(2023) 04 NCLT CK 0005

In the National Company Law Tribunal

Case No : CP (CAA)/205/MB-IV/2022 IN CA (CAA)/213/MB/2022

Presto Tyresoles Retreading Privatelimited Vs

Date of Decision : 12-04-2023

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

Citation : (2023) 04 NCLT CK 0005

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. The Bench convened through video conferencing.

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 232 read with section 230 and other applicable provisions of the Companies Act, 2013 and the rules framed there under for the Scheme Merger and Arrangement between Presto Tyresoles Retreading Private Limited ("Demerged Company No. 1") and Tyresoles Retreading (Gujarat) Private Limited ("Demerged Company No. 2") and Manjunath Tyresoles Treads Private Limited ("Transferor Company No. 1") and Ecoflex Surfaces Private Limited ("Transferor Company No. 2") with Tyresoles (India) Private Limited ("Transferee Company" or "Resulting Company") and their respective shareholders.

4. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions dated 17th June, 2022.

5. The Learned Counsel appearing on behalf of the Petitioner states that the Petitions have been filed in consonance with the Order dated 20.09.2022 passed

by this Tribunal in CA(CAA)/213/MB/2022.

6. The Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

7. That the Petitioner Company No. 1 is presently carrying on business as tyre retreading activities including services of tyre retreading, sale of retreaded tyres, rubber dust, and business of sale and service of GPS devices to the clients, the Petitioner Company No. 2 is carrying on the business of tyre retreading activities including services of tyre retreading, sale of retreaded tyres, rubber dust, and business of sale and service of GPS devices to the clients, the Petitioner Company No. 3 is carrying on the business manufacturing of tread rubber, a component which is a major raw material for manufacture of Retreaded Tyres, the Petitioner Company No. 4 is carrying on the business of production and sale of crumb flooring used for sports surfaces and specialty flooring products for applications such as Indoor Gyms, Badminton, Outdoor tennis, Basketball and Volleyball court floorings and jogging tracks and the Petitioner Company No. 5 is presently carrying on the business of providing services in relation to retreading of tyres, sale of retreaded tyres and other related products.

8. The rationale for the Scheme of Arrangement of the Petitioner Companies is in the interest of the Stakeholders of these Companies and shall result in the following benefits:

i. Transferee Company/ Resulting Company is primarily engaged in the business of providing services in relation to retreading of tyres, sale of retreaded tyres and other related products.

ii. The Transferor Company 1 is primarily engaged in manufacturing of tread rubber, a component which is a major raw material for manufacture of Retreaded Tyres.

iii. The Transferor Company 2 is primarily engaged in the of production and sale of crumb flooring used for sports surfaces and specialty flooring products for applications such as Indoor Gyms, Badminton, Outdoor tennis, Basketball and Volleyball court floorings and jogging tracks.

iv. The Demerged Company 1 is primarily engaged in the business of tyre retreading activities including services of tyre retreading, sale of retreaded tyres, rubber dust, and business of sale and service of GPS devices to the clients.

v. The Demerged Company 2 is primarily engaged in the business of tyre retreading activities including services of tyre retreading, sale of retreaded tyres, rubber dust, and business of sale and service of GPS devices to the clients.

vi. The Demerged Company 1 has 2 verticals viz Demerged Undertaking 1 and Remaining Undertaking 1 with divergent business profiles, growth potential, risk-rewards, capital requirements and are largely independent of each other.

Demerged Undertaking 1 carries on business of tyre retreading, sale of retreaded tyres, rubber dust and Remaining Undertaking 1 carries on business of sale and service of GPS devices. The nature of risk and competition involved in each undertaking is different, necessitating focused management approach and Demerger, on a going concern basis, of the Demerged Undertaking 1 into the Resulting Company.

vii. The Demerged Company 2 has 2 verticals viz Demerged Undertaking 2 and Remaining Undertaking 2 with divergent business profiles, growth potential, risk-rewards, capital requirements and are largely independent of each other. Demerged Undertaking 1 carries on business of tyre retreading, sale of retreaded tyres, rubber dust and Remaining Undertaking 1 carries on business of sale and service of GPS devices. The nature of risk and competition involved in each undertaking is different necessitating focused management approach and Demerger, on a going concern basis, of the Demerged Undertaking 2 into the Resulting Company.

9. The Regional Director has filed his Report dated 4th January, 2023 making certain observations and the Petitioner Company has undertaken/made following submission that :-

i. the Petitioner Company 5 shall comply with section 232(3)(i) of the Companies Act, 2013 in respect of fees payable by the Petitioner Company 5 for increase of share capital on account of merger of Petitioner Company 3 and Petitioner Company 4.

ii. the Petitioner Company 5 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.

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

iv. there are no sectoral regulatory authorities.

v. the Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

10. The Regional Director appeared through its representative and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company and are 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 and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

12. The Official Liquidator has filed his report on 20th February, 2023 in the Company Scheme Petition No. 205 of 2022, 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 Companies and that the Transferor Company 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. 205 of 2022 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition.

15. The Petitioner Company No. 3 and Petitioner Company No. 4 be dissolved without winding up.

16. 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.

17. The Petitioner Companies will 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.

18. 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.

19. The Appointed Date is 1st July, 2022.

20. Ordered Accordingly.