(2020) 12 NCLT CK 0124

In the National Company Law Tribunal

Case No : Company Petition (CAA) No. 977/MB Of 2020, Company Application (CAA) No. 545/MB Of 2020

Rajendra Finance Private Limited And Ors. Vs

Date of Decision : 09-12-2020

Acts Referred:

Companies Act, 2013 — Section 13, 14, 61, 230, 230(1), 230(3), 230(4), 230(5), 231, 232, 232(3)(i), 232(6)

Citation : (2020) 12 NCLT CK 0124

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah, Rupa Sutar

Final Decision : Allowed

Judgement

Sr.

No.

Para

(IV)","RD Report / Observations dated 2nd

December, 2020",Response of the Petitioner Companies.

(a),"In compliance of AS--14 (IND AS-

103), the Petitioner Companies shall

pass such accounting entries which

are necessary in connection with the

scheme to comply with other

applicable Accounting Standards

such as AS-5(IND AS8) etc.","So far as the observation in paragraph IV

(a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that in addition to Compliance of AS-14, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.

(b),"As per Part â?"A-Definition Clause 3(3.7, 3.8 & 3.10) of the Scheme. â??The Appointed Dateâ?? means the 1st April, 2019 or such other date as the National Company Law Tribunal (Tribunal) of Judicature at Mumbai or other competent authority may otherwise direct/fix. â??The Effective Dateâ?? means the date on which certified copies of the Order(s) of the National Company Law Tribunal at Mumbai vesting the assets, properties, liabilities, rights, duties, obligations and the like of all the Transferor Companies in the Transferee Company are filed with the Registrar of Companies, Maharashtra, after obtaining the necessary consents, approval, permissions, resolutions, agreements, sanctions and orders in this regard.

Record Date"" means the date to be fixed by the Board of the Directors of Remi Finance and Investment Private Limited, for the purposes of issue and allotment of shares of Remi Finance and Investment Private Limited as may be applicable and relevant in accordance with this Scheme of Amalgamation.

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Honâ??ble Tribunal taking into account its inherent powers.

Further, the Petitioner may be asked to comply with the requirements and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.","So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned

Counsel for the Petitioner Companies submits that the Appointed Date is 1st April, 2019 from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(c),"The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.","So far as the observation in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies undertake that this Scheme is approved by the requisite majority of members and creditors as per the directions issued in terms of the NCLT order dated 28th February, 2020.

(d),"Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are made and same and there is no discrepancy/any change/changes are made, for

changes if any liberty
be given to Central Government to
file further report if any required.","So far as the observation in paragraph IV
(d) of the Report of the Regional Director
is concerned, the Learned Counsel for the
Petitioner Companies submits that the
Petitioner undertakes that Scheme
enclosed to the Company Application and
the scheme enclosed to the Company
Petition are one & same there is no
discrepancy or
deviation.
(e),"The Petitioners under provisions of
section 230(5) of the Companies Act,
2013 have to serve notices to
concerned authorities which are
likely to be affected by
Amalgamation and to obtain NOC
from the concerned regulator like
RBI since the Company appears to be
finance Company. Further, the
approval of the scheme by this
Hon'ble Tribunal may not deter such
authorities to deal with any of the
issues arising after giving effect to
the scheme. The decision of such
Authorities is binding on the
Petitioner Company(s).","So far as the observation in paragraph IV
(e) of the Report of the Regional Director
is concerned, the Learned Counsel for the

Petitioner Companies submits that the scheme by this Honâ??ble Tribunal may not deter any authorities to deal with any of the issues arising after giving effect to the scheme and that the decision of authorities is binding on the Petitioner Company (s). The Petitioner Companies further state that RBI approval is not required as Companies are not NBFC Company.

(f),"Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.","So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its Authorized Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013.

(g),"As regards Part -B Clause 14(14.1 to 14.3) of Scheme (Combination of Authorized Share Capital); upon the sanction of the Scheme, the authorized share capital of Transferee Company Shall automatically stand increased without any further act, instrument or deed on the Transferee Company. In this regard it is submitted that Hon'ble Tribunal may kindly direct the petitioner to comply with provisions of Section 13, Section 14 & Section 61 of the Companies Act, 2013 or any other applicable provision of the Act,","So far as the observation in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner the petitioner in the authorized share capital of Transferee Company Shall automatically stand increased without any further act, instrument or deed on the Transferee Company and that the Petitioner Company will to comply with provisions of Section 13, Section 14 & Section 61 of the Companies Act, 2013 or any other applicable provision of the Act for increase.

(h),"The Scheme at Para 13 (13.3) to

provides that excess of assets over

liabilities of all the Transferor

Companies shall be transferred to

Capital Reserved Account. In this

regards it is submitted that such

excess to be treated as reserve

arising out of Amalgamation and

hence be not available for

distribution of dividend and other

related purpose.","So far as the observation in paragraph IV

(h) of the Report of the Regional Director

is concerned, the Learned Counsel for the

Petitioner Companies submits that the

Petitioner Company undertakes that the

excess of assets over liabilities of all the

Transferor Companies and that such

excess to be treated as reserve arising out

of Amalgamation.

(i) The Scheme, with the Appointed Date fixed as 1st April, 2019 placed at pages 266 to 291 (Exhibit â?" K) of the Company Petition, is hereby",,

sanctioned. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders.,,

(ii) The Transferor Companies shall be dissolved without being wound up.,,

(iii) The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. Petitioner Companies are directed to,,

file a copy of this Order along with a copy of the Scheme of Amalgamation with the Registrar of Companies concerned, electronically along with E-",,

Form INC-28 within 30 days from the date of receipt of the Order from the Registry.,,

(iv) The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar of this Tribunal, within 60",,

days from the date of receipt of the Order, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any,",,

payable.,,

(v) The Petitioner Companies shall comply with all the undertakings given by them.,,

(vi) The Petitioner Companies shall, within 15 days of receipt of this order, issue newspaper publications with respect to approval of the Scheme, in",,

the same newspapers in which previous publications were issued.,,

(vii) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.,,

(viii) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.,,

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

ORDER,,

The matter is taken up on VC. Heard Mr. Ahmed Chunawala, Counsel for the Petitioner, Ms. Rupa Sutar, Deputy Director from the Office of the",,

Regional Director (WR), MCA, Mumbai and Mr. V.P. Katkar, Official Liquidator of the Honâ??ble Bombay High Court. Petition allowed vide",,

separate orders.,,