(2020) 12 NCLT CK 0009

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition No. (CAA)/171/ND Of 2019, Company Application No. CA(CAA) No. 150 (ND) Of 2019

Sandarbh Foods Private Limited APPELLANT

Vs

Dharampal Satyapal Limited RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Income Tax Act, 1961 — Section 148
Companies Act, 2013 — Section 133, 230, 230(4), 231, 232, 233, 234

Citation : (2020) 12 NCLT CK 0009

Hon'ble Judges : P.S.N. Prasad, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Anirudh Das, Rakshit Jha, Tania Sharma, Shailendra Singh

Final Decision : Disposed Of

Judgement

P.S.N. Prasad, J

1. This Joint application has been filed by the Petitioner Transferor Company under Sections 230 to 232 of the Companies Act, 2013 read with the

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of

the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation

(hereinafter referred as the ""Scheme"") has been placed on record.

2. The ""Transferor Company, Sandarbh Foods Private Limited was incorporated under the provisions of companies Act 1956, having its registered

office situated at 98, Okhla Industrial Estate, Phase- III, New Delhi- 110020.

3. The ""Transferee Company"", Dharampal Satyapal Limited was incorporated

under the Companies Act, 1956, having its registered office situated at

98, Okhla Industrial Estate, Phase- III, New Delhi- 110020.

4. A perusal of the petition discloses that initially the First Motion application seeking directions for calling and convening the meetings of Equity

Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Companies was filed before this Bench vide CA (CAA) No. 150/

(ND)/2019 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders,

Secured Creditors and Unsecured Creditors of the Transferor Company were directed to be dispensed with, whereas, the meeting of equity

Shareholders and secured creditors of the Transferee Company was dispensed with along with that the tribunal vide order dated 01.11.2019 directed

to convene the meeting of Unsecured Creditors on 06.12.2019. The Chairperson appointed by the Hon'ble Tribunal filed its report on 09.12.2019

wherein the percentage of total number of unsecured creditors who voted in favor of the scheme stands 100%.

5. On 03.01.2020 the Petitioners were directed to carry out publication in the newspapers 'Indian Express' English edition as well as in 'Jan Satta'

Hindi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Northern Region), Registrar of

Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department, Food Safety and Security Standards Authority of India and

to the other relevant sectoral regulators through their counsels. Further, notices shall also be served to objector(s) or to their representative, if any, as

contemplated under sub-section (4) of section 230 of the Act.

6. It is seen from the records that the Petitioner Transferor Companies have filed compliance affidavit dated 06.02.2020 affirming compliance of the

order passed by the Tribunal dated 03.01.2020. A perusal of the affidavit discloses that the petitioners have effected the newspaper publication as

directed in one issue of the 'Indian Express' English edition on 18.01.2020 as well as in 'Jan Satta' Hindi edition again on 18.01.2020 in relation to the

date of hearing of the petition. Pursuant to the notice issued to the Regional Director, Assistant Commissioner Income Tax, RoC, Official Liquidator

and Food Safety and Standards Authority of India have filed their report and participated in the proceeding.

7. The Regional Director has filed its Report dated 31.01.2020 in which certain objections were raised whereas, on 06.07.2020 the counsel for the

Regional Director has submitted that after verification of revised second motion petition filed by the applicant no specific objection has been raised

against the approval of the scheme.

8. The Official Liquidator has filed its report wherein no specific objection has been raised against the approval of the Scheme It is submitted in the

report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any

manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or

to public interest.

9. The Income tax Department in their affidavit filed on 11.06.2020 has submitted that the M/s Dharampal Satyapal Ltd. (Transferee Company) has

assessment proceedings for the A.Y. 2017-18 and the A.Y. 2018-19 are pending in circle. The I.T. Department further submitted that for the A.Y.

2012-13 the Transferee Company was scrutinized u/s 148 of the IT Act in this circle in December, 2019. Further the I.T. Department in their reports

stated that a demand in respect of the Transferee Company for the A.Y. 2012-13 and A.Y. 2016-17 are outstanding in this circle and the purpose of

the Amalgamating Company to merge with the Amalgamated Company is to evade tax and hinder the ongoing proceedings. The petitioner Company

filed their reply affidavit submitting that the Income Tax has misconstrued and misunderstood the scheme. The petitioner further submitted that the

petitioner/Amalgamated Company continues its corporate existence post the sanction of the scheme and continues to be assessed in the jurisdiction of

the Income Tax Department and in no manner the rights of the Income Tax Department is adversely affected by the sanction of the scheme. Further,

the proceedings pertaining to Income Tax with respect to the Assessment Year 2012-13, 2017-18 and 2018-19 shall continue even after the scheme is

made effective.

10. The Income Tax Department filed another affidavit dated 17.07.2020 reiterating the facts filed in the Income Tax report and stated that if the

Hon'ble tribunal approve this amalgamation then the books of accounts and other relevant papers of the Amalgamating Company be preserved. The petitioner Company in their reply reiterated that in no manner the Rights of the Income Tax Department will be hindered or hampered or adversely

affected by the sanction of the scheme. Hence, it seems that the objections filed by the Income Tax Department have been duly replied by the

petitioner and Income Tax Department could not firmly establish that the sole purpose of the amalgamation is the evasion of taxes as post sanction of

the scheme the petitioner will continue to be assessed in the jurisdiction of the Income Tax Department and in no manner the rights of the Income Tax

Department is adversely effected by the sanction of the scheme. However, in order to protect the interest of the Revenue it is clarified that there shall

be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as

provided in law.

11. Pursuant to the notice issued to the Food Safety and Security Standards Authority of India neither any report has been filed nor any authorized

representative appeared before the Hon'ble Tribunal.

12. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act,

2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

13. Certificates of respective Statutory auditors of the petitioner companies have been placed on record to the effect that Accounting Treatment

proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the

provisions of Section 133 of the Companies Act, 2013.

14. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision

should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their

commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies

Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by its shareholders and creditors.

15. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is

open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

16. It has also been affirmed in the petition that the Scheme is in the interest of the transferor company and the transferee company including their

shareholders, creditors, employees and all concerned.

17. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed

Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there

appears to be no impediment in sanctioning the present Scheme.

i. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

ii. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

iii. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction

granted by this court to the scheme 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.

iv. While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any

other requirement which may be specifically required under any law.

18. THIS TRIBUNAL DO FURTHER ORDER

1. That the Transferor Company shall stand dissolved without following the process of winding-up; and

2. That all the property, rights and powers of all 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.

3. 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; and

4. That all proceedings now pending by or against the Transferor Company, be continued by or against the transferee company; and

5. That 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 condition not less favorable than those subsisting in the concerned Transferor Company on the said date.

6. That Petitioner companies 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 all the Transferor Company registered with him on the file

kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidatedaccordingly; and

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.

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

