(2023) 06 NCLT CK 0009

In the National Company Law Tribunal

Case No : CP (CAA)/248/MB-V/2022 In C.A. (CAA) 134 /MB-V/2022

Nivo Instruments Private Limited Vs

Date of Decision : 06-06-2023

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

Citation : (2023) 06 NCLT CK 0009

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Yuvraj G Thakore, Gaurav Jaiswal,

Final Decision : Disposed Of

Judgement

Anuradha Sanjay Bhatia, Member (Technical)

1. The Bench is convened by videoconference.

2. We have heard the Learned Counsel for the Petitioner Companies and the representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai ("Regional Director"). No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme.

3. The sanction of the Tribunal is sought under Sections 230-232 and other applicable provisions of the Companies Act, 2013 (the Act) and the Rules framed thereunder for the Scheme of Merger of Nivo Instruments Private Limited ('Transferor Company') with Toshbro Controls Private Limited ('Transferee Company') and their respective Shareholders (hereinafter referred as to "Scheme").

4. The Learned Counsel for the Petitioner Companies submits that Board of Directors of Nivo Instruments Private Limited ('Transferor Company') with Toshbro Controls Private Limited ('Transferee Company') approved the Scheme in their respective Board Meeting held on 14th March, 2022. The Appointed Date fixed under the Scheme is 1st April, 2021.

5. The Learned Counsel for the Petitioner Companies submits that the Transferee Company carry on the business of manufacturing, produce, repair, use, buy, sell, import, export in India or abroad, all types of process control instruments, process control systems, equipment, apparatus and appliances. The Transferor Company carry on business in India and abroad as manufacturers and dealers in all kinds of process control, electrical and electronic, scientific, medical, engineering instruments, equipments, apparatus, devices, contrivances, components and their accessories Individually and in complete systems and undertake their maintenance and servicing.

6. The Learned Counsel for the Applicant Companies has stated that the Transferee Company as well as Transferor Company have decided to go for a scheme of compromise /arrangement /amalgamation and the rational for amalgamation is as under: -

i. The Transferor Company and the Transferee Company are part of the same management group and have common majority equity shareholders.

ii. Greater financial strength and flexibility for the Transferee entity, which would result in maximizing overall shareholder value and improve the economic and competitive position of the combined entity.

iii. Achieve greater efficiencies in operations with optimum utilization of resources, better administration and reduced cost. The amalgamation would help in avoiding duplication of regulatory and procedural compliances and consequently result into saving of time, resources and cost involved and therefore increased cost savings are expected to flow from focused operational efforts.

iv. The scheme shall be in the beneficial interest of the shareholders of the Transferor Company and the Transferee Company. The Scheme shall not be in any manner prejudicial to the interest of the concerned members or general public at large.

7. The Learned Counsel for the Petitioner Companies further submits that the Present Company Scheme Petitions is filed in consonance with Section 230-232 of the Companies Act, 2013 and in terms of order dated 16th September, 2022 passed in CA (CAA) / 134 / MB-V / 2022 by this Tribunal.

8. The Learned Counsel appearing on behalf of the Petitioner Companies submits that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all Statutory / Regulatory requirements, if and to extent applicable, as may be required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.

9. The authorized, issued, subscribed and paid-up capital of the Transferor Company, as on March 31, 2021 is as under:

Share Capital

Amount (in Rs.)

Authorized 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 fully

paid up

1,00,000

Total

1,00,000

10. The authorized, issued, subscribed and paid-up capital of the Transferee Company, as on March 31, 2021 is as under:

Share Capital

Amount (in Rs.)

Authorized Capital

10,000 Equity Shares of Rs. 100/- each;

10,00,000

90,000 Cumm. Preference Shares of Rs.

90,00,000

100/- each;

Total

1,00,00,000

Issued, Subscribed and Paid-up Share

Capital

5,00,000

5,000 Equity Shares of Rs. 100/- each fully

90,00,000

paid up;

90,000 Cumm. Preference Shares of Rs.

100/- each;

Total

95,00,000

11. CONSIDERATION AND MODE OF DISCHARGE OF CONSIDERATION

11.1 Upon the Scheme becoming finally effective, in consideration of the transfer and vesting of the Undertaking of the Transferor Company in the Transferee Company in terms of the Scheme, the Transferee company shall, subject to the provisions of the Scheme and without any further application, act or deed, issue and allot 10800 (Ten Thousand Eight Hundred) Equity Shares having face value of Rs. 100/- (Rupees Hundred only) per Equity share, credited as fully paid-up in the capital of the Transferee Company to the members of the Transferor Company whose names appear in the Register of Members of the respective Transferor Company on a date to be fixed by the Board of Directors of the Transferee Company or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferee Company and approved by then to be placed on its register names in the following proportion:

a. In the case of Transferor Company (NIVO INSTRUMENTS PRIVATE LIMITED) in the ratio of (1.08) Equity Shares of the face value of Rs. 100/- (Rupees Hundred only) each of the Transferee Company for every (1) Equity Share of the face value of Rs. 10/- (Rupees Ten) each, held by such member or his/her/its respective legal heirs, executors or successors in the Transferor Company.

12. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 24th February, 2023. In paragraph 2 (a) to (i) of the Report, the RD has made certain observations. In response to the observations made by the Regional Director, the Petitioner Companies have given necessary undertakings and clarification as per Affidavit in Rejoinder dated 2nd March 2023. The said observation of RD and response of the Petitioner Companies are as under:

Sr.

No.

Para (2)

RD Report / Observations dated 24th February, 2023

Response of the Petitioner Companies in its Affidavit in Rejoinder dated 2nd March 2023

(a b c)

The Hon’ble Tribunal may hereby kindly consider the report of ROC as narrated in Para (2)

The ROC Mumbai has submitted that there are no Inspections, Injury, Investigation, Prosecution, Technical Search and any complaints against the Petitioner Companies.

The Petitioner Transferee Company undertakes to pay the difference of the amount of fees payable on account of enhanced authorized capital, if any, and undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013. The Petitioner Companies undertakes to take utmost interest of the Creditors of the Company.

(d)

In compliance of AS-14 (IND AS- 103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.

As regards the observation made in paragraph 2 (d) of the said Report, the Petitioner Transferee Company undertakes to comply with the applicable Accounting Standard – 14 or IND AS 103. It is further submitted that the Transferee Company shall pass the accounting entries which are necessary in connection with the Scheme to comply with the applicable accounting standards.

(e)

The Hon’ble Tribunal may hereby kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application as well as in the Company Petition are one and the same and there is no discrepancy,

The Petitioner Companies say and submit that the Scheme submitted in the Company Application as well as in the Company Petition are one and the same and there is no discrepancy, or no changes are made.

(f)

The Approval of the Scheme by the Hon’ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme.

The Petitioner Companies say and submit that the Petitioner Companies have served Notices to the applicable statutory authorities i.e., Regional Director, Registrar of Companies, Official Liquidator as well as the Income Tax Department. The Petitioner Companies have also filed Affidavit of Service evidencing the service of such notices.

(g)

As per Definition of the Scheme. "Appointed Date" means April 1, 2021. And "Effective Date" or upon this Scheme becoming effective or upon coming into effect of this Scheme, shall means the date on which certified copies of the NCLT's order sanctioning this Scheme are filed by the companies with the Registrar of Companies, Mumbai.

"Record date" means date (s) to be fixed by the Board of Directors of the transferee Company after the effective date with reference to which the eligibility of the Equity shareholders of the transferor company for the purpose of issue and allotment of shares of the transferee Company, in the terms of the Scheme shall be determined.

Further, the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

The Petitioner Companies say and submit that the Petitioner Companies in their respective board meeting approved the Scheme and passed a resolution dated 14th March 2022 to file the Application for necessary approval of the National Company Law Tribunal. It is submitted that the Appointed date in the present Scheme of Amalgamation is in compliance with the circular dated 21.08.2019. It is submitted that the Appointed date is 1st April 2021, and the Application was filed on 31st March 2022. Thus, the appointed date is in compliance with the Circular dated F. No. 7/12/2019/CL-1 dated 21.08.2019.

(h) and (i)

Petitioner Company shall undertake to comply with the directions of the concerned sectoral Regulatory, If so required.

Petitioner Company shall undertake to comply with the directions of the Income Tax department, If any

The Petitioner Companies undertakes to comply with the directions of Statutory Authorities. The Petitioner Companies also undertakes to comply with the provisions of Income Tax Laws and Rules framed thereunder.

13. The Official Liquidator has filed his report dated 28th February 2023 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and the Scheme is not prejudicial to the interest of the public and the Shareholders of the Transferor Companies. Accordingly, the Transferor Companies may be ordered to be dissolved without winding up.

14. The Learned Counsel, Mr. Gaurav Jaiswal, along with Tushar Wagh, Deputy Director, Authorised representative of the Regional Director, MCA (WR), Mumbai who is present at the time of Final hearing has submitted that the clarifications, submissions and undertakings given by the Petitioner Companies are hereby accepted and that they have no objection for approving the scheme by the Tribunal

15. From the material on record, the Scheme appears to be fair and reasonable and does not violate of any provisions of law and is not contrary to public policy.

16. Since all the requisite statutory compliances have been fulfilled, consolidated Company Scheme Petition in C.P. (CAA) 134 / MB / 2022 filed by Petitioner Companies are made absolute in terms of clause (a) to (c) of the said Company Scheme Petition.

17. The Scheme is sanctioned hereby, and the Appointed Date of the Scheme is fixed as 1st April, 2021.

18. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-Form INC-28, within 30 days from the date of receipt of the order by the Registry, duly certified by the Assistant/ Deputy Registrar of this Tribunal.

19. The Petitioner Companies are directed to lodge a certified copy of this Order and the Scheme duly authenticated by the Assistant/Deputy Registrar of this Tribunal, with the concerned Superintendent of Stamps for adjudication of stamp duty payable, if any, within 60 working days from the date of receipt of certified copy of the certified order from the Registry of this Tribunal.

20. All concerned regulatory authorities to act on a copy of this Order duly certified by the Assistant/Deputy Registrar of this Tribunal along with copy of the Scheme.

21. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.

22. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.

23. Ordered Accordingly. CP (CAA)/248/MB-V/2022 is allowed and disposed of.

