(2023) 03 NCLT CK 0033

In the National Company Law Tribunal

Case No : CP (CAA) No.26/Chd/Hry/2022

Pyrite Builders & Constructions Privatelimited Vs

Date of Decision : 06-03-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232
Income Tax Act, 1961 — Section 170(2A)

Citation : (2023) 03 NCLT CK 0033

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Abhinav Sood, Yogesh Putney, Yatin Chadha

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint second motion company petition filed by the Petitioner-Companies, namely, Pyrite Builders and Constructions Private Limited (Petitioner Company No.1/Transferor Company No.1), Webcity Builders and Developers Private Limited (Petitioner Company No.2/Transferor Company No.2), and Nadish Real Estate Private Limited (Petitioner Company No.3/Transferee Company) under Section 230-232 of the Companies Act, 2013 (the Act) read with Companies (compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the petitioner companies.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is attached as Annexure P-1 of the petition.

3. The first motion application seeking directions for dispensing/convening with the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Applicant Companies and of Debenture Holders of Applicant Company No.1 and 3 was filed before this Tribunal vide CA (CAA) No.49/Chd/

Hry/2021 and based on such an application necessary directions were issued on 13.04.2021. As per the order dated 13.04.2021, the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Applicant Companies and of Debenture Holders of Applicant Company No.1 and 3 were dispensed with for the reasons recorded in the aforementioned order.

4. It is submitted that the registered offices of the Applicant Companies are situated in the State of Haryana and, therefore, all the Applicant Companies are under the territorial jurisdiction of this Bench.

5. The main objectives, date of incorporation, authorized and paid-up share capital and the rationale of the Scheme have been discussed in detail in the order dated 13.04.2021.

6. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 20.05.2022 and the same were compiled by filing affidavit vide Diary No.00760/01 dated 10.08.2022. The notice of hearing was published by Petitioner Companies in "Business Standard" (English) and "Jansatta" (Hindi) both in Delhi NCR edition on 29.06.2022 and the original copies of the newspapers are attached as Annexure-A1 of the aforesaid affidavit. It has also stated in the affidavit that copies of notices were served upon the (1) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (2) The Concerned Registrar of Companies (3) the Official Liquidator (4)the jurisdictional Income Tax Authorities through the Nodal Officer-Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh along with coy of this petition by way of speed post/courier. Speed Postal Receipts and courier receipts along with tracking reports evidencing service of notices are attached as Annexure-2 of the aforesaid affidavit.

7. It is deposed by the authorized signatories of the applicant companies that neither the petitioner companies nor their counsel have received any objection related to the present scheme from any stakeholder or the general public at large till date. The aforesaid affidavits have been filed vide Diary No.00760/01 dated 10.08.2022.

8. In response to the abovementioned notices, the statutory authorities have furnished their responses.

8.1 Registrar of Companies (RoC)/Regional Director (RD)

8.1.1 The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director (RD), by Diary No.00760/3 dated 23.09.2022. Para 10 of the report of the Regional Director sets out certain observations based on a report of RoC dated 25.08.2022 and the petitioner companies have replied by letter 26.08.2022 (attached as Annexure-C of RD report). It is stated in the report of the Regional Director that all observations raised by the RoC stand clarified.

8.1.2 Thus, no adverse observations can be inferred from the report of the

Regional Director against the petitioner companies.

8.2 Official Liquidator

8.2.1 The Official Liquidator has filed his report vide Diary No.00760/2 dated 12.08.2022. The Official Liquidator in its report has reproduced the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements. It is also stated that pursuant to the Scheme of Amalgamation becoming effective, the Transferor Company shall stand dissolved without being wound up or liquidated.

8.2.2 Thus, no adverse observations can be inferred from the report of the Official Liquidator against the petitioner companies.

8.3 Income Tax Department

8.3.1 The Income Tax Department filed its report by Diary No.00760/4 dated 14.10.2022 in respect of Petitioner Companies No. 1 & 2 stating that the Department has no objection to the proposed Scheme of Arrangement.

8.3.2 Thus, no adverse observation can be inferred from the report of the Income Tax Department.

9. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles is attached as Annexures P-15 of the petition.

10. We have heard the learned counsel for petitioner companies and learned counsel for the Income Tax Department and have perused the record carefully.

11. In the context of the above discussion, the Scheme contemplated between the petitioner companies appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Arrangement attached as Annexure P-1 with the petition.

12. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

13. While approving the scheme as above, it is clarified that this order should not

be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

i. That all the property, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same; and

ii. That all the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company;

iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

iv. All contracts of the Transferor Companies which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

v. All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

vi. That the Appointed Date for the Scheme shall be 01.04.2021 as specified in the Scheme;

vii. That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;

viii. That the Transferee Company shall, without further application, allot to the existing members of the Transferor Companies shares of Transferee Company to which they are entitled under the said Scheme;

ix. That the fee, if any, paid by the Transferor Companies on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme';

x. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170(2A) of the Income Tax Act, 1961;

xi. That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;

xii. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee Company, and the files relating to the Companies and Transferee Company shall be consolidated accordingly, as the case may be; and

xiii. That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

14. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

15. All the concerned Regulatory Authorities are to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

16. The Company Petition CP (CAA) No.26/Chd/Hry/2022 is allowed and disposed of accordingly.