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(2023) 07 NCLT CK 0004

In the National Company Law Tribunal

Case No : CP (CAA) No.23/Chd/Pb/2022

Raglan Developers Private Limited Vs

Date of Decision : 03-07-2023

Acts Referred:
Companies Act, 2013 — Section 66, 133, 184, 185, 189, 230, 232, 232(3) (i)
Companies Act, 1956 — Section 295, 297, 299, 301

Citation : (2023) 07 NCLT CK 0004

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

Bench : Division Bench

Advocate : Rahul Jogi, 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, Raglan Developers Private Limited (Transferor Company/ Petitioner Company No. 1) and Raglan Infrastructure Private Limited (Transferee Company/Petitioner Company No. 2) under Sections 230-232 and Section 66 of Companies Act, 2013 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 -1 of the petition.

3. The first motion application seeking directions for dispensing with the meetings of the Equity Shareholders and of Secured Creditors and Unsecured Creditors of all the Applicant Companies was filed before this Tribunal vide CA (CAA) No.25/Chd/Pb/2021 and based on such an application necessary directions were issued on 25.03.2022. As per the order dated 25.03.2022, the meetings of Equity Shareholders, Secured Creditors and Secured Creditors of Applicant

Companies were dispensed with for the reasons mentioned in the aforesaid order.

4. The main objects, date of incorporation, authorized and paid-up share capital and the rationale of the Scheme have been discussed in detail in the order dated 25.03.2022.

5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 27.04.2022 and the same were compiled by filing affidavit vide Diary No. 00564/01 dated 20.07.2022. The notice of hearing was published in newspapers namely, "Business Standard" (English, Chandigarh and Punjab Edition) and "Business Standard" (Hindi, Chandigarh and Punjab Edition) on 05.07.2022. The original copies of the newspapers are attached as Annexure-7 to the aforesaid respective affidavits. It is also stated in the aforesaid affidavits that copies of notices were served upon the (1) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; (2) Registrar of Companies, Punjab and Chandigarh; (3) Official Liquidator (attached to the Hon'ble High Court of Punjab and Haryana); (d) Jurisdictional Income Tax Department, by all Petitioner Companies by way of speed post. Original speed post receipts along with tracking report are attached as Annexure – 3 to 6 of the aforesaid affidavit.

6. It is deposed by the authorized signatories of the Petitioner companies that after the publication of the notice of hearing in the newspaper, no objection from any person has been received. The aforesaid affidavit has been filed vide Diary No 00564/3 dated 25.08.2022.

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

7.1. Registrar of Companies (RoC)/Regional Director (RD)

7.1.1. The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director (RD), by Diary No. 00564/4 dated 06.09.2023. It is stated in the Report that No Affidavit regarding compliance of Provisions of Sections 295, 297, 299 & 301 of the Companies Act, 1956 and Section 184, 185 and 189 of the Companies Act, 2013 not furnished by the petitioner Companies and as per section 232(3) (i) of the Companies Act. 2013, the fee, if any, paid by the Transferor Company on its authorized capital shall be set-off against any fee payable by the Transferee Company on its authorized capital subsequent to the amalgamation.

7.1.2. The petitioner companies have filed reply by Diary No. 00564/6 dated 06.09.2023 stating that the petitioner companies have duly complied with the provisions of Sections 295, 297, 299 & 301 of the Companies Act, 1956 and Section 184, 185 and 189 of the Companies Act, 2013 and the affidavit confirming the compliance is attached as Annexure 2. It is further submitted that in terms of Clause 16.1 of the Scheme of Amalgamation, the Transferee Company shall pay the fees on its authorized share capital after claiming the set

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off fees already paid by the transferor company.

7.1.3. Thus, no adverse observation can be inferred from the report of the Regional Director/Registrar of Companies.

7.2. Official Liquidator

7.2.1. The Official Liquidator has filed his report vide Diary No.00564/2 dated 27.07.2022. 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.

7.2.2. Thus, no adverse observation can be inferred from the report of the Official Liquidator.

7.3. Income Tax Department

7.3.1. The Income Tax Department filed its report by Diary No. 00564/5 dated 25.09.2022 stating that a demand amounting to Rs. 4,13,470/- is pending in respect of the Transferor company.

7.3.2. The petitioner companies have replied by Diary No. 00564/7 dated 26.09.2022 stating that in terms of Clause 6.5(I) of the Scheme, all the liabilities of the transferor Companies shall be transferred to the transferee company and as per Clause 7 of the Scheme all suits, actions and other proceedings including legal and taxation proceedings shall be continued by the transferee company as if the same has been originally instituted by the transferee company. It is further undertaken that the outstanding income tax demand shall be paid by the transferee company subject to the right of appeal available to the petitioner companies.

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

8. 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 Annexure 12 of the petition.

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

10. 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

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the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation attached as Annexure -1 with the petition.

11. 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.

12. 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 Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 and Section 66 of the Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the Transferor Company 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 Company 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 Company 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 Company, the Transferee Company had been a party or beneficiary or obliged thereto;

v. That the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme';

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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 Company 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 Company shares of Transferee Company to which they are entitled under the said Scheme;

ix. That the fee, if any, paid by the Transferor Company 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 increased authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Company;

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 Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Company 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.

13. 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.

14. 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.

15. The Company Petition CP (CAA) No.23/Chd/Pb/2022 is allowed and disposed of accordingly.

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