(2019) 12 NCLT CK 0009

In the National Company Law Appellate Tribunal

Case No : Company Petition No. (CAA) 88/PB Of 2019

Multiiplex Trading And Industrial Company APPELLANT

Vs

ASF Infrastructure Private Limited RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232, 233, 234

Citation : (2019) 12 NCLT CK 0009

Hon'ble Judges : M.M. Kumar, CJ;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Tarun Jain, Sonam Sharma, Ayush Beotra, Vibhooti Malhotra, Shailendra Singh

Final Decision : Disposed Of

Judgement

M.M. Kumar, CJ

1. This Joint Application has been filed by the Petitioner 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 Arrangement. The copy of the Scheme has been placed on record.

2. A perusal of the petition that initially the First Motion application seeking directions for convening/dispensing with the meetings of Shareholders and Creditors was filed before this bench and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, this Tribunal vide its first motion order dated 23.05.2019 has dispense with the requirement of convening all the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company and of the Transferee Company. On 14.06.2019 the Petitioners were directed to carry out publication in the newspapers English Daily 'Financial Express' as well as in Hindi Daily 'Jansatta' (Delhi Edition). In addition

thereto notices were directed to be served on 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.

3. It is seen from the records that the Petitioners have filed an affidavit affirming compliance of the order passed by the Tribunal. A perusal of the Affidavit discloses that the petitioners have effected the newspaper publication on 22.06.2019 as directed 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, Income Tax Department in compliance of the order and in proof of the same acknowledgement by the respective offices have also been place on record.

4. The Regional Director, official has filed its representation and has submitted that he has not received any complaint/objection from any shareholder, creditor or other stakeholder of the companies.

5. The Official Liquidator has filed its report wherein no material objection has been raised by them in relation to 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 the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

6. The Income Tax Department has filed its report wherein no material objection has been raised by the department in relation to the approval of the proposed Scheme.

7. Certificates of respective Statutory auditors of both 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.

8. 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.

9. In the case of Hindustan Lever Employees Union v. Hindustan Lever Limited (1995) 5 SCC 491 the three judges Bench of Hon'ble Supreme Court held that:

'A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process. '

10. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

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

12. 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.

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

14. The Petitioners shall however 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 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.

16. 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.

17. 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 the Transferor Company, he 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 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 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 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 Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the transferee company and the files relating to both 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.

