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(2022) 08 NCLT CK 0030

In the National Company Law Tribunal

Case No : C.P. (CAA) No. 10/KB/2022 Connected With C.A. (CAA) No. 195/KB/2021

Pitti Projects Private Limited Vs

Date of Decision : 23-08-2022

Acts Referred:
Companies Act, 2013 — Section 133, 230(1), 232(3), 232(3)(i), 232(4)

Citation : (2022) 08 NCLT CK 0030

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Shashi Agarwal, Harihar Sahoo

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

1. The instant petition has been filed under Section 232(3) and other applicable provisions of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of Elderson Commo Trade Private Limited, being the Petitioner No. 2 abovenamed ("Transferor Company No. 1" or "Elderson") and Emars Commo Trade Private Limited, being the Petitioner No. 3 abovenamed ("Transferor Company No. 2" or "Emars") with Pitti Projects Private Limited, being the Petitioner No. 1 abovenamed ("Transferee Company" or "Pitti") whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1st April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

2. The Petition has now come up for a final hearing. Ld. Authorised Representative for the Petitioners submits as follows:-

a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 15/09/2021 respectively.

b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

i. For the purposes of better, efficient and economical management, control and running of the business of the undertakings concerned and also for administrative convenience and to obtain advantage of economy of large scale and to broad base the present business, the present Scheme is proposed to amalgamate the Transferor Companies with the Transferee Company.

ii. Simplification of corporate structure by reducing the number of legal entities and reorganizing the legal entities in the group structure;

iii. Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out;

iv. Elimination of duplication in administrative costs and multiple record-keeping, thus resulting in cost savings;

v. Concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities.

vi. Simply the Shareholding of Transferee Company.

c) The Statutory Auditors of respective Petitioner Companies have by their certificates dated 29/09/2021 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

d) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr Pranab Kumar Chakrabarty, Registered Valuer.

3. By an order dated 20.12.2021, in Company Application CA(CAA) No. 195/ KB/2021, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) :-

Meeting(s) dispensed: Meetings of the Equity Shareholders of the Petitioner Companies for considering the Scheme were dispensed with in view of all such shareholders having given their consent to the Scheme by way of affidavits. And further, as all Petitioner Companies had no secured creditors and no unsecured creditors, no meeting of creditors was required to be held.

4. Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 08/03/2022 the instant petition was admitted by this Tribunal and initially fixed for hearing on 25/04/2022 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 22/03/2022, the Petitioners have duly served such notices on the Regional Director, MCA on 22/03/2022 by hand delivery, Registrar of Companies on 22/03/2022 by hand delivery, Official Liquidator on 22/03/2022 by hand delivery, Reserve Bank of India on 22/03/2022 by hand delivery, Income Tax officer on 22/03/2022 by hand delivery. The Petitioners have also published such advertisements once each in

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the Financial Express and Aajkaal in their respective issues dated 07/04/2022. An affidavit of compliance duly affirmed on 08/04/2022 in this regard has also been filed by them.

5. All statutory formalities requisite for obtaining the sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

6. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD"), Official Liquidator, High Court, Calcutta have filed their representations before this Tribunal.

7. The Official Liquidator has filed his report dated 21st April,2022 and concluded as under:-

That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to the public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

8. The RD has filed his reply affidavit dated 15th July, 2022 ("RD affidavit") which has been dealt with by the Petitioners. The observations of the RD and responses of the Petitioner(s) are summarized as under:-

a) Paragraph No. 2 (a) of RD affidavit: That it is submitted that on examination of the report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up-dated in filing their statutory returns 31/03/2021.

Paragraph 5(a) of Rejoinder: With reference to paragraph 2(a) of the said reply, since the statements made in the said paragraphs are general statements hence no comments is required to the said statements.

b) Paragraph No. 2 (b) of RD affidavit : That Petitioner Company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph 5(b) of Rejoinder: With reference to para 2 (b), it is stated that the petitioners' companies undertake to comply with the provisions of section 232(3)(i) of the Companies Act 2013. Further, Part-B of Clause 9 of the Scheme relating to authorised capital is in accordance with section 232(3)(i) of the Companies Act 2013.

c) Paragraph No. 2 (c) of RD affidavit : That the Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

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Paragraph 5(c) of Rejoinder: With reference to para 2 (c), I say that as per the Scheme of Amalgamation appointed date is 01/04/2021 hence assets of transferor companies to be transferred will as per the audited accounts of the transferor companies as at 31/03/2021. However, list of assets to be transferred is annexed hereto and marked with letter "A".

d) Paragraph No. 2 (d) of RD affidavit: That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph 5(d) of Rejoinder: With reference to para 2 (d), it is stated that the petitioners companies undertakes to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it. However Petitioner Companies undertakes that stamp duty will be paid immediately after sanction of scheme and the Scheme becomes effective. Further, I say that transferor Companies has no immovable assets.

e) Paragraph No. 2 (e) of RD affidavit; The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph 5(e) of Rejoinder: With reference to para 2 (e), it is stated that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy and no change.

f) Paragraph No. 2 (f) of RD affidavit: The Transferee Company has shown Rs.340 lakhs as "other liabilities under current liabilities" as on 31.3.2021. The said entire liability was created in 2020-21. But no disclosure of nature of the said liability was made in spite of statutory requirements in this regard under schedule-III to the Companies Act 2013 and striking materiality of the quantum of the said liability. The matter of is of much significance and the applicant should first furnish clarification.

Paragraph 5(f) of Rejoinder: With reference to para 2 (f), I say that Transferee Company has shown RS 340 lakhs as "Other Liabilities" under "Current Liabilities" as it is payable within twelve months. As the liability is payable within twelve months, hence there is no requirement for any further disclosure.

g) Paragraph No. 2 (g) of RD affidavit: It is submitted that as per instructions to the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 11/01/2022 for their views/ observation in the matter. However, the same is still awaited.

Paragraph 5(g) of Rejoinder: With reference to para 2 (g), it is stated that the petitioner companies have also served the notice twice to respective income tax assessing officer by hand deliveries and have received no communication. However the Petitioner Companies undertakes that even after the sanction of scheme, the Transferee Company will be liable for all liabilities of Transferor

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Companies.

9. It is further stated and submitted that the petitioner companies undertake that if there is any deficiencies found, or violation committed relating any enactment, statutory rules or regulation, the sanction granted by this Tribunal to the scheme will not come in the way of action being taken in accordance with law, against the concerned persons, directors and official of the petitioners and Transferee Company.

10. Heard submissions made by the Ld. Authorised Representative appearing for the Petitioner, Mr Harihar Sahoo, Joint Director on behalf of RD(ER), Kolkata, who appeared and were heard. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

a) The Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal with Appointed date as 1st April, 2021 (“Appointed Date”) and the same shall be binding on Transferor Companies and Transferee Company, their respective shareholders and creditors and all concerned;

b) All the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

c) All the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

d) The employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme;

e) All proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;

f) In case of any default including any Provisions of Income Tax Act in this respect of the Transferor Companies the Income Tax department , the ROC, West Bengal and all other Statutory Department shall be at liberty to initiate appropriate proceedings against the Transferee Company, which after the sanction of the scheme by this Tribunal is in any case responsible for the liabilities/non-compliance of the Transferor Companies also.

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g) The Transferee Company do without further application issue and allot shares to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;

h) Leave is granted to the Petitioners to file the Schedule of assets and liabilities of the Transferor Companies in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

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

j) The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Companies shall be dissolved without winding up with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

11. The Petitioners shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

12. Company Petition being C.P. (CAA) No. 10/KB/2022 is disposed accordingly.

13. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

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