(2023) 08 NCLT CK 0029

In the National Company Law Tribunal

Case No : CP (CAA)/65/MB-IV/2023 In CA(CAA)/42/MB/2022

Poorit Properties Private Limited Vs

Date of Decision : 18-08-2023

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

Citation : (2023) 08 NCLT CK 0029

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. Heard the Learned Counsel for the Petitioner Companies. Neither objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme, except otherwise stated hereinafter.

2. The sanction of the Tribunal is sought under Sections 232 read with section 230 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of Poorit Properties Private Limited, the First Transferor Company and Jivesh Developers And Properties Private Limited, the Second Transferor Company with Innovative Constructions Private Limited, the Transferee Company.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 12th March, 2021.

4. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Company Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 42 of 2022 of the Hon’ble Tribunal.

5. That the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have

filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

6. That the Petitioner Company No. 1 is presently carrying on business of real estate including buy, purchase, construct, develop, take on lease, exchange, hire or otherwise acquire or deal in properties both commercial as well as for residential purposes and that the Petitioner Company No. 2 is presently carrying on the business of real estate including buy, purchase, construct, develop, take on lease, exchange, hire or otherwise acquire or deal in properties both commercial as well as for residential purposes and that the Petitioner Company No. 3 is presently carrying on the business of real estate including buy, purchase, construct, develop, take on lease, exchange, hire or otherwise acquire or deal in properties both commercial as well as for residential purposes.

7. Consideration for the Scheme-

7.1 In consideration of amalgamation of the Transferor Company No. 1 with the Transferee Company, the Transferee Company shall issue and allot to the shareholders of the Transferor Company No. 1, as on the Record Date, 559 (Five Hundred FiftyNine) fully paid equity shares of Rs. 10/- each of the Transferee Company for every 1 (One) fully paid equity shares of Rs. 10/-each of the Transferor Company No. 1.

7.2 In consideration of amalgamation of the Transferor Company 2 with the Transferee Company, the Transferee Company shall issue and allot to the shareholders of the Transferor Company 2 (other than Transferor Company 1/ Transferee Company) as on the 'Record Date' 2,259 (Two Hundred Two Fifty Nine) fully paid up equity shares of Rs.10/- each of the Transferor Company 2.

7.3 The New Equity Shares issued and allotted by the Transferee Company in terms of this Scheme, shall be subject to the provisions of the Memorandum and Articles of Association of the Transferee Company and shall rank pari passu with the existing shares of the Transferee Company and shall be eligible for dividend, as may be declared by the Transferee Company for the financial year 21-22 but not for any earlier year.

7.4 The existing share certificates pertaining to shares in the Transferor Company No. 1 and 2 shall stand cancelled and become invalid. The Board of Directors of the Transferee Company, at their discretion, may or may not require the shareholders of the Transferor Company 1 & 2 to surrender their share certificates before issuing and allotting the New Equity Shares in the Transferee Company in terms of this Scheme.

7.5 If necessary, the Transferee Company shall, before allotment as aforesaid of the New Equity Shares in terms of the Scheme, increase its authorised capital by the creation of at least such number of equity shares of Rs. 10/-each as may be necessary to satisfy its obligations under the Scheme.

8. The rationale for the Scheme of Amalgamation of the Petitioner Companies is

in the interest of the stakeholders of these companies and shall result in the following benefits:

i. Enable all the companies to consolidate their business operations and provide significant impetus to their growth since all the companies are engaged in the similar areas of business enabling the amalgamated entity to reach at higher orbit.

ii. Reduction in the number of companies under the same management leading to greater operational efficiency and ease of management and thus reducing administrative and operational costs.

iii. Optimum utilization of financial resources of all the Companies for new and upcoming projects in a seamless manner.

iv. Optimum utilization of the human resources and corporate infrastructure for the benefit of the ongoing and new projects relating to all the entities.

v. Improving the financial position of the merged entity which would enable ease of funding options on more favourable terms as compared to what the terms could be for a single company on a standalone basis.

vi. The amalgamation will result in simplified corporate structure with significant reduction in the multiplicity of legal and regulatory compliances required to be carried out and formation of a stronger company with a larger capital and asset base and enable the combined business to be pursued more conveniently and advantageously.

9. The Regional Director has filed his Report dated 7th July, 2023 making certain observations and the Petitioner Companies have undertaken/made following submission that :-

a. the GNL-1 forms are filed by the Petitioner Companies on 20th day of July, 2023.

b. the approval from RERA is not applicable, however, the notice was given by the Petitioner Companies as an abundant precaution and the same is filed by way of affidavit.

c. the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013.

d. the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable.

e. the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy / any change / changes are made.

f. the Petitioner will comply with the requirements as to Appointed Date, vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry.

g. there are no sectorial regulatory authorities and if there is any sectorial authorities the Transferee Company would comply with the directions in relation to Transferor Companies as well.

h. the Transferee Company shall comply with the outcome of any proceedings against the transferor companies.

i. the BEN -2 has been filed vide SRN No. F52477320 dated 09.12.2022.

10. The Regional Director appeared through its representative and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company and is acceptable to them. Hence, the Regional Director does not have any further objection to the proposed Scheme Company Petition.

11. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme in relation to tax or any other kind of obligations of Transferor Companies, as permissible under the Income Tax Law, and the Transferee Company shall abide with the same subject to provisions of applicable law.

12. The Official Liquidator has filed his report on 4th July, 2023 in the Company Scheme Petition No. 65 of 2023, inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Companies and that the Transferor Companies may be ordered to be dissolved by this Tribunal.

13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any Authority or Creditors or Members or any other Stakeholders.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 65 of 2023 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition.

15. The Scheme of Amalgamation is hereby sanctioned, and the appointed date of the Scheme is fixed as 1st April, 2021.

16. The Transferor Companies be dissolved without winding up.

17. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.

18. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date

of receipt of the Order, if any.

19. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

20. Ordered Accordingly.

