(2022) 04 NCLT CK 0007

In the National Company Law Tribunal

Case No : C.P. (CAA) No. 67/ KB / 2021 Connected with C.A. (CAA) No. 825/ KB / 2020

Purvi Finance Co Private Limited Vs

Date of Decision : 07-04-2022

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230(3), 232(1), 232(3)(i), 232(4)

Citation : (2022) 04 NCLT CK 0007

Hon'ble Judges : Rajasekhar V.K., Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Shashi Agarwal, Harihara Sahoo

Final Decision : Disposed Of

Judgement

Rajasekhar V.K. Member (Judicial)

1. The court convened by video conference.

2. The instant petition has been filed under Section 232(3) and other applicable provisions of the Companies Act, 2013 for sanction of the Scheme of Amalgamation of S3 Exports Private Limited being the Petitioner No. 2 abovenamed ("Transferor Company No. 1") and Shankar Styles Station Private Limited being the Petitioner No. 3 abovenamed ("Transferor Company No. 2") with Purvi Finance Co Private Limited being the Petitioner No.1 abovenamed ("Transferee Company") whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, being 1st April, 2019 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).

3. The Petition has now come up for a final hearing. Counsel for the Petitioners submits as follows:-

(a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 21/02/2020 respectively.

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

i) Simplification of corporate structure by reducing the number of legal entities and reorganizing the legal entities in the group structure;

ii) Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Transferor Companies;

iii) Elimination of duplication in administrative costs and multiple record-keeping, thus resulting in cost savings;

iv) Concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities.

(c) The Statutory Auditors of respective Petitioner Companies have by their certificates dated 15/02/2020 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standard as notified by Central Government pursuant to Section 133 of Companies Act, 2013.

(d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

(e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Ms Abhijit Nagee, Registered Valuer.

(f) The shares of the Petitioner Companies are not listed on any Stock exchange.

(g) By an order dated 12.01.2021 in Company Application (CAA) No. 825/ KB / 2020, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) :-

i) In view of the individual affidavit given by the shareholders of the Transferee Company and Transferor Companies, meeting of the shareholders of the Transferee Company and Transferor Companies is hereby dispensed with.

ii) In view of the fact that Transferee Company and Transferor Companies have no secured creditors, there is no question of holding secured creditors meeting.

iii) In view of the fact that unsecured creditors of applicant companies as applicable have given NOC in the form of affidavit, meeting of unsecured creditors is dispensed with

(h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme . By an order dated 02/07/2021 the instant petition was admitted by this Tribunal and initially fixed for hearing on 19/08/2021 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 02/07/2021, the Petitioner(s) have duly served such notices on the Regional Director, MCA on 13/07/2021, Registrar of Companies on 14/07/2021, Official Liquidator on 12/07/2021 Income Tax officers on 12/07/2021. The Petitioner(s) have also published such advertisements once each in the Financial Express and Aajkaal in their respective issues dated 26/07/2021. An affidavit of compliance duly affirmed on 28/07/2021 in this regard has also been filed by them.

(i) All statutory formalities requisite for obtaining the sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD"), Official Liquidator, High Court, Calcutta have filed their representations before this Tribunal.

5. The Official Liquidator has filed his report dated 16th July,2021 and concluded at para 9 and 10 as under:-

"9. That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to the public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

6. The RD has filed his reply affidavit dated 11th March,2022 ("RD affidavit") which has been dealt with by the Petitioner in their rejoinder affidavit dated 14th January, 2022 and supplementary rejoinder dated 1st April,2022 to the reply filed by the RD. The observations of the RD and responses of the Petitioner(s) are summarized as under:-

Paragraph No. 2 (a) of RD affidavit

It is submitted that on examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and /or representation regarding the proposed Scheme of Amalgamation, as per available records all the petitioner companies are updated in filing their Statutory Returns including Financial Statements and Annual Return.

Paragraph 4(a) of Rejoinder

With reference to paragraph 2(a) of the said reply, the petitioners make no comments as it already stated that there is no complaint and/or representation against the scheme and both petitioners companies have updated in filing with Registrar of Companies.

Paragraph No. 2 (b) of RD affidavit

Appointed Date is 1st April 2019 which is much older and since all the Petitioner Companies have already filed subsequent Financial Statements upto the financial year. ended 31/03/2021, this Appointed Date apparently lacks relevance to the Scheme, as it appears. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper, keeping in view the present circumstances.

Paragraph 4(b) of Rejoinder

With reference to para 2 (b) of the said reply, it is stated that Appointed Date is 1st April, 2019 as when the scheme was considered by the Board of Directors of the Petitioner Companies on 21/02/2020 when the accounts for year ended 31/03/2020 of the petitioners companies were not audited and thereafter the said scheme was not filed due to Covid. However, it is stated that the Scheme of Amalgamation with appointed date as 01/04/2019 is not against the public interest. Further, if required the appointed date may be changed to 01/04/2021 or any such date as may be deem fit and proper by Hon'ble National Company Law Tribunal, Kolkata Bench.

Paragraph No. 2 (c) of RD affidavit

Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph 4(c) of Rejoinder

With reference to para 2 (c) of the said reply, it is stated that the petitioners' companies undertake to comply with the provisions of section 232(3)(i) of the Companies Act 2013. Further, Part-III of Clause 25 of the Scheme relating to authorised capital is in accordance with section 232(3)(i) of the Companies Act 2013.

Paragraph No. 2 (d) of RD affidavit

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph 4(d) of Rejoinder

With reference to para 2 (d) of the said reply, it is stated that the petitioners companies undertakes to pay applicable stamp duty as applicable. However Petitioner Companies undertakes that stamp duty will be paid immediately after sanction of scheme and the Scheme becomes effective.

Paragraph No. 2 (e) of RD affidavit

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph 4(e) of Rejoinder

With reference to para 2 (e) of the said reply, it is stated that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy and no change.

Paragraph No. 2 (f) of RD affidavit

It is submitted that the Transferor Company, S3 Exports Private Limited changed the figures in its balance sheet as at 31.03.2020 as follows:-

Item

Figures in Balance

Sheet as at 31.03.2020

(Rs)

Corresponding figures as

on 31.03.2020 shown in

the balance sheet as at

31.03.2021 (Rs)

Short Term Loans &

Advances Unsecured

considered Good

2,63,18,124/-

Short Term Loans &

Advances

(i) Inter-Corporate

Advances to Related parties

0

1,52,18,031/-

1,11,00,093/-

It is therefore signified that financial statement of the company contains serious inaccuracies and lacks credibility. The resultant position of the merger/ amalgamationtherefore is not clear

Paragraph 4(f) of Rejoinder

With reference to para 2(f) of the said reply, it is submitted that in the audited accounts of S3 Exports Private Limited for the year ended 31/03/2020, under the heading/Schedule - Short Term Loans & Advances (unsecured considered goods) INR 2,63,18,124/- has been stated. However in the audited accounts for the year ended 31/03/2021 and in previous year (i.e. 31/03/2020) column, the total amount stated is same. However to reflect the actual financial position for the year ended 31/03/2021 and accordingly in the previous year column of 31/03/2020 the said same amount under the heading Short Term Loans &

Advances (unsecured considered good), has been further bifurcated and there is no change in the total amount of previous year (i.e. 31/03/2020). It is submitted that due to the above stated fact, there is no discrepancies in the said amount as stated in the audited Balance Sheet for the year ended 31/03/2021 and 31/03/2020 relating to amount INR 2,63,18,124/-. Copies of financial statement for 30/03/2021 and 31/03/2020 are annexed hereto and marked with letter "A".

Paragraph No. 2 (g) of RD affidavit

It is submitted that several pages of the Financial Statement as at 31/03/2021 filed by the Transferor Companies, Shankar Styles Station Private Limited and S3 Exports Private Limited are not properly legible and hence, a proper reading of the financial statement is not possible and a comprehensive representative cannot be drawn up by this deponent.

Paragraph 4(g) of Rejoinder

With reference to para 2 (g) of the said reply, it is stated revised financial statement as at 31/03/2021 of Shankar Styles Station and S3 Exports Private Limited has been filed. Copies of the challan filed are annexed hereto and marked with letter "B".

Paragraph No. 2 (h) of RD affidavit

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forward to the Income Tax Department on 18/02/2021 with a request to forward their comments/observations/objections, but till date the same is awaited.

Paragraph 4(h) of Rejoinder

With reference to para 2 (h) of the said reply, it is stated that the petitioner companies have also served the notice two times to respective Income Tax assessing officer and have received no communication. However the Petitioner Companies undertakes that even after the sanction of scheme, the Transferee Company will be liable for all liabilities of Transferor Companies.

7. After hearing submissions made by the Ld Counsel appearing for the Petitioners, it is ordered that in case of any default including any Provisions of Income Tax Act in this respect of the Transferor Companies the Income Tax department , the ROC, West Bengal and all other Statutory Department shall be at liberty to initiate appropriate proceedings against the Transferee Company, which after the sanction of the scheme by this Tribunal is in any case responsible for the liabilities/non-compliance of the Transferor Companies also.

8. Further, heard submissions made by the Ld Counsel appearing for the Petitioner, Mr Harihara Sahoo, Joint Director for and on behalf of RD, who appeared and were heard. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

(a) The Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" hereto, is sanctioned by this Tribunal with Appointed date as 1st April, 2019 ("Appointed Date") and the same shall be binding on Transferor Companies and Transferee Company, their respective shareholders and creditors and all concerned;

(b) All the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

(c) All the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

(d) The employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme;

(e) All proceedings and/or suits and/or appeals now pending, by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;

(f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies , the shares in the Transferee Company to which they are entitled in terms of the Scheme;

(g) Leave is granted to the Petitioner(s) to file the Schedule of Assets & liabilities of the Transferor Companies in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

(h) Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

(i) The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Companies shall be dissolved without winding up with effect from the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

9. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

10. Company Petition (CAA) No. 67/ KB/2021 connected with C.A. (CAA) No.825/ KB/2020 is disposed of accordingly.

11. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

