(2019) 08 NCLT CK 0094

In the National Company Law Appellate Tribunal

Case No : Company Application No. (CAA)-190(ND) Of 2018, CAA-03/ND Of 2019

REPRA Arts Pvt. Ltd. APPELLANT

Vs

TRR Properties Pvt. Ltd. RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:
Companies Act, 2013 — Section 210, 230, 230(7), 231, 232, 232(3), 232(3)(i)

Citation : (2019) 08 NCLT CK 0094

Hon'ble Judges : R. Varadharajan, J;H.C. Suri, Member (Technical)

Bench : Division Bench

Advocate : Mukesh Sukhija, Sanjay Kumar, Ayushmaan, Swati Koshal, Sonam Sharma

Judgement

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of arrangement, as contemplated

between the companies and its shareholders by way of amalgamation of the Petitioner / Transferor Company with the Petitioner/ Transferee

Company namely Repra Arts Private Limited (for brevity ""Transferor Company"") and TRR Properties Private Limited (for brevity Transferee

Company"") under Section 230 to 232 and other applicable provisions of the Companies Act, 2013(for brevity 'the Act') read with Companies

(Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity the Rules') pursuant to the Scheme of Amalgamation (hereinafter

referred to as the 'SCHEME') proposed between the petitioners and the said Scheme is also annexed as Annexure ""A-1"" to the petition.

2. From the records, it is seen that the First Motion seeking directions for dispensing the requirement of convening the meeting of the Equity

Shareholders, Secured and Unsecured Creditors of the Petitioner Companies was filed before this Tribunal vide CA (CAA) No. 190 (ND) 2018 and

based on such joint application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the

meeting of the Equity Shareholders of both the companies was directed to be dispensed with vide order dated 17.12.2018. It was also represented that

there were no secured and unsecured creditors of the petitioner companies, therefore, the necessity of convening the meeting did not arise.

3. Under the circumstances, the Petitioner Companies filed their joint petition for sanction of the Scheme of Amalgamation before this Tribunal,

subsequent to the order of dispensation/convening of the meeting in relation to both the Transferor Company and Transferee Company. On

07.01.2019 this Tribunal ordered Notice in the Second Motion petition moved by the Petitioner Companies in connection with the scheme of

amalgamation, to the Registrar of Companies, NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Department, as

well as other sectoral regulators and to such other Objector(s), if any. The Petitioners were also directed vide said order to carry out publication in the

newspapers ""Business Standard"" (English, Delhi Edition) and ""Business Standard"" (Hindi, Delhi Edition) in relation to the hearing filed of the petition on

06.02.2019.

4. The petitioners, it is seen from the records have filed an affidavit on 24.01.2019 in relation to the compliance of the order passed by the Tribunal as

noted above and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Tribunal in one issue of the

'Business Standard' in English and Hindi edition on 19.01.2019. Further, the notices have been served to The Regional Director (NR, MCA), Registrar

of Companies (NCT of Delhi & Haryana), Office of the Official Liquidator, Registrar of Companies, NCT of Delhi & Haryana and Deputy

Commissioner of Income Tax Department in compliance with the directions passed by this Tribunal and in proof of the same

acknowledgements/receipts have also been enclosed.

5. That the Regional Director, Northern Region, MCA to whom notice was issued has filed an Affidavit on 20.03.2019 before this Tribunal, New

Delhi and upon perusal of the same it is observed that that the Regional Director does not have any adverse observation/ remark against the Scheme

of Amalgamation between the petitioner companies. It is also reflected in the Representation Affidavit filed by RD at paragraph 10 of the report of

the ROC as has been extracted therein to the effect that the Amalgamation company be directed to comply with the provision of section 232(3) (i) of

the Companies Act, 2013, in regard to fee payable on its revised authorized share capital. Further it is also brought to the notice of this Tribunal that in

the petition, the Transferee Company even though has mentioned that they have no secured creditors andthe meeting of secured creditor was also

dispensed with by this Tribunal on the basis of above submission of Transferee Company, however, it has been observed from MCA-21 records that

the Transferee Company has an active charge of Rs. 2,57,00,000/- in favor of Bank and that the same to be clarified from the Transferee Company.

6. The Petitioner/ Transferee company has filed a detailed rejoinder to the observations of the RD, vide diary no. 0710102034282018/3 dated

20.05.2019, and has represented as follows:

It is pertinent to mention here that, the Transferee Company had obtained Loan for an amount of Rs. 2,57,00,000/- from Catholic Syrian Bank on

02/09/2004 and necessary form 8 was filed with the office of Registrar of Companies for creation of charge and said loan was repaid in full on

16/09/2010, however necessary Form for satisfaction of charge was not filed due to non-availability of NOC from the Banker. The said NOC was

made available by Banker only on 05/11/2018 and the necessary Forms were filed for satisfaction of charge. The copy of the NOC from the Bank,

Form CHG-4 filed along with the challan and charge satisfaction certificate are enclosed herewith and marked as Annexure - A (C oily).

The petitioner company has also filed a No Due certificate dated 05.11.2018 from Catholic Syrian Bank, with the following observation;

With reference to the above, we hereby certify that the Mortgage Loan of Rs. 2,57,00,000/- availed by you on 02.09.2004 stands closed on

16.09.2010. There is no due outstanding in the loan account as on date.

7. In view of the documents and the rejoinder of the petitioner companies filed and made available to the RD the objections of the RD in relation to

secured creditors stands satisfied. In relation to compliance with section 232(3) (i) of the Companies Act, 2013 the petitioner companies are directed to comply if necessary arises.

8. That the report of the Official Liquidator filed on 26.02.2019 has been placed on record which states that the Official Liquidator has not received

any complaint against the proposed scheme of Amalgamation from any person/ party interested in the scheme. Hence, no objections has been made in

the report submitted by the Official Liquidator.

9. Further, the department of Income Tax has filed its report on 08.04.2019 in relation to Transferor Company, and on 24.05.2019 in relation to the

Transferee Company which has been placed on record which states that the Income Tax Department has no objection to the Scheme of

Amalgamation. And with respect to the Transferee Company it has no pending outstanding demand as well as investigation/inquiry against it. Hence,

no objections has been made in the report submitted by the Official Liquidator.

10. That the Petitioner Companies have complied with proviso to Section 230 (7) proviso/ Section 232 (3) by filing the certificate of the Company's

Auditor in relation to compliance with the Accounting Standards 14, the applicable accounting standard notified by the Central government under the

Companies Act, 2013 and the rules framed there under.

11. The Petitioner companies have submitted that no investigation proceedings are pending against them under section 210 or any other applicable

provisions of the Companies Act, 2013.

12. In view of an affidavit filed on 04.02.2019 by the Petitioner Companies that no complaint has been received on behalf of the Petitioner Companies

and in absence of any objections having been placed on record before this Tribunal. Thus in relation to share valuation and share exchange ratio as

fixed in scheme, no objections has been brought forth by its shareholders or by any authorities and in any case being a commercial decision taken by

the shareholders and this Tribunal exercising only a supervisory jurisdiction as held repeatedly by the Apex Court no interference is sought for in this

regard and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as

Annexure ""A-1"" with the Company Petition as well as the prayer made therein.

13. Notwithstanding the above, if there is any deficiency found or, 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 law, against the concerned persons, directors and

officials of the petitioners.

14. 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:

(1) 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 section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of

the Transferor Company therein but subject nevertheless to all charges now affecting the same;

(2) 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 section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company;

(3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company;

(4) That all the employees of the Transferor Company in service on date immediately preceding the date on which the scheme finally take effect shall

become the employees of the Transferee company without any break or interruption in their service;

(5) That the Transferee Company do without further application allot to the persons entitled of the Transferor Company, as have not given such notice

of dissent, the shares in the transferee company to which they are entitled under clause no. 12 of Section- F of the said SCHEME OF

AMALGAMATION;

(6) That Transferor Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the

Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of

Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee

company and the files relating to the said both companies shall be consolidated accordingly;

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