(2023) 01 NCLT CK 0032

In the National Company Law Tribunal

Case No : C.A(CAA)/6/MB II Of 2023

S M I Coated Products Private Limited Vs

Date of Decision : 20-01-2023

Acts Referred:
Companies Act, 2013 — Section 230, 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 01 NCLT CK 0032

Hon'ble Judges : P. N. Deshmukh, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Satwinder Singh, Ashima Jain

Final Decision : Disposed Of

Judgement

P.N. Deshmukh (Retd.), Member Judicial

1. The Bench is convened by videoconference today.

2. Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a scheme of amalgamation of S M I COATED PRODUCTS PRIVATE LIMITED, the Transferor Company with JINDAL POLYPACK LIMITED, the Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 19th December, 2022 for the Transferor Company and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is May 2nd, 2022.

4. The rationale for the proposed Scheme is as under:

The Transferee Company was incorporated to carry on the business of as manufacturers, importers, exporters of and dealers in polymers, monomers, elastomers, flexible packaging films, specialty films, BOPP films and resins of all types, grades and copolymer formulations and in all forms such as resins/chips, powder, flakes, granules, films sheets, tubes, pipes, fibers, laminates or as processed goods and including specifically polyethylene, polypropylene, polymethyl, polystyrene, polyvinyl-acetate, methacrylate, epoxy resins, alkyd resins melamine, polyesters such as terephthalate and isophthalate, or any other or new substances being improvements upon, modifications of or being derived from additions to petrochemicals or other products or resulting from any process; to acquire or invest in companies/entities who are carrying out any of the aforesaid activities or in similar business or supplement the business of the Transferee Company.

Transferor Company is engaged in the manufacturing and selling of gummed paper & film, self-adhesive sheets & rolls in India and all other related products, which complements the nature of the business for which the Transferee Company was incorporated. Transferee Company, in May, 2022, had acquired shares of the Transferor Company.

Now in order to expand the product portfolio and leverage the resources of both the Transferor and Transferee Company and to optimize the group structure, the management of the aforesaid companies have decided to amalgamate the Transferor Company with and into the Transferee Company.

The said amalgamation shall also result in following benefits:

• Amalgamation of the Transferor Company with the Transferee Company would lead to availing of the synergy benefits, eliminate multiple administrative functions and reduction of legal, administrative & compliance costs, thereby increasing the shareholders' value.

• The proposed amalgamation would result in optimizing and leveraging existing resources of both the Companies for the most beneficial utilization of these factors in the combined/single entity. It would be advantageous to combine the activities and operations of both the Companies in a single entity and building strong capability to effectively meet future challenges in competitive business environment. The amalgamation will thus eliminate a multi-layer structure and reduce managerial overlaps, which are necessarily involved in running two separate entities and also prevent cost duplication that can erode financial efficiencies of a holding structure and the resultant operation would be substantially cost-efficient. This scheme would result in simplified corporate structure of the Transferee Company and its businesses, thereby leading to more efficient utilization of capital and creation of a consolidated base for future growth.

• Greater efficiency in cash management of the Transferee Company and better access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities. The proposed amalgamation would enhance the shareholders' value of the Companies.

• The scheme envisages transfer of the entire undertaking of Transferor Company as a going concern to the Transferee Company and is in the Interest of its shareholders, creditors, employees and all concerned.

• Upon amalgamation, the combined entity will have a larger capital base which will ultimately help the company to boost its ability to raise finances.

• The proposed arrangement will provide greater integration and flexibility to the Transferee Company and strengthen its position in the industry, it terms of the assets base, revenues, product and service range.

Further, there is no adverse effect of this Scheme on the directors, key management personnel, promoters, non-promoter members, creditors and employees of the Companies and the same would be in the best interest of all stakeholders

5. The Authorised Share Capital of the Applicant Company No.1, as on the 30th day of September, 2022 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

5,00,000 Equity Shares of Rs.100/- each

5,00,00,000

Total

5,00,00,000

Issued, Subscribed and Paid-up

3,92,000 Equity Shares of Rs. 100/- each fully paid-up

3,92,00,000

Total

3,92,00,000

As on date there is no change in the capital structure of the Applicant Company No.1.

6. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of S M I COATED PRODUCTS PRIVATE LIMITED, the Transferor Company with JINDAL POLYPACK LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the Seven Equity Shareholders of the Applicant Company No.1, which are annexed as ‘Exhibit I1 Colly’ to the

Company Scheme Application.

7. The Share Capital of the Applicant Company No.2 as on the 30th day of September, 2022 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

1,00,00,000 Equity Shares of Rs.10/- each.

10,00,00,000

Total

10,00,00,000

Issued, Subscribed and Paid-up

1,00,000 Equity Shares of Rs. 10/- each fully paid-up.

10,00,000

Total

10,00,000

As on date there is no change in the capital structure of the Applicant Company No.2.

8. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of S M I COATED PRODUCTS PRIVATE LIMITED, the Transferor Company with JINDAL POLYPACK LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the seven Equity Shareholders of the Applicant Company No.2, which are annexed as 'Exhibit J1 Colly' to the Company Scheme Application.

9. That there are 4 (Four) Secured Creditors having value of Rs. 93,44,69,649.37 (Rupees Ninety Three Crores Sixty Nine Thousand Six Hundred and Forty Nine and Thirty Seven Paisa only). That Counsel for the Applicant Company No. 1 submits that since the scheme is an arrangement between the Applicant Company No.1 and their respective shareholders in accordance with the provisions of the Companies Act, 2013. This bench hereby directs the Applicant Company No.1 to issue notice to its Secured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

10. That the counsel for the Applicant Companies submits that there are no

Secured Creditors in the Applicant Company No. 2 mentioned in Para 39 of the Application.

11. That there are 430 (Four Hundred Thirty) Unsecured Creditor having value of Rs. 82,85,65,823.94 (Rupees Eighty Two Crores Eighty Five lakhs Sixty Five thousand Eight Hundred Twenty Three and Ninety Four Paisa only). The Counsel for the Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant Company No. 1 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 1 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.1 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 1 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors by RPAD / Speed Post / Courier / Email or by hand delivery as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

12. That there are 5 (Five) Unsecured Creditor having value of Rs. 103,13,66,269.16 (Rupees One Hundred and Three Crore Thirteen lakhs Sixty Six Thousand Two Hundred Sixty Nine and Sixteen paisa only). The Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/ sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.2 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 2 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors by RPAD / Speed Post / Courier / Email or by hand delivery as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

13. The Consideration is as follows:

Since, the Transferor Company is a wholly owned subsidiary of the Transferee Company, accordingly, upon the Scheme becoming effective, all the equity shares as held by the Transferee Company in the Transferor Company either by itself or through its subsidiaries/nominees shall stand cancelled and extinguished. Therefore, there will be no issue and allotment of shares as consideration by the Transferee Company to the shareholders of the Transferor Company upon coming into effect of the Scheme. The investments in the shares of Transferor Company, appearing in the books of account of Transferee Company shall, without any further act or deed, stand cancelled.

14. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

15. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

16. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction, The Applicant Company No. 1 PAN: AAHCS4115N having his address at CIRCLE 11(2)(2), Mumbai and The Applicant Company No. 2 PAN: AAFCJ3893C having his address at Circle-1(1), Meerut, Aayakar Building, Meerut, (U.P.). The Applicant Company's assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Applicant Companies are directed to serve Notice by Registered Post AD/ Speed Post/Courier and Hand Delivery to the concerned GST Authorities (if registered) as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the GST Authority within 30 days of the date of receipt of the notice it will be presumed that GST Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Transferor Company is also directed to serve intimations of the Scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. The Appointed Date is 2nd May, 2022

