(2020) 02 NCLT CK 0104

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application No. (CAA) 26/ND Of 2020

Precise Laboratories Private Limited	APPELLANT
Vs	
Northern Aromatics Limited	RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:
Companies Act, 2013 — Section 230, 230(5), 231, 232

Citation : (2020) 02 NCLT CK 0104

Hon'ble Judges : Ina Malhotra, J;L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Rajeev Kumar

Final Decision : Allowed

Judgement

Ina Malhotra, J

1. This is a joint petition filed by way of a 1st Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as 'the Act') by the Applicant Company No. 1, (Transferor Company No.1) in connection with the Scheme of Amalgamation (hereinafter referred to as 'the Scheme') for merging its business with M/s. Northern Aromatics Limited (Applicant Company No.2/Transferee Company).

2. As per averments, the registered offices of the Transferor as well as that of the Transferee Company are situated in the National Capital Territory of Delhi, falling within the territorial jurisdiction of this Court.

3. The Applicant No. 1 / Transferor No. 1 Company was incorporated under the Act on 22.06.1989 under the name and style of "Precise Laboratories Private Limited" having CIN U74899 DL1989 PTC036702. Its authorized share capital is Rs. 1,00,00,000/- while its issued, subscribed and paid up capital is 60,00,000 divided into 6,00,000 equity shares of Rs. 10/-each.

The main object of the Applicant company No.1 is to carry on the business of manufacturers of hair oils, tooth powder, skin cream and other cosmetic items.

4. The Applicant No. 2/ Transferee No. 2 Company, now a public limited company was incorporated under the Act on 27.12.1979 under the name and style of "Northern Aromatics Limited" having CIN U01100 DL1979 PLC010100. Its authorized share capital is Rs. 48,00,000/- while its issued, subscribed and paid up capital is 35,49,000 divided into 35,490 equity shares of Rs. 100/-each.

The main object of the Applicant company No.2 is to carry on the business of manufacturers of fragrances, flavours, herbal extracts and essential oils.

5. As per averments, the Transferor Company is desirous of amalgamating with the Transferee Company and have formulated a Scheme of Amalgamation.

6. Copies of the Memoranda of Association and Articles of Association along with their latest audited Balance Sheets, as on 31.03.2019 and reports of the Statutory Auditor of all the Applicant Companies No. 1 and 2 have been filed. Provisional un-audited Financial Statements upto 30th September, 2019 have also been filed.

It has also been certified by the Statutory Auditor that each of the applicant companies has adhered to the Accounting Treatment which is in compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013.

7. It has been stated on behalf of the Applicant Companies that the Scheme of Amalgamation is necessitated and justified on grounds that :-

a. Rationalization of group and business structure to ensure optimized legal entity structure;

b. Consolidation of resources of the Transferor and Transferee Company resulting in improved organizational capability;

c. Cost reduction as a result of elimination of duplication of administrative expenses and optimum utilization if available resources;

d. Operational synergies and flexibility resulting into higher profitability and a stronger and wider capital and financial base for future growth.

The Appointed date of the Scheme is 1st April, 2019.

8. The Board of Directors of the Transferor and Transferee Companies vide their respective meetings held on 22.01.2020 have unanimously approved the proposed Scheme of Amalgamation. Copy of the board resolutions passed have been filed.

As per the Scheme, duly approved by the Board and consented to by its shareholders and creditors, the salient features of the Scheme are as follows:-

? It is provided that upon coming into effect of the Scheme and with effect from the Appointed Date the Transferor Company shall stand amalgamated into the Transferee Company and its Undertaking shall, pursuant to the provisions of Sec 230 to 232 and other applicable provisions, if any, of the Act, be and stand transferred to and vested in the Transferee Company as a going concern without any further act, instrument, deed, matter or thing so as to become, the undertaking of the Transferee Company by virtue of and in the manner provided in the Scheme;

? Further the Scheme becoming effective and upon the amalgamation of the Transferor Company into Transferee Company, in terms of the Scheme, the Transferee Company shall, without any further application or deed, issue and allot equity shares and OCRPS credited as fully paid up, to the shareholders of the Transferor Company, holding fully paid up equity shares in the Transferor Company and whose names appear in the register of members of the Transferor Company as on the Record Date or to such of their respective heirs, executors, administrators or other legal representative or other successors in tittle as may be recognized by the Board of the Transferee Company in the following manner:

a.) 100 fully paid up equity share of Rs. 100/-each of the Transferee Company shall be issued and allotted for every 82,645 fully paid up equity shares of Rs. 10/- each held in the Transferor Company;

b.) 1 fully paid up equity share of Rs. 100/-each of the Transferee Company shall be issued and allotted for every 6 fully paid up equity shares of Rs. 10/- each held in the Transferor Company;

? It provides that upon this Scheme becoming effective, the authorized share capital of the Transferor Company as set out in the Scheme but prior to the issuance and allotment of Transferee Company under Clause 15, the authorized share capital of the Transferor Company, shall be deemed to be added to and combined with the authorized share capital of the Transferee Company without any requirement of a further act or deed on the part of the Transferee Company, such that upon the effectiveness of the Scheme, the authorized share capital of the Transferee Company shall be Rs. 1,48,00,000 comprising of 1,28,000 equity shares if 100 each and 20,000 non-cumulative redeemable preference shares of 100 without any further act, deed, resolution or writing.

? It provides that upon this Scheme becoming effective, the authorized share capital of the Transferee Company as set out in the Clause 16.1 of the Scheme shall be reclassified without any requirement of a further act or deed on the part of the Transferee Company, such that upon the effectiveness of the Scheme, the reclassified authorized share capital of the Transferee Company shall be as follows: a.) Rs. 47,90,000 comprising of 47,900 equity shares of Rs. 100;

b.) 1,00,10,000 comprising of 1,00,100 non-cumulative optionally convertible redeemable preference shares of Rs. 100 each

? Upon this Scheme becoming effective, the Transferee Company shall account for the amalgamation in its books as on the Appointed Date, as per the "Purchase Method" under the Accounting Standard 14-"Accounting For Amalgamation". Accordingly, on the coming into effect of the Scheme and with effect from the Appointed Date, the Transferee Company shall record, all the assets and liabilities recorded in the books of account of the Transferor Company and transferred and vested in the Transferee Company pursuant to the Scheme, at their respective carrying values.

? It is submitted that Scheme is not prejudicial to the interests of the Equity Shareholders and Secured/ Unsecured creditors of the Transferor and Transferee Company. Further the Scheme will be beneficial to the Transferor Company, Transferee Company and their respective Shareholders.

9. Vide the present application, a prayer is made for dispensation of convening meetings in view of the following facts:-

A. In respect of the Transferor Company No.1 / Applicant Company No.1:-

? It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.

? It has no Secured creditor as certified by the Statutory Auditor.

? It has 1 Unsecured creditor who had accorded its consent vide affidavit placed on record.

In view of the consent accorded by its 2 Shareholders and 1 Unsecured Creditor vide affidavits, the requirement of convening the meeting of the shareholders and unsecured creditor is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

B. In respect of the Transferee Company

? It has 8 shareholders, who have accorded their consent vide affidavits placed on record.

? It has 1 Secured creditor who had accorded its consent vide affidavit placed on record.

? It has 110 Unsecured creditors Consent affidavit of 70 Unsecured creditors, having a stake of 94 % in terms of value of the credit has been filed on record.

In view of the consent of the unsecured creditors having an credit of 94% and consent affidavits of its 8 equity shareholders and 1 of its Secured Creditor being on record, the requirement of convening the meeting of the shareholders, secured and unsecured creditor is dispensed with.

10. The proposed Scheme of Amalgamation is annexed along with the present application.

11. It is submitted that the proposed arrangement is sought to be made under

the provisions of Section 230 to 232 of the Companies Act, 2013 and the Scheme if sanctioned by this Tribunal, will take effect from the date of on which certified copy of the order of sanctioning of proposed Scheme, passed by this Tribunal is filed with the Registrar of Companies.

12. It has also been submitted that there are no proceedings pending inquiry or investigation in respect of the applicant company.

13. While dispensing with the meetings, this Bench also directs that notices be sent to the Central Government through the office of the Regional Director (Northern Region), the Income Tax Authorities, Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator and other sectoral regulators or authorities as required under sub- section (5) of section 230 of the Companies Act, 2013 who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangement, and Amalgamation) Rules, 2016. Copies of the notices along with the proof of dispatch be filed before this Bench along with the affidavit of compliance.

14. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicant.

As sequel to the above, the present application stands allowed by dispensing with the meetings of shareholders, secured and unsecured creditors of the applicant companies.

