**(2024) 03 NCLT CK 0061**

**In the National Company Law Tribunal**

**Case No :** C.P. (CAA) No. 67/ MB -III/2023 Connected With C.A. (CAA) No. 271/ MB-III/2022

**?Rathore Organic Products Private Limited Vs**

**Date of Decision :** 26-03-2024

**Acts Referred:**

Companies Act, 2013 — Section 133, 230, 230(3), 230(5), 230(6), 230(7), 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B), 2(19AA), 149

**Citation :** (2024) 03 NCLT CK 0061

**Hon'ble Judges :** Lakshmi Gurung, Member (J);Charanjeet Singh Gulati, Member (T)

**Bench :** Division Bench

**Advocate :** Prachi Mota, Bhagawati Prasad

**Final Decision :** Disposed Of

## Judgement

Lakshmi Gurung Member (Judicial)

1. Heard the Ld. Authorised Representative for Petitioner Companies.

2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and the Rules framed thereunder for sanction of the Scheme of Amalgamation of CORAL VENTURE PRIVATE LIMITED (First Transferor Company or First Petitioner Company), ADITYA FINANCIAL CONSULTANTS PRIVATE LIMITED (Second Transferor Company or Second Petitioner Company), SRADDAH VYAPAAR PRIVATE LIMITED (Third Transferor Company or Third Petitioner Company), with and into RATHORE ORGANIC PRODUCTS PRIVATE LIMITED (formerly known as Twinstar Multi Trade Private Limited, (Transferee Company or Fourth Petitioner Company) and their respective shareholders (‘Scheme’).

3. The Boards of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board resolutions in their respective Board meetings held on 01.10.2022 which are annexed to the Company Scheme Petition.

 

4. The Appointed Date is 1st April 2023.

5. Nature of Business:

5.1. The Transferor Companies are engaged in the business of providing consultancy and advisory services.

5.2. The Transferee Company is engaged in business of manufacturing Organic products.

6. The registered offices of the Petitioner Companies are situated in Mumbai, Maharashtra and hence the subject matter of the Petition is within the jurisdiction of this Bench.

7. The shares of the Petitioner Companies are not listed on any stock exchange.

Rationale of the Scheme:

8. The Applicant Companies submit that the rationale for the Scheme is as under:

a. The Transferor Companies and the Transferee Company are owned and controlled by the same management i.e. Directors and promoters belong to the same family.

b. The Transferor and Transferee Companies are willing to merge into a single entity to eliminate the same shareholders holding shares in all the Applicant Companies into one single holding in the Transferee Company.

c. The Transferor Companies do not have any significant business activities due to challenging economic conditions and slowdown in domestic economy.

d. The amalgamation of all the Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings enabling effective management and unified control of operations. This would enable streamlining the activities and consequently reducing managerial overlaps by reducing the number of Companies under the same Management and thus lead to reduction in administration efforts.

e. It would be advantageous to combine the activities and operations of all the four Companies into a single Company for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance issues as the Companies are engaged in similar businesses thereby reduction in Statutory Compliance and other related cost of the combined entity.

9. Ld. PCS submits that, the Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated 05.01.2023 passed in CA (CAA) No. 271/(MB)/2022 of this Tribunal. The Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking

 

given by the Petitioner Companies is accepted.

10. Consideration:

The Scheme envisages that upon the Scheme becoming effective,

10.1. The Transferee Company shall issue and allot 8 (Eight) Equity shares of Rs. 10/- (Rupees Ten Only) each credited as fully paid-up in the capital of the Transferee Company for every 100 (Hundred) Equity Shares of the face value of Rs. 1/- (Rupees One only) each held by the Shareholders of the First Transferor Company.

10.2. The Transferee Company shall issue and allot 20 (Twenty) Equity shares of Rs. 10/- (Rupees Ten Only) each credited as fully paid-up in the capital of the Transferee Company for every 100 (Hundred) Equity Shares of the face value of Rs. 10/- (Rupees Ten only) each held by the Shareholders of the Second Transferor Company.

10.3. The Transferee Company shall issue and allot 22 (Twenty-Two) Equity shares of Rs. 10/- (Rupees Ten Only) each credited as fully paid-up in the capital of the Transferee Company for every 100 (Hundred) Equity Shares of the face value of Rs. 10/- (Rupees Ten only) each held by the Shareholders of the Third Transferor Company.

11. The meetings of the Shareholders and Unsecured Creditors of Petitioner Companies were dispensed with by the Tribunal vide order dated 05.01.2023 on account of consent affidavits of shareholders and Unsecured Creditors. Further, there were no secured creditors in the Petitioner Companies, so question of convening the meeting did not arise.

12. The Regional Director, Western Region on behalf of the Central Government has filed its Report dated 21.06.2023 ('RD Report') with observations in paragraphs 2(a) to 2(h). In response to the said observations, the Petitioner Companies have given undertakings and clarifications vide affidavit dated 03.07.2023. Some observations are mere factual or routine in nature. Important observations from RD Report are reproduced in italics and the clarifications and undertakings in reply are reproduced in italic, bold:

2(a)(ii)

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 AS-8) etc.

2(a)(ii)(a) -The Petitioner Companies undertakes to comply with AS-14 or IND AS-103 and such applicable accounting standards for Amalgamation and as per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme including AS-5 or IND AS-8 as applicable.

b. As per Definition of the Scheme, "Appointed Date" means April 01, 2023 or such other date, directed by or stipulated by the Mumbai bench of National Company Law Tribunal or any other competent authority may otherwise direct/ fix; And "Effective Date" means the last of the dates on which the certified or authenticated copies of the order sanctioning this Scheme passed by the Mumbai bench of the National Company Law Tribunal is filed with the Registrar of Companies, Mumbai, Maharashtra, by the Transferor Company and the Transferee Company as required under the provisions of the Companies Act. Any reference in this Scheme to the date of "coming into effect of this Scheme" or "the Scheme coming into effect" or "Scheme becoming effective" shall mean the Effective Date;

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 Tribunal taking into account its inherent powers. The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

2(b) The Petitioners Companies confirms that the definition “Appointed Date” means 1st April, 2023. Further, Clause 4.2 of the Scheme specifies that the appointed date shall be 1st April, 2023. Further, the Petitioners confirms that the “Effective Date” shall be the last of the dates on which certified or authenticated copies of the Orders of the National Company Law Tribunal, Mumbai sanctioning the scheme are filed with the Registrar of Companies by the Transferor and Transferee Company.

c. Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor companies is dissolved, the fee and stamp duty paid by the transferor companies on its authorised capital shall be set-off against fees and stamp duty payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.

2(c) The Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees in the increased Authorised Share Capital and would pay the differential fees, if any.

d. The 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 7 sub-section (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

2(d) The Petitioner Companies states that the meetings of members and creditors were dispensed with by the Tribunal vide its Order dated 05th January, 2023. Therefore, the requirement of holding the meetings and furnishing the minutes thereof are not applicable in the present matter.

e. The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;

2(e) the Petitioner Companies undertakes the compliance of all provisions of the Income Tax Act, 1961 including any direction of the Income Tax department, if any in accordance with the law.

f. In the Balance Sheet of Transferor Company 1, Transferor Company 2, Transferor Company 3 and Transferee Company as on 31.03.2022, Security Premium of Rs. 20,12,57,100/-, 18,51,52,500/-, 5,60,36,400/-, and 3,92,24,500/- respectively are showing, details of the same are, as under:

CORAL VENTURE PRIVATE LIMITED

Date of allotment

Name of Allottees

No of shares

Par value

Premium per share

Security premium

31-03-2008

Saisahara Commercial Pvt Ltd

35000

1

99

3465000

31-03-2008

Nirnidhi Consultants Pvt Ltd

55000

1

99

5445000

 

31-03-2008

Risewell

Suppliers Pvt Ltd

120000

1

99

11880000

31-03-2008

Warner

Multimedia Limited

60000

1

99

5940000

31-03-2008

JMD  Sounds Limited

100000

1

99

9900000

31-03-2008

Prominent

Vyapaar Pvt Ltd

30000

1

99

2970000

31-03-2008

Sainath  Dealcom Pvt

Ltd

 

110000

1

99

10890000

31-03-2008

Prime  capital

Market Limited

75000

1

99

7425000

31-03-2008

Sairam  Dealcom Pvt Ltd

155000

1

99

15345000

31-03-2008

Mooncity

Merchandies Pvt Ltd

40000

1

99

3960000

31-03-2008

Saisahara

Vyapaar Pvt Ltd

70000

1

99

 

6930000

31-03-2008

Kumaon

Engineering Co. Pvt Ltd

75000

1

99

7425000

31-03-2008

Rohtang

Commcercial Pvt Ltd

80000

1

99

7920000

31-03-2008

Bahar

Merchants Pvt Ltd

200000

1

99

19800000

31-03-2008

sairam

commercial Pvt Ltd

100000

1

99

9900000

31-03-2008

 

Albright

Consultants Pvt Ltd

165000

1

99

16335000

31-03-2008

Godawari

Commerce PVt Ltd

90000

1

99

8910000

31-03-2008

Reward  Advisory Pvt

Ltd

100000

1

99

9900000

31-03-2008

Sai  Vyapaar Pvt Ltd

100000

1

99

9900000

31-03-2008

Sainam

Commrecial Pvt Ltd

4000

1

99

396000

31-03-2008

Select  Infinlease Pvt Ltd

18900

1

99

1871100

31-03-2008

Tridev  Multitrade Pvt

Ltd

100000

1

99

9900000

31-03-2008

Sital  Mercantile

& Credit Pvt Ltd

50000

1

99

4950000

31-03-2008

Seashell

Venture Pvt Ltd

75000

1

99

7425000

31-03-2008

Meadow Venture Pvt Ltd

25000

1

99

2475000

2032900

201257100

ADITYA FINANCIAL CONSULTANTS PRIVATE LIMITED

Date of issue

Name Of Allotte

No of shares

Par value

Premium Per Share

Security Premium

31-03-2008

Bhaneshwari

Dealcomm Pvt Ltd

1750

10

390

682500

31-03-2008

Classic Advertising &

Services Pvt Ltd

12750

10

390

4972500

31-03-2008

Dhirendra  Merchants Pvt ltd

14000

10

390

5460000

31-03-2008

Doon  valley

Commvercial Pvt Ltd

16250

10

390

6337500

31-03-2008

Ganpati  DealcomPvt Ltd

23750

10

390

9262500

31-03-2008

Gulmohar  Enclave

Pvt Ltd

19875

10

390

7751250

31-03-2008

Gulmohar  Tower Pvt Ltd

32000

10

390

 

12480000

31-03-2008

Harish Tie-Up Pvt Ltd

12625

10

390

4923750

31-03-2008

Majestic Commercial Pvt Ltd

15000

10

390

5850000

31-03-2008

Manish Merchants

Pvt ltd

18250

10

390

7117500

31-03-2008

Mateshwari Estates Pvt Ltd

20000

10

390

7800000

31-03-2008

Mayukh

Constructions Pvt ltd

6125

 

10

390

2388750

31-03-2008

Orchid  Merchants pvt Ltd

10375

10

390

4046250

31-03-2008

Pawan  Putra Advertising Pvt Ltd

24000

10

390

9360000

31-03-2008

Prime  Tracom Pvt ltd

5250

10

390

2047500

31-03-2008

Pushpanjali  Projects Pvt Ltd

15000

10

390

5850000

31-03-2008

Sahashi  Jyoti Tectiles Pvt Ltd

27625

 

10

390

10773750

31-03-2008

Shreeradhe  Tea Plantation Pvt Ltd

36250

10

390

14137500

31-03-2008

Sparl  Impex Pvt ltd

3750

10

390

1462500

31-03-2008

Sriram  Dealcom

Pvt Ltd

2000

10

390

780000

31-03-2008

Swagatam  Financial Consultants Pvt Ltd

10750

10

390

4192500

31-03-2008

Tanish  Infotech Pvt Ltd

 

18250

10

390

7117500

31-03-2008

Tanish  Tradecom Pvt Ltd

41750

10

390

16282500

31-03-2008

Tirupati  Mansion Pvt Ltd

10000

10

390

3900000

31-03-2008

Trimurty  Advisory

Services Pvt Ltd

32500

10

390

12675000

31-03-2008

Vishkha  Technology Pvt Ltd

19875

10

390

7751250

31-03-2008

 

Yogita  Developers Pvt Ltd

25000

10

390

9750000

474750

185152500

SRADDAH VYAPAAR PRIVATE LIMITED

Date  of allotment

Name  Of Allotte

No  Of Shares

Par  Value

Premium  Per Share

Security  Premium

31-03-2008

Elishan  Esates Pvt Ltd

3000

10

490

1470000

31-03-2008

Buskinath  Design

Private Limited

5000

10

490

2450000

31-03-2008

Bimex  Exports Pvt Ltd

3000

10

490

1470000

31-03-2008

Fastner Mercantile Pvt Ltd

10000

10

490

4900000

31-03-2008

Gajbadan Advisory Services Pvt Ltd

2000

10

490

980000

31-03-2008

Goodfaith Cement

Pvt Ltd

3400

10

490

1666000

31-03-2008

Growth Commodities Pvt Ltd

2000

10

490

980000

31-03-2008

Joyprit Hotel Pvt Ltd

 

1400

10

490

686000

31-03-2008

Kolkata  Trexim Pvt Ltd

10000

10

490

4900000

31-03-2008

Marudhar  Vyapaar Pvt Ltd

11000

10

490

5390000

31-03-2008

Prospect  TIE-UP Pvt Ltd

6000

10

490

2940000

31-03-2008

Sanyam  Mercants Pvt Ltd

7600

10

490

3724000

31-03-2008

Sarthak  Traders Pvt Ltd

 

20000

10

490

9800000

31-03-2008

Shivratri

Commodities Pvt Ltd

4000

10

490

1960000

31-03-2008

Sristi Developers Pvt Ltd

8300

10

490

4067000

31-03-2008

Sukant Steel Pvt

Ltd

4400

10

490

2156000

31-03-2008

Sunlight Financial

Advisory Pvt Ltd

2060

10

490

 

1009400

31-03-2008

Tuticorin Trexim Pvt Ltd

200

10

490

98000

31-03-2008

Vinayak Financial Consultants Pvt Ltd

10000

10

490

4900000

31-03-2008

Mansukh Consultancy

Services Pvt Ltd

1000

10

490

490000

114360

56036400

RATHORE ORGANIC PRODUCTS PRIVATE LIMITED

Date of allotment

Name Of Allotte

No. of Shares

Par Value

Premium Per Share

Security Premium

30-03-2007

 

Ram Avatar

Prajapati

500

10

490

245000

30-03-2007

Bayanwala

Brothers Pvt. Ltd

10000

10

490

4900000

30-03-2007

Sargam Tradelink Pvt.

Ltd

10000

10

490

4900000

30-03-2007

Sital Mercantile Co

Pvt. Ltd

20000

10

490

9800000

30-03-2007

Reward

Commodity Pvt Ltd

20000

10

490

9800000

30-03-2007

Saltlake  Vaypaar Pvt

Ltd

10000

10

490

4900000

30-03-2007

Godawari  Commercial

Pvt Ltd

10000

10

490

4900000

80500

39445000

In view of the above, if agreed, NCLT may ask the petitioners to clarify that Income Tax Department has properly assessed the increase of share capital from time-to-time u/s. 68 of the Income Tax Act, 1961 payment of Income Tax by existing shareholders, if they who have purchased shares at lower price than issued price from above allotees or seek the reply from Income tax department about issue of share capital at high premium through accommodation entries.

It is further submitted that CBDT vide circular dated 17.03.2023 (Copy Enclosed) appointed following nodal officer for income tax department for the Region of Mumbai & Goa, which is as follows:-Pr. CCIT, Mumbai Address:- 3rd Floor, Aayakar Bhawan, Maharishi Karve Road, Mumbai - 400020. Phone No. 022-22017654 Email:- Mumbai.pccit@incometax.gov.in

2(f) The Petitioner Companies submits that the Regional Director has raised issues which pertain to the financial year 2008-09 and 2007-08 respectively of which the income tax assessments have already been completed. Further the issues raised by the Regional Director is time barred under section 149 of the Income Tax Act. 1961. Further, there are no outstanding dues payable to the Income Tax Department by both the Petitioner Companies. Copies of screenshot of the Income tax login ID of the respective Companies showing the No dues are annexed herewith as Annexure A. It is further submitted that the Scheme already provides that all the assets and liabilities of Transferor Company shall vest in the Transferee Company upon Amalgamation which is also a very well settled law. Furthermore, the Petitioner Companies also undertakes to comply with all the provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.

g. It is observed from latest MGT-7 for the year ending 31.03.2022 filed by the petitioner companies that transferor companies has following corporate body shareholders having more than 10% shareholding, but form Ben-2 has not been filed:-

Name of the Company

Name of the shareholder

Percentage of shareholding

Status of Ben-2

Aditya Financial Consultants Private Limited (Transferor Company 2)

Coral Venture Pvt Ltd

43.86%

Not Filed

Twinstar Multi Trade Pvt Ltd

56.14%

Not Filed

Sraddah Vyapaar Private Limited (Transferor Company 3)

Coral Venture Pvt Ltd

44.87%

Not Filed

Twinstar Multi Trade Pvt Ltd 55.13%

Not Filed

Therefore, petitioner company may be directed to clarify and comply with the same as required u/s. 90 of the Companies Act, 2013 r.w. companies (Significant Beneficial Owners) Rules, 2018.

 

2(g) The Petitioner Companies submit that the Form BEN-2 for the Transferor Company No. 2 has been filed vide SRN F62126446 and F62102819; for the Transferor Company No. 3 has been filed vide SRN F62127030 and F62126776 and a copy of the Form as filed on the MCA Portal is annexed hereto and marked as Annexure- B.

h. That on examination of the report of the Registrar of Companies, Mumbai dated 16.05.2023 (Annexed as Annexure A-1)) that all the Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and / or representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the petitioner companies have filed Financial Statements up to 31.03.2022 further observations in ROC report are as under:

i. That the ROC Mumbai in his report dated 09.05.2023 has stated that no Inquiry, inspection, investigation & prosecution is pending against the subject applicant companies except Transferor Company 2 namely Aditya Financial Consultants Private Limited against which inquiry is pending.

2(h)(i) The Petitioner Companies states that, the Petitioner Company has not received any notice for pending inquiry. Further, any inquiry against the Petitioner Company which has not come to our notice up to this stage and if anything arises or observed post approval of scheme of amalgamation even in the name of transferor companies would be considered.

ii. The Transferor Company is having below mentioned Charge with the Status as "OPEN"

Assets under Charge

Charge

Amount

Date of

creation

Status

Lien of FD Account No.:

918040059908766

500000

16-07-2018

OPEN

Lien of FD Account No.:

919040050164025

1064791

20-07-2019

OPEN

Lien of FD Account No.:

918040059908766

1500000

16-07-2018

OPEN

100% in form of TDR with Banks

lien noted thereon

12000000

31-03-2022

Open

2(h)(ii) Petitioner Companies states that the "OPEN" Charge of Transferor Company would be transferred and reflect on the Index of Charge of the Transferee Company once the Form INC 28 of Transferee Company is approved.

iii. As per available information with this office the Transferor Company 2 is under Inquiry & pending.

2(h)(iii) The Petitioner Companies states the same is self-explanatory and does not require explanation.

iv. The Transferor Company No. 1 is having Long Term Borrowings as per note 3 attached to Financial Statement as at 31/03/2022 as Unsecured but considered good from Directors of Rs. 99,25,000/ & other of Rs. 98,66,851/-

2(h)(iv) The Petitioner Companies states that, the Long term Borrowings of the Transferor Company No. 1 would be transferred and reflect in the Financial Statement of the Transferee Company once the Form INC 28 of Transferee Company is approved.

v. The Transferor Company No. 2 is having Short Term Loans and Advances as per note 7 attached to Financial Statement as at 31/03/2022 as Loans from others of Rs. 2,06,20,195/-. Further the company is under Inquiry follow up process.

2(h)(v) The Petitioner Companies states that, the Short term loans and advances of the Transferor Company No. 2 would be transferred and reflect in the Financial Statement of the Transferee Company once the Form INC 28 of Transferee Company is approved.

 

vi. The Transferor Company No. 3 is having Long term Borrowings as Anukumar Rathore as per note 3 attached to Financial Statement as at 31/03/2022 of Rs. 37,21,000/- who is a Director of the Company. However, the name as per Master Data & its Financial Statement appears to vary from each other.

2(h)(vi) The Petitioner Companies states that, the Long term Borrowings of the Transferor Company No. 3 would be transferred and reflect in the Financial Statement of the Transferee Company once the Form INC 28 of Transferee Company is approved. Further, change in the name of the Director Anukumar Rathore on the Master Data and Financial Statement, it is typological mistake in the Financial Statement, whereas Mr. Anukumar Rathore, Director of the Petitioner Company No. 3 is one and the same.

vii. As.

viii. As per the provisions of Section 232(3)(i) of the Companies Act; 2013, 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. Therefore, remaining fee, if any after setting-off the fees already paid by the transferor company on its authorized capital, has to be paid by the transferee Company on the increased authorized capital subsequent to the amalgamation

2(h)(viii) The Transferee Company reiterates that it would comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees and would pay the differential fees, if any.

ix. Interest of the Creditors should be protected.

2(h)(ix) The interest of creditors shall be protected at all times.

13. RD during hearing dated 24.08.2023 submitted that certain inquiry is being conducted in case of Second Transferor Company which is pending. The matter was adjourned from time to time on the request of the RD on account of pending inquiry. Finally Regional Director (WR) filed Additional Affidavit dated 05.02.2024, inter alia stating therein that Inquiry Report has been submitted by the Inquiry Officer, Registrar of Companies, Mumbai and directed the Directors of the Second Transferor Company and Transferee Company to undertake, that any proceedings arising out of the said inquiry in near future shall be enforced against Transferee Company.

14. In response to the above the Directors of Transferor Company 2 and Transferee Company have filed an Affidavit in Supplementary Rejoinder dated 08.02.2024 undertaking that any notices or order or adjudication notices issued in the name of Transferor Company no 2 in the near future, shall be enforced against the Transferee Company and same shall be complied by the Transferee Company, and its directions.

 

15. During hearing on 13.02.2024, Mr. Bhagawati Prasad, Assistant Director for RD (WR) submits that he has no further objection/ objections for the scheme.

16. The Official Liquidator has filed Report dated 11.07.2023 inter-alia making the following observations in paragraphs 10 and 11 which is reproduced hereunder:

“10. From the Assets and Revenue of the Coral Venture Private Limited (1st Transferor Company) as at 31.03.2022 it appears to be a deemed NBFC. There may be applicability of provisions of Section 45-IA of Reserve Bank of India Act. Tribunal may require the Company to clarify on this.

11. From the Financial statement as at 31/03/2022 of Transferor Companies it is found that companies have taken loan from Directors. In terms of proviso to clause (viii) sub rule (c) of Rule 2 of Companies (Acceptance of Deposit) Rules, 2014 a declaration needs to be given to the effect that, that such amount is given from own fund and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the same has to be disclosed in the Board Report. Tribunal may require the Transferor Company to produce a copy of such declaration and extract of Board Report where such disclosure has been made.”

17. The Petitioner Companies in their reply vide Rejoinder dated 26.07.2023 to the report of Official Liquidator have submitted as under:

17.1. The Transferee Company has changed its main object clause from "distribution of chemical, textile products and related activities" to "produce, prepare and deal in processed foods, organic foods" vide passing Special Resolution dated June 6, 2022. A copy of the certificate for change in object clause is annexed to the Rejoinder in respect of Report of OL.

17.2. The Transferee Company applied for FDA/FSSAI license for carrying out the said object. The Food and Drug Administration, Maharashtra has issued registration certificate dated 17th October, 2022 to carry on the Yausiness of Food Additives. It is further submitted that the Transferee pany is in process of setting up the requisite infrastructure for carrying he said business. A copy of the license issued by FDA, Maharashtra is annexed to the Rejoinder in respect of Report of OL.

17.3. The Transferee Company would commence the business of Food Additives very soon and would come out of the criterial of deemed NBFC in near future and therefore the provisions of Section 45-IA of Reserve Bank of India will not apply to Transferee Company.

17.4. It is further submitted that Notice was also served upon the Reserve Bank of India, Legal Department by hand delivery on July 19, 2023. Copy of the proof of service by Hand Delivery is annexed to the Rejoinder in respect of Report of OL.

 

17.5. As observation made in Para 11 of the report of Official Liquidator is concerned, copies of the declaration as received from Directors stating that the loans advanced to the Companies have been given out of their own funds and not from borrowed funds are annexed to the Rejoinder in respect of Report of OL.

18. Thus, the Petitioner Companies have taken care of the Observations/ Clarifications sought by Official Liquidator.

19. No objections have been received by the Tribunal opposing the Company Scheme Petition and nor has any party controverted any averments made in the Company Scheme Petition.

20. The Statutory Auditors of the Transferee Company have examined the Scheme in terms of provisions of Sections 230-232 and certified that the accounting treatment specified in the Scheme is in compliance with all applicable accounting standards specified under section 133 of the Companies Act, 2013.

21. The Income Tax Department will be at liberty to examine the aspect of any tax payable because of this scheme including Securities Premium Accounts in accordance with the law and it shall be open to the income tax authorities to take necessary action as permissible under the Income Tax Law.

22. Further, effectiveness of this Scheme shall not deter any regulatory authorities to initiate action, proceedings, prosecution, investigation or any regulatory action against the Petitioner Companies and the Second Petitioner Company. The Second Petitioner Company has undertaken that all such proceedings shall continue in its own name.

23. The shareholders and creditors of the Petitioner Companies are the best judges of their interest. Their decision should not be ordinarily interfered with by the Tribunal as per the decision of Hon’ble Supreme Court in Miheer H. Mafatlal vs. Mafatlal Industries Ltd [JT 1996 (8) 205] wherein it was held as follows:

“It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the usefulness and propriety of the scheme by supporting it by the requisite majority vote.”

24. From the material on record, the Scheme to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

ORDER

25. The Scheme annexed at Annexure A to the Company Scheme Petition is

hereby sanctioned, and the Appointed date of the scheme is 1st April

2023. Following directions are issued:

a) The Transferor Company be dissolved without winding up.

 

b) The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically in e-Form INC-28 within 30 days from the date of receipt of the Certified copy of the Order from the Registry.

c) The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Registrar with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the Certified copy of the Order from the Registry.

26. Petitioner Companies are also directed to serve copy of this order to Income Tax Department, Nodal Officer, GST (if applicable).

27. While approving the Scheme, we clarify that this Order should not, in any way, be construed as an Order granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect of any permission or compliance with other requirements which may be specifically required under any law.

28. The Petitioner Companies shall comply with all the undertakings given by them.

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

30. All the employees of the Transferor Company in service, on the date immediately preceding the date on which the Scheme takes effect i.e. the Effective Date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in the concerned Transferor Company on the said date.

31. Any legal proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company. The legal proceedings whether civil or criminal, if any of whatsoever nature shall not abate as a result of the present Scheme of Amalgamation and shall be taken over by the Transferee Company.

32. All the properties, rights, liabilities, duties and powers of the Transferor Company, be transferred without further act or deed, to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company.

33. The Registrar of Companies is entitled to proceed against the Transferee Company for violation/offences committed by Transferor Company, if any.

34. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Registrar.

35. Any person interested shall be at liberty to apply to this Tribunal in the above

matter for any directions that may be necessary.

36. Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.

37. Ordered Accordingly. Thus, the Company Scheme Petition with C.P. (CAA) /67/ MB/C-III/2023 in CA (CAA)/271/MB/C-III/2022 shall stand to be disposed of.

 