(2023) 06 NCLT CK 0063

In the National Company Law Tribunal

Case No : C.P.(CAA)/1034/MB/2020 Connected with C.A.(CAA)/87/MB/2020

Preeti Infrastructure Limited Vs

Date of Decision : 20-06-2023

Acts Referred:

Companies Act, 2013 — Section 61, 66, 230, 230(5), 230(6), 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2023) 06 NCLT CK 0063

Hon'ble Judges : H.V. Subba Rao, Member (J);Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Santosh Thakur, Ahmed Chunawala

Final Decision : Disposed Of

Judgement

H.V. Subba Rao, Member (Judicial)

1. The Bench is conveyed by video conference today.

2. Heard the 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 Petitions to the said Scheme.

3. The sanction of the Tribunal is sought under Sections 230 to 232 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 PREETI INFRASTRUCTURE LIMITED, the Amalgamating Company with KADOLI INVESTMENT LIMITED, the Amalgamated Company.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution dated 07th October, 2019, which are annexed to the respective Company Scheme Petitions.

5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No.87 of 2020 of this Tribunal.

6. The Learned Advocate appearing on behalf of the Petitioners further states 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.

7. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company presently carrying on business of consultancy services and investment in shares and stocks and that the Second Petitioner Company presently is carrying on business of trading / investments in shares / stocks / Bonds etc.

8. The rationale for the Scheme of Amalgamation of the Petitioner Companies would, inter alia, all the Companies are under the same management. The management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits:

a. Both the Petitioner Company No.1 and the Petitioner Company No.2 are under the same management and the arrangement of both the Companies shall result into consolidation of activities of two companies into single entity which will specify structure and will result into various benefits including:

b. Integration of operations.

c. Efficient management control and system.

d. To consolidate its business operation and provide significant impetus to growth of the Transferee Company business.

e. The arrangement would result in optimum utilization of resources which would reduce the administrative costs and other overheads which are presently being multiplicated because of separate entities.

f. Enhance values of all stakeholders in the long run.

g. The Sub-Division and reduction of share Capital of the Transferee Company be effected to bring capital within serviceable limits.

9. The Regional Director has filed their Report dated 12th May, 2021 inter-alia making the following observations in Paragraphs IV (a) to (g) which are reproduced hereunder:

Director

Company / Rejoinder

IV(a)

In compliance of AS-14 (IND AS-I03), 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.

So far as the observation in paragraph IV(a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that in addition to Compliance of AS- 14, 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)

As per Definition of the Scheme.

“Appointed Date” means the 1st day of April, 2019 or such other date as may be approved by the Hon’ble National Company Law Tribunal, Mumbai Bench or any other appropriate authority.

"Effective Date" means the date or last of the dates on which certified copies of the Order(s) of the National Company Law Tribunal, Mumbai Bench sanctioning the Scheme are filed with the Registrar of Companies, Maharashtra by the Transferor Company and by the Transferee Company after obtaining the consents, approvals, permissions,

resolutions, agreements, sanction and orders necessary for giving effect to the Scheme.

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.

Further, 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.

So far as the observation in paragraph IV(b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Appointed Date is 1st April, 2019 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. The Petitioners Companies will be compliance with requirements clarified vide circular No. F. No.7/12/2019/CL - I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

IV(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, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.

So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013.

IV(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.

So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the convening and holding the meeting of the Equity Share Holders of the Petitioner Companies for the purpose of considering and if thought fit, approving with or without modification the proposed scheme of Amalgamation of Preeti Infrastructure Limited (Transferor Company) with Kadoli Investments Limited (Transferee Company) is dispensed with, in view of the consent affidavit given by the members of the Petitioner Companies.

Further Learned Counsel of the Petitioner Companies submits that Hon’ble NCLT has dispensed with the meeting of the unsecured creditors of the Petitioner Companies as they have given No Objection to the proposed Scheme.

Further Learned Counsel of the Petitioner Companies submits that there are no Secured Creditors of Petitioners

Companies.

IV(e)

Proposed Scheme is also proposes the Reduction of Share Capital, therefore, the Petitioner Companies may be directed to comply with Section 61 and 66 of the Companies Act, 2013.

So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that they will not pursue the reduction of shares capital as proposed in

the scheme.

IV(f)

Clause - 11.3 of Accounting Treatment of the scheme; stated that The excess, if any of the value of the assets over the value of the liabilities of the Transferor Company transferred to and vested in the Transferee Company pursuant to this Scheme and recorded in the books of account of the Transferee Company and after adjusting aggregate value of Equity Shares issued by the Transferee Company to members of the Transferor Company as per clause 11.1 will be credited to Capital Reserve Account in the books of the Transferee Company. Similarly, deficit if any may be debited to Goodwill Account in the books of the Transferee Company.

In this regard it is submitted that as per Accounting Standard 14, such surplus if any arising out of the scheme shall be credited to the Capital Reserve arising out of amalgamation and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company. Such Capital Reserve, arising out of the amalgamation shall not be considered as free reserve and not available for distribution of dividend.

So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that they shall comply with clause 11 of the Accounting Treatment of the Scheme.

Further the Learned Counsel for the Petitioner Companies submits that Guidance note as per Accounting Standard 14 shall be complied with by crediting to the Capital Reserve

arising out of amalgamation and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company. Such Capital Reserve, arising out of the amalgamation shall not be considered as free reserve and not available for distribution of dividend.

IV(g)

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

So far as the observation in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act,1961. Further Learned Counsel of the Petitioner Company submits that they shall ensure compliances of all the provisions of Income Tax Act ,1961 and Rules there under.

10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The Representative of the RD has submitted that the explanations and clarifications given by the Petitioner Companies are found satisfactory and that they have no objection to the Scheme. The affidavit filed by the Petitioner Companies is accepted by this Tribunal and the Regional Director has filed his supplementary report on 09.07.2021.

11. The Official Liquidator has filed his report on 05th October, 2020 in the Consolidated Company Scheme Petition No.1034 of 2020, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved by this Tribunal.

12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is notcontrary to public policy.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No.1034 of 2020 is made absolute in terms of clauses (a) to (c).

14. Petitioners 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.

15. 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.

16. 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.

17. The Appointed Date is 1st April, 2019.

18. Ordered Accordingly.