit(s) to dispense from convening and conducting the Meeting of the Equity Shareholders and the Preference Shareholder of the First Applicant Company/ Demerged Company follows:

• First Applicant Company – Consent Affidavits of Equity shareholders are attached as Annexure "M2" on page no. 295 to 302 to the Joint Company Scheme Application; and

• First Applicant Company – Consent Affidavit of the sole Preference shareholder is attached as Annexure "N2" on page no. 304 to 307 to the Joint Company Scheme Application;

Accordingly, the Meeting of the Equity Shareholders and Preference Shareholder of the First Applicant Company is hereby dispensed with.

8. The Learned Counsel of the Applicant Companies submit that there are no Secured Creditors in the First Applicant Company.

9. The Learned Counsel of the Applicant Companies submit that there is 1 (one) Unsecured Creditor in the First Applicant Company having outstanding value of Rs. 5,81,952 (Rupees Five Lakh Eighty-One Thousand Nine Hundred and Fifty-Two) a list of which is annexed as "Annexure L1" having page no. 292 to the Joint Company Scheme Application. The Counsel for the Applicant Companies further submitted that the First Applicant company has filed an Additional Affidavit dated 21st March 2024 annexing consent affidavit of the Unsecured Creditor. In view of the consent affidavit of the unsecured creditor, the meeting of the unsecured creditor of First Applicant Company is hereby dispensed with.

10. The Learned counsel submits that as regards the Second Applicant Company/ Resulting Company there are:

i. 2 (Two) Equity Shareholders a list of which is annexed as "Annexure O1" having page no. 308 to the Joint Company Scheme Application; The Equity Shareholders have provided their consent affidavit(s) to dispense from convening and conducting the Meeting of the Equity Shareholders of the Second Applicant Company/ Resulting Company follows:

• Second Applicant Company – Consent Affidavits of Equity shareholders are Annexure "O2" on page no. 309 to 317 to the Joint Company Scheme Application;

Accordingly, the Meeting of the Equity Shareholders of the Second Applicant Company is hereby dispensed with.

11. The Learned Counsel of the Applicants submit that there are no Secured and unsecured Creditors in the Second Applicant Company.

12. The Learned Counsel of the Applicant Companies submits that Applicant Companies filed an additional affidavit dated 07.03.2024 listing out the assets and liabilities of the Demerged Company to be transferred to the Resulting

Company.

13. The First Applicant Company and Second Applicant Company are directed to serve notice along with copy of Scheme and list of assets and liabilities as per additional affidavit under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the-

i. Central Government through the office of Regional Director, Western Region, Mumbai;

ii. Jurisdictional Registrar of Companies;

iii. Jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made;

iv. the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address: - 3 Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];

v. Reserve Bank of India, and

vi. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law.

14. The aforementioned Notices shall be served through by Registered Post-AD/ Speed Post/ or Hand Delivery along with copy of Scheme and state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme". It is clarified that notice of service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the notice.

15. The Applicant Companies shall host the notices along with a copy of the Scheme and additional affidavit on their respective websites, if any.

16. The Applicant Companies to file Affidavit of Service to report to this Tribunal that the direction regarding the issue of notices have been duly complied with as per the applicable Rules of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.