

(2022) 10 NCLT CK 0003

In the National Company Law Tribunal

Case No : CP (CAA)/228/MB-IV/2021 In CA (CAA)/143/MB-IV/2021

Pranavaditya Spinning Mills Limited Vs

Date of Decision : 03-10-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 232

Citation : (2022) 10 NCLT CK 0003

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

Bench : Division Bench

Advocate : Hemant Sethi, Vidisha Poonja Devanshi Sethi, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. This Bench is convened through video conferencing today.
2. Heard Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the said Scheme of Amalgamation (by way of Merger by Absorption) of Pranavaditya Spinning Mills Limited with Indo Count Industries Limited and their respective shareholders.
4. The Petitioner Companies have approved the Scheme by passing the Board Resolutions at their respective board meetings held on 21th October, 2020 and have approached the Tribunal for sanction of the Scheme.
5. The Equity Shares of First Petitioner Company are listed on BSE Limited ("BSE") and the Equity Shares of Second Petitioner Company are listed on BSE and National Stock Exchange of India Limited ("NSE"). Accordingly, BSE by its letter dated March 25, 2021, has given their "No Objection Letter" to the First Petitioner Company, to file the Scheme with the Tribunal. Similarly, BSE and NSE

by its letter dated March 25, 2021 and March 26 2021 respectively have, given their "No Objection Letter" to the Second Petitioner Company, to file the Scheme with the Tribunal

6. The Learned Counsel for the Petitioner Companies submits that:

The Transferor Company, listed on BSE Limited and the Transferee Company, listed on BSE Limited and National Stock Exchange of India Limited, both are a part of the same group. Further, the Transferor Company is a subsidiary of the Transferee Company wherein the Transferee Company holds majority shareholding in the Transferor Company. The main business of PSML has been manufacturing of cotton yarn and it has a huge freehold land of ~ 34 acres at Plot No.266 Village Alte, Tal. Hathkanangale, Dist. Kolhapur (near textile hub Ichalkaranji) and ~ 20000 spindle capacity for spinning. The land, machinery, infrastructure and all other resources available with the Transferor Company can be utilized in cost effective and efficient manner to carry out Transferee Company's business expansion. The Transferor and Transferee's industrial units are situated within a distance of ~ 40 kilometers. Hence, it is proposed to amalgamate Transferor Company into the Transferee Company in this Scheme.

7. Further, the Amalgamation of the Transferor Company into the Transferee Company would inter alia have the following benefits:

a. Consolidation of the Transferor Company and the Transferee Company will achieve simplified corporate structure, rationalise the number of listed entities and result in a single listed entity with combined businesses.

b. Provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, it will also enable optimal utilization of existing resources which are in excess of the current business requirements of the Transferor Company and provide an opportunity to fully leverage assets, capacities, experience and infrastructure of the Transferor Company and Transferee Company.

c. Reducing managerial overlaps involved in operating multiple entities, enable cost savings and effective utilization of valuable resources which will enhance the management focus thereby leading to increase in operational and management efficiency; integrate business functions; eliminate duplication and rationalization of administrative expenses.

d. Synchronization of efforts to achieve uniform corporate policy, greater integration and greater financial strength and flexibility for the Transferee Company.

e. Better value creation for the shareholders of both the companies enabling the public shareholders to hold shares of the combined listed entity.

f. Upon completion of the amalgamation, the Transferor Company will be dissolved. Consequently, there would be lesser regulatory and legal compliance

obligations including accounting, reporting requirements, statutory and internal audit compliance requirements, tax filings, company law compliances, Stock Exchange compliances etc. and therefore reduction in administrative costs.

The intended Scheme is not prejudicial to the interest of the creditors or the employees of the Transferor Company and the Transferee Company.

8. The Learned Counsel for the Petitioner Companies further submits the following:

i. The First Petitioner Company is authorised to carry on, inter alia, the business of manufacturing of cotton yarn.

ii. The Second Petitioner Company is engaged in the business of manufacturing of home textiles and its products broadly falls under the categories of Bed Sheet, Pillow Cover and Comforter.

9. The Learned Counsel for the Petitioner Companies further submits that the present Company Petition is filed in consonance with Section 230-232 of

the Companies Act, 2013 and in terms of order pronounced on 18th August 2021 in CA(CAA)/143/MB-IV/2021.

10. Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavit of service with the Tribunal and also made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.

11. The Counsel for the Petitioners further submits that in compliance of order dated 18th July 2022 passed in the aforesaid petition, the Petitioners have filed Additional Affidavit dated 4th August 2022 disclosing therein details of Corporate Guarantees, Bank Guarantees, Contingent liabilities, details of fixed deposits placed with bank as margin money, Letters of credit and pending litigation.

12. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed a Report dated 25th March 2022 inter-alia stating in paragraphs IV (a) to (h). In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings vide their Affidavit in Rejoinder dated 11th April 2022. In response to the reply of the Petitioner Companies, the Regional Director has filed his Supplementary Report dated 04th May 2022 stating that the replies of the Petitioner Companies on all the observations filed via the said Rejoinder Affidavit appears to be satisfactory. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Para

Observation by the Regional Director

Undertaking of the Petitioner Companies /

Rejoinder Affidavit

IV(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

In so far as observations made in paragraph IV (a) of the Report of Regional Director is

concerned, the Petitioner Companies undertake that they will comply with AS-14 (IND AS-103) and 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.

IV(b)

The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or arrangement. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).

The Petitioner Companies have served notices under section 230(5) of the Companies Act, 2013 to the concerned regulatory authorities. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that the approval of the scheme by this Hon'ble Tribunal will not deter the regulatory authorities which have been served notice under section 230(5) of the Companies Act, 2013 to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Companies, unless otherwise appealable by them.

IV(c)

The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.

In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that Scheme of amalgamation enclosed to the Company Application to NCLT and the Company Petition, are one and same and there is no discrepancy/any change made.

IV(d)

As per Definition of the Scheme "Appointed Date" means 1st October 2020 or such other date as may be approved by the Hon'ble National Company Law Tribunal ('NCLT').

"Effective Date" means the last of the dates on which the certified copies of the Order of NCLT, Mumbai bench under Sections 230 & 232 of the Act sanctioning the Scheme is filed with the Registrar of Companies, Pune, at Maharashtra by the Transferor Company and Transferee Company;

Hence, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No.

7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

The Appointed Date is 1.10.2020 which is antedated more than one year which needs to be amend.

In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies clarify that the scheme shall be effective from the Appointed Date which is a specific date of 1st Day of October 2020 and falling within 1 year from the date of filing application in NCLT i.e., 9th June 2021. Hence the Appointed Date being in compliance with the circular no. F. No. 7/12/2019/CL-1

dated 21.08.2019 issued by the Ministry of Corporate Affairs, is not required to be amended.

IV(e)

Clause 7 of the Scheme Accounting Treatment

a. The Amalgamation of the Transferor Company with the Transferee Company shall be accounted for in the books of account of the Transferee Company in accordance with 'Pooling of Interest Method' of accounting as per Indian Accounting Standard (Ind AS)

103 (Business Combination) prescribed under Section 133 of the Companies Act, 2013, which is applicable to the Company since this is a common control business combination as follows:

b. All the assets, liabilities and reserves in the books of the Transferor Company shall stand transferred to and vested in the Transferee

Company pursuant to the scheme and shall be recorded by the Transferee Company at their carrying amounts as appearing in the books of Transferor Company, on the Appointed Date.

In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Second Petitioner Company undertakes that the surplus

/deficit as mentioned in the Accounting Treatment clause of the Scheme is already stated to be adjusted in "Capital Reserve Account" in the financial statements of the Transferee Company and the Second Petitioner Company undertakes that the said Capital Reserve arising out of amalgamation shall not be available for distribution of dividend.

c. The Transferee Company shall credit to its share capital account, the aggregate face value of the new shares issued by it pursuant to Clause 6 of this Scheme.

d. The carrying amount of investments in the equity shares of the Transferor Company to the extent held by Transferee Company, shall stand cancelled and there shall be no further obligation in that behalf.

e. Upon the scheme coming into effect, the surplus /deficit, if any of the net value of assets, liabilities and reserves of the Transferor Company acquired and recorded by the Transferee Company in terms of clause 7.2 over the sum of (a) the face value of the new shares on Amalgamation issued and allotted pursuant to clause 6; and

(b) the value of investments cancelled pursuant to Clause 7.4, shall be adjusted in "Capital Reserve Account" in the financial statements of the Transferee Company.

f. Any inter-company balance(s) and inter-company investments, debts, borrowings (secured or unsecured), if any between the Transferor Company and the Transferee Company shall stand cancelled and corresponding effect shall be given in the books of account and the records of Transferee Company for the reduction of any assets or liabilities, as the case may be. There would be no accrual of interest or other charges and there shall be no obligation/outstanding in that behalf in respect of any such intercompany loans, debt, securities or balances with effect from the Appointed Date.

g. In case of any difference in any of the accounting policies between the Transferor Company and the Transferee Company, the impact of the same in the merger by absorption will be quantified and adjusted in the Capital Reserves of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the true financial position on the basis of consistent accounting policies.

h. Upon the Scheme coming into effect, the accounts of the Transferee Company, as on the Appointed Date shall be reconstructed with the terms of this Scheme.

i. The balance of the retained earnings appearing in the financial statements of the Transferor Company shall be aggregated with the corresponding balance appearing in the financial statements of the Transferee Company.

j. The identity of the reserves shall be preserved and shall appear in the financial statements of the Transferee Company in the same form in which they appeared in the financial statements of the Transferor Company.

Petitioner Companies have to undertake that the surplus / deficit shall be adjusted to Capital Reserve Account arising out of amalgamation.

Further Petitioner Companies have to undertake that reserves shall not be available for distribution of dividend.

IV(f)

Clause 24 of the Scheme COMMENTS VIA OBSERVATION LETTERS

DATED 25 MARCH 2021 & 26 MARCH 2021 ISSUED BY STOCK EXCHANGES

Pursuant to the observation letters dated 25 March, 2021 issued by BSE Limited to Transferor Company and 25 March, 2021 & 26 March, 2021 issued by BSE Limited and National Stock Exchange of India Limited, respectively to the Transferee Company, following information and facts on methods of valuation are provided below:

i. In case of ICIL only one method of valuation i.e. Market Approach has been used because its shares are frequently traded on Stock Exchanges, and market price reflects significant multiple of book value. Therefore, it was inappropriate to consider cost and income approach in case of ICIL. Further, ICIL is a listed Company and information related to the future profit and loss account, balance sheet and cash flows is price sensitive and hence was not provided to the valuer.

In so far as observations made in paragraph IV (f) of the Report of Regional Director is

concerned, the Petitioner Companies undertake to comply with directions of BSE and NSE vide their observation letters dated 25th March, 2021 issued by BSE Limited to Pranavaditya Spinning Mills Limited ("PSML" or "Transferor Company") and Indo Count Industries Limited and dated 26th March, 2021 issued by National Stock Exchange of India Limited respectively to the Indo Count Industries

Limited ("ICIL" or "Transferee Company").

ii. Two Methods of Valuation i.e. Cost and Market Approach have been used for

PSML and Income approach method has not been used as PSML is a listed Company and information related to the future profit and loss account, balance sheet and cash flows is price sensitive and hence was not provided to the valuer. Further, PSML's production was stopped at the time of appointed date."

Petitioner Companies shall undertake to comply the directions of BSE and NSE vide their observation letters dated 25th March, 2021 issued by BSE Limited to Pranavaditya Spinning Mills Limited ("PSML" or "Transferor Company") and Indo Count Industries Limited and 26th March, 2021 issued by National Stock Exchange of India Limited respectively to the Indo Count Industries Limited ("ICIL" or "Transferee Company").

IV(g)

Transferor Company is a public company, listed on BSE Limited. As on September 30, 2021, total 15,555 equity shares representing 0.08% of the paid-up share capital of the Transferor Company is held by Non-Resident Indian (NRI) under public category.

Hence Petitioner Company shall undertake to comply with guidelines of FEMA and FERA.

In so far as observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply with guidelines of FEMA and FERA, wherever applicable.

IV(h)

The Petitioner Company viz Indo Count Industries Limited be directed to pay difference / balance of filling fees and stamp duty on its increased share capital, if any.

In so far as observations made in paragraph IV (h) of the Report of Regional Director is concerned, Indo Count Industries Limited undertakes to pay difference / balance of filling fees and stamp duty on its increased paid-up share

capital

13. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.

14. The Official Liquidator has filed his report dated 8th March, 2022 inter-alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner.

15. 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.

16. As per clause 6 of the Scheme, the Transferee Company shall without any further application or deed, issue and allot equity shares as fully paid up to the shareholders of the Transferor Company as on the Effective Date, whose names appear in the Register of Members of the Transferor Company as on the Appointed date or to their successors-in-title, as the case may be, in the following manner:

"2 (Two) fully paid Equity Shares of face value of INR 2/- each of Transferee Company shall be issued and allotted for every 15 (Fifteen) Equity shares of face value of INR 10/- each held in Transferor Company."

17. Since all the requisite statutory compliances have been fulfilled, Company Petition CP (CAA)/228/MB-IV/2021 connected with CA (CAA)/143/MB-IV/2021 is made absolute in terms of prayer in the Petition.

18. The Scheme is sanctioned hereby, and the Appointed Date of the Scheme is fixed as 1st October 2020.

19. 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 Joint/ Deputy Registrar of this Tribunal.

20. The Petitioner Companies are directed to lodge a certified copy of this Order and the Scheme duly authenticated by the Joint/ 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.

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

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

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

24. Ordered accordingly. Files to be consigned to the records.