(2020) 05 NCLT CK 0030

In the National Company Law Appellate Tribunal

Case No : Company Petition CAA No. 194(PB) Of 2018 In Company Application (CAA) No. 22(PB) Of 2019

Qanna Trading Private Limited APPELLANT

Vs

ARL Trading Private Limited RESPONDENT

Date of Decision : 05-05-2020

Acts Referred:
Companies Act, 2013 — Section 129, 230, 231, 232, 232(3)(i)

Citation : (2020) 05 NCLT CK 0030

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Manoj Kumar Garg, Kundan Kr. Roy, Siddhartha Patra, Tania Sharma, Vibhooti Malhotra, Lakshya

Final Decision : Disposed Of

Judgement

B.S.V. Prakash Kumar, J

Under consideration is the CAA- 22(PB)/2019 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The present petition has been filed by the Petitioner Companies named above for the purpose of the approval of the Scheme of Amalgamation, as contemplated between the Companies and its Shareholders by way of Amalgamation of Transferor Companies with the Transferee Company. As per the Scheme of Amalgamation (in short, 'Scheme'), "(A) Qanna Trading Private Limited (B) Zara Trading Private Limited, (C) Ambee Conbuild Private Limited, (D) Parelkar Infotech Private Limited, (E) Felicia Conbuild Private Limited, (F) Wilona Buildcon Private Limited, (G) Akira Infotech Private Limited, (H) Valora Trading Private Limited, (I) Siddhant Conbuild Private Limited (hereinafter referred to as Transferor Companies) are proposed to be merged with "ARL Trading Private Limited" (hereinafter referred to as Transferee Company)' as a going concern.

1. The Transferor Company 1 being a Private Limited Company was incorporated on 19th January 2005, under the Companies Act, 1956. The Transferor Company Corporate Identification Number (in short "CIN') is U45201DL2005PTC132246.

2. The Transferor Company 2 being a Private Limited Company was incorporated on 25th January 2007, under the Companies Act, 1956. The Transferor Company CIN is U67120DL2007PTC158446.

3. The Transferor Company 3 being a Private Limited Company was incorporated on 2nd March 2009, under the Companies Act, 1956. The Transferor CIN is U70200DL2009PTC188058.

4. The Transferor Company 4 being a Private Limited Company was incorporated on 16th March 2009, under the Companies Act, 1956. The Transferor CIN is U72300DL2009PTC188433.

5. The Transferor Company 5 being a Private Limited Company was incorporated on 6th May 2009, under the Companies Act, 1956. The Transferor CIN is U70200DL2009PTC190080.

6. The Transferor Company 6 being a Private Limited Company was incorporated on 1st May 2009, under the Companies Act, 1956. The Transferor CIN is U70200DL2009PTC189928.

7. The Transferor Company 7 being a Private Limited Company was incorporated on 29th April 2009, under the Companies Act, 1956. The Transferor CIN is U72900DL2009PTC189835.

8. The Transferor Company 8 being a Private Limited Company was incorporated on 27th April 2009, under the Companies Act, 1956. The Transferor CIN is U51909DL2009PTC189766.

9. The Transferor Company 9 being a Private Limited Company was incorporated on 3rd May 2011, under the Companies Act, 1956. The Transferor CIN is U45204DL2011PTC218446.

10. The Transferee being a Private Limited Company was incorporated on 22nd December 2005 under the Companies Act, 1956. Its CIN is U67120DL2005PTC143941.

11. The main object of the Transferee Company is to purchase or otherwise acquire, build, carry out, equip, maintain, alter, improve, develop, manage, work, control and superintend any plants, warehouse, sheds, offices, shops, stores, buildings, machinery, apparatus, labour lines and houses, warehouses, and such other works and conveniences necessary for carrying on the main business of the Company.

12. The Board of Directors of the Transferor Companies has approved the present Scheme vide its Resolution dated 19.11.2018. The other necessary requirements have also been fulfilled as per the Order dated 07.01.2019 passed by this Bench

in CA (CAA) -194(PB)/2018 & corrected on 28.01.2019.

13. The rationale for the proposed scheme as stated in the scheme is that the Transferor companies and the Transferee Company belong to the same group. There are synergies in the business operations of the Transferor Company and the Transferee Company. In order to provide better operational and financial efficiency in the businesses of Transferor Companies and the Transferee Company, it is intended to merge Transferor Companies into the Transferee Company.

14. The Counsel appearing for the Petitioner Companies has submitted that clause 4 of the present Scheme states that upon Scheme becoming effective, all the assets and also the liabilities of the Transferor Companies shall be incorporated in the books of the Transferee Company on the basis of the values recorded in the books of accounts of the Transferor Companies as on the appointed date. The debit balance in the books of the Transferor Companies towards miscellaneous expenditure to the extent not written off as shown in the books of the Transferor Companies on that date shall be set of against the amalgamation reserve account of the Transferee Company. It is further submitted by the Counsel for the Petitioners that no winding up petitions are initiated/pending against the Transferor Companies and there are no other investigations pending or proceedings initiated under the Companies Act, 2013/1956.

15. Further, the Regional Director, MCA (RD) in its affidavit dated 06.05.2019 has stated that the Transferor Companies are regular in filing the statutory returns. It has further submitted that no complaints/inspection/investigation or Prosecution are pending against the Transferor and Transferee Companies.

16. The Official Liquidator (In short, 'OL') in his Report dated 30.04.2019, based on the information submitted by the Petitioner Companies, submitted that no Complaint against the proposed Scheme is received from any person/party interested in the Scheme in any manner till the date of filing of the Report.

17. Part 11 of the Scheme provides that the merger of the Transferor Companies with Transferee Company shall be accounted as per "The Pooling of interests Method" as prescribed in the Accounting Standard-14 contained in company (Accounting Standards) Rules, 2006, notified under Section 129 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015.

18. The Transferee Company has undertook that the Transferee Company will pay the Fees, if any required to be paid to the Registrar of Companies after merger of the authorized Share capital of all Transferor Companies with the Authorized Share Capital of Transferee Company, if the Fees paid by all Transferor is insufficient & this undertaking has already be given by Transferor Companies & Transferee Company in para 10.11 of the Scheme of amalgamation and the proposed Scheme is not in contravention of Section 232 (3) (i) of the

Companies Act 2013 and the Section clearly provides that "where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation".

19. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013.

20. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of Amalgamation annexed with the Petitions is hereby sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Companies involved in this Scheme. The Appointed date of the Scheme is 01.04.2018.

21. While approving the Scheme as above, it is further clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

22. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

23. A certified copy of this Order shall be filed with the concerned Registrar of Companies (ROC) within 30 days of the receipt of this Order.

24. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this order with the concerned Registrar of Companies.

25. Upon receiving the certified copy of this Order, the ROC concerned is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Companies shall be consolidated with the files and records of the Transferee Company.

26. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14.12.2016.

27. Accordingly, the Scheme stands sanctioned and CAA 22(PB)/2019 stands disposed of.