(2023) 09 NCLT CK 0038

In the National Company Law Tribunal

Case No : CP(CAA)/23/MB/2023 In CA(CAA)/189/MB/2022

Parcorp Private Limited Vs

Date of Decision : 27-09-2023

Acts Referred:
Companies Act, 2013 — Section 66, 230, 230(1), 230(3), 230(4), 230(5), 230(6), 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2023) 09 NCLT CK 0038

Hon'ble Judges : Reeta Kohli, Member (J);Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Manoj Kumar Mishra, Gaurav Jaiswal

Final Decision : Disposed Of

Judgement

Madhu Sinha, Member (Technical)

1. Heard the Learned Counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the petition.

2. The sanction of this Tribunal is sought under Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 ('Act') in the matter of the Scheme of Amalgamation of Parcorp Private Limited, ("Transferor Company ") and Seabird Resorts Private Limited ("Transferee Company") and their respective Shareholders ("Scheme").

3. The Learned Counsel for the Petitioner Companies submits that the Petitioner Company 1 is presently carrying on business of commission agent, shipping agents, ship managers, ship or boat owners, vessel or trawlers owners, ship builders, logistic providers, transporters, booking agents, forwarding agents, etc. The Petitioner Company 2 is presently carrying on business to run, manage, own, lease, convert, build, commercialize, handle, operate, renovate, construct, maintain, improve, exchange, furnish, recondition, hire, let or hire, consolidate, encourage, establish, sponsor, provide, organise, operate and conduct resorts,

motels, hotels, restaurants, lodges, cafes, taverns, tea and coffee houses, bear houses, bars, boating centres, flight carriers, refreshments rooms, night clubs, family sports and leisure centre, etc.

4. The Learned Counsel for the Petitioner Companies submits that the rationale of the Scheme is as under:

The Transferor Company has faced financial losses, since last two years due to escalated overhead cost, loss of business, challenging and competitive market environment and increase in legal and tax cost. Considering the cost elements involved, the Management of the Transferor Company was of the view that it would be difficult for the Company to sustain and grow in such a scenario also the chances of wealth maximisation for the shareholders is bleak. After considering the opinions and advice from financial experts, amalgamation of the transferor company with the Transferee Company was decided upon. The said amalgamation would result in cutting down the layers between the holding and subsidiary. There is no business and investment in transferor company except the Transferor Company holds 55.88% in Transferee Company and upon Scheme coming into effect ultimate shareholders of the Transferor Company will become shareholders in Transferee Company and currently holds entire stake in Transferee Company thereby mirror image shareholding will be reflected in Transferee Company.

The Amalgamation would result inter-alia the following benefits to Transferor and Transferee Company and their respective shareholders:

? In order to consolidate the business at one place and effectively manage the Transferor Company and Transferee Company as a single entity, which will provide several benefits including streamlined group structure by reducing the number of entities, reducing the multiplicity of legal and regulatory compliances, rationalizing costs, it is intended that Transferor Company be amalgamated with the Transferee Company. The amalgamation will contribute in furthering and fulfilling the objectives and business strategies of all the companies thereby accelerating growth, expansion and development of the respective businesses through the Transferee Company thereby strengthen the financial capacity of the group. The amalgamation will thus enable further expansion of the Transferee Company and provide a strong and focus base to undertake the business more advantageously. Further, this arrangement would bring concentrated management focus, integration, streamlining of the management structure, seamless implementation of policy changes and shall also help enhance the efficiency and control of the Transferor Company and Transferee Company.

? Optimum and effective utilization and rationalization of capital, resources, assets and facilities;

? Enhancement of competitive strengths including financial resources;

? Obtaining synergy benefits;

? Better management and focus on growing the businesses;

? Reduction of overheads, administrative, managerial and other expenditure;

? Simplify shareholding structure and reduce shareholding tiers.

? Wealth maximisation of all the shareholders

? Tax synergies

? The Scheme would be in the best interests of the shareholders, creditors, employees and other stakeholders of the Companies and the public at large, as it would result in enhancement of shareholder value and operational efficiencies.

In view of aforesaid benefits, it is proposed that the Transferor Company be amalgamated with the Transferee Company, followed by dissolution without winding-up of the Transferor Company and consequent cancellation of equity and preference shares held by the Transferor Company in the Transferee Company, pursuant to Section 230 to 232 read with Section 66 of the Companies Act, 2013 and Rules framed thereunder.

5. There is no likelihood of the interest of any shareholder or creditor of Transferor and Transferee Companies being prejudiced in any manner as a result of the Scheme.

6. The Learned Counsel for the Petitioner Companies submits that the Board of Directors of the respective Petitioner Companies vide resolution dated 14th March, 2022 have approved the Scheme and have approached the Tribunal for sanction of the Scheme.

7. The Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with the order dated 25th November, 2022 passed by this Tribunal in CA(CAA)/189/MB/2022.

8. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made there under.

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its report dated March 28, 2023 inter alia stating that, save and except the observations as stated in paragraph 2 (a) to (g) of the report, this Tribunal may pass such order or orders as deemed fit and proper in the facts and circumstance of the case. In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings vide their affidavit dated 19th April, 2023. The observations made by the Regional Director and the clarifications/undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No

RD Report dated March 28, 2023

Response of the Petitioner Companies

Para 2(a)

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

Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(a) of the said report of Regional Director concerned, the Petitioner Companies undertakes to pass necessary accounting entries in connection with the Scheme as per AS-14 (IND AS-103) as well as to comply with other applicable accounting standards to the extent applicable. The accounting entries as per the applicable accounting standard is also provided in clause no. 17 of the Scheme

Para 2(b)

As per Definition of the Scheme, "Appointed Date" means the 1st day of January, 2022 or such other date as the National Company Law Tribunal (Tribunal) or other competent authority may otherwise direct/ fix.; And

“Effective Date" means the date on which the certified true copy of the Order of Hon'ble National Company Law Tribunal sanctioning the Scheme of Amalgamation is filed by the Transferor Companies and the Transferee Company with the respective jurisdictional Registrar of Companies ("ROC"), Mumbai, as the case may be.;

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

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

Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(b) of the report of Regional Director concerned, as provided under the Scheme, the Petitioner Companies clarifies that, the Scheme shall be effective from the Appointed Date which is a specific date i.e., January, 01, 2022. Accordingly, the Scheme is in conformity with the circular no. F. No.7/12/2019/CL -1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

Para 2(c)

Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty

Apropos observation of the Regional Director, Western Region, Mumbai made in Paragraph 2(c) of the report concerned, the Petitioner Companies undertakes to comply with section 232(3)(i) of the Companies Act, 2013, wherein pursuant to the dissolution of the Transferor Companies, the fees, if any, paid by the respective Transferor Company on its Authorized Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the amalgamation. The Transferee Company shall pay the difference of fees and Stamp duty, if any, after the above mentioned set-off.

Para 2(d)

The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(d) of the report of Regional Director concerned, as provided under the scheme, the Petitioner Companies states that the Hon'ble Tribunal, Mumbai Bench vide Order dated November 25, 2022 passed in the Company Scheme Application C.A.(CAA)189/MB /2022 (hereinafter referred to as "the Application Order")

a) Dispensed with the meeting of the Equity and Preference Shareholder s of Petitioner Companies (Reference para 7 (a) and 7 (b) of Application Order) being consent received by way of affidavits from equity and preference shareholders of the Petitioner Companies.

b) There are no secured creditors in the Petitioner Company 1 (Reference para 8 of Application Order). Therefor the requirement of holding meeting of the secured creditors was not required.

c) Dispensed with the meeting of Secured Creditors of Petitioner Company 2 (Reference para 9 of Application Order) being consent received by way of NOC from the secured creditor and the present scheme does not involve an arrangement with the secured creditor nor is there any compromise or arrangement envisaged in the scheme with the secured creditor of the Petitioner Company 2.

d) Dispensed with the meeting of Unsecured Creditors of Petitioner Company 1 (Reference para 10 of Application Order) being consent received by way of NOC from the Unsecured Creditors of the said Petitioner Company.

e) Dispensed with the meeting of Unsecured Creditors of Petitioner Company 2 (Reference para 11 of Application Order) and directed to serve individual notices to all its unsecured creditors. Further, the Applicant Company 2 served individual notice to all its Unsecured Creditors having outstanding balance of Rupees Five Lakhs and above as on 31st March, 2022.

Para 2(e)

The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;

Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(e) of the report of Regional Director is concerned, the Petitioner Company 2 clarifies that the Scheme is in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961 and undertakes that all the relevant provisions of lncome Tax Act, 1961 and Rules thereunder to the extent applicable will be complied with. The above matter is also provided in Clause no. 7 of the Scheme referred to in point (a) above.

Para 2(f)

It is observed from latest MGT-7 for the year ending 31.03.2022 filed by the petitioner companies that transferee company has following corporate body shareholders having more than 10% shareholding, but form Ben-2 has not been filed:

Name of the Company

Name of the Shareholder

Percentage of shareholding

Status of BEN -2

Seabird Resorts Private Limited (Transferee Company)

Parcorp Private Limited (Transfer or Company)

55.88%

Not filed

Therefore, petitioner company may be directed to clarify and comply with the same as required u/s. 90 of the Companies Act, 2013 w.r.t companies (Significant Beneficial Owners) Rules, 2018.

Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(f) of the report of the Regional Director concerned, the Petitioner Companies clarifies that though Form BEN – 2 is not applicable, the Petitioner Companies have duly filed Form BEN – 2 on 25.07.2023 and the same has been duly served upon the Regional Director on 31.07.2023 via hand delivery and email. The Petitioner Companies have also submitted Form BEN – 2 with the service acknowledgement of the Regional Director in the form of an Additional Affidavit before the Hon'ble NCLT, Mumbai Bench.

Para 2(g)

That on examination of the report of the Registrar of Companies, Mumbai dated 28.03.2023 (Annexed as Annexure B)) that all the Petitioner the Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or representation regarding proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the petitioner companies have filed Financial Statements up to 31.03.2022 further observations in ROC report are as under: -

i. That the ROC Mumbai in his report dated 28.03.2023 has stated that no Inquiry, inspection, investigation & prosecution is pending against the subject applicant companies.

ii. Notices should be served to unsecured creditors of the Transferee Company.

iii. As per the provisions of Section 232(3)(1) of the Companies Act, 2013, where the transferor Company is dissolved, the fee, if any, paid by the transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after

iv. Interest of the Creditors should be protected.

v. May be decided on its merit.

Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(g) of the report of Regional Director concerned,

i. the facts are selfexplanatory and hence no response is required for the same;

ii. the notices were duly served to the unsecured creditors of the transferee Company;

iii. the Petitioner Companies shall comply with provisions of section 232(3)(i) of the Companies Act, 2013 and pay the remaining fees, if any, after setting off the fees already paid by the Transferor Companies on its Authorized Capital being transferred to the transferee company subsequent to amalgamatio n; and

iv. pursuant to the Scheme , the interest of the creditors are protected as the Scheme of Arrangement does not affect the rights or propose any reduction in the amounts payable to the creditors of the Petitioner Companies;

v. no response is required for the same.

10. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraph 9 above. The Affidavit dated 19th April, 2023 filed by the Petitioner Companies, the clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal, and the Petitioner Companies are directed to comply with the same. Adv. Gaurav Jaiswal, the Ld. Counsel for the Regional Director, MCA (WR), Mumbai who is present at the time of the hearing has submitted that the explanation and clarifications given by the Petitioner Companies are found satisfactory she stated that they have no serious objections for approving the scheme by the Tribunal.

11. The Petitioner Company 2 have filed an Affidavit in rejoinder to the report filed by the Regional Director with this Tribunal on 25th April, 2023 providing clarification/undertakings to the observations made by the Regional Director. A copy of the same has been filed with the office of the Regional Director on 25th April, 2023. The said clarification/undertakings are reproduced in Para 9 above. The clarifications and undertakings given by the Petitioner Company 2 are accepted.

12. The Official Liquidator has filed his report inter alia stating therein that the affairs of the Transferor Company has been conducted in a proper manner. Accordingly, the Transferor Company may be ordered to be dissolved without winding up.

13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

14. The Scheme is hereby sanctioned with the Appointed Date of 1st January 2022.

15. The Authorised Representative respectfully submits that upon merger of the Companies, Shares of the Transferee Company would be allotted in the manner as mentioned below:

“72,31,600 (Seventy Two Lakhs Thirty One Thousand and Six Hundred) equity shares of face value INR 10 each fully paid-up of SRPL shall be issued and allotted to the equity shareholders of PPL in the proportion of their holding in PPL"

16. Upon the Scheme becoming effective, paid up share capital of Transferee Company shall stand cancelled and reduced to the extent of 72,31,600 Equity Shares of the face value of Rs. 10/- (Rupees Ten Only) and 7,14,80,000 Preference shares of the face value of Rs. 10/-(Rupees Ten Only) each held by Transferor Company without any further act or deed on a proportionate basis.

17. Upon the coming into effect of this Scheme, the Transferor Company shall stand dissolved without winding-up and without any further act or deed.

18. Further, upon the coming into effect of this Scheme and with effect from the Appointed Date, entire undertaking of the Transferor Company including all the

assets and liabilities, shall pursuant to Sections 230 to 232 and other applicable provisions of the Act, without any further act, instrument or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company and the same shall be assumed by the Transferee Company in accordance with the Scheme.

19. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)23/MB/2023 filed by the Petitioner Companies are made absolute in terms of the prayer clauses of the said Company Scheme Petition.

20. The Petitioner Companies are directed to file 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, duly certified by the Joint Registrar or the Assistant Registrar, as the case may be, of this Tribunal.

21. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Joint Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified Order.

22. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registrar of Tribunal, along with a copy of the Scheme.

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

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

25. Ordered Accordingly. CP (CAA) No. 23 of 2023 is Allowed and Disposed of.