(2020) 03 NCLT CK 0102

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

Case No : Company Petition No. (CAA) 112/PB Of 2019, Company Application No. CA (CAA)100/PB Of 2019

Sapbelle Tradelinks Private Limited And Ors. APPELLANT

Vs

Aamor Inox Limited RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2020) 03 NCLT CK 0102

Hon'ble Judges : B.S.V. Prakash Kumar, J;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Chetan Khanna

Final Decision : Disposed Of

Judgement

B.S.V. Prakash Kumar, J

1. This Joint Application has been filed by the Petitioner Companies 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. The copy of the Scheme has been placed on record.

2. A perusal of the petition shows that the First Motion application seeking directions for convening/dispensing with the meetings of Shareholders and Creditors was filed before us and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, first motion order issued directions with respect to the same. On 22.08.2019 the Petitioners were directed to carry out publication in the newspapers English Daily 'Business Standard' (Delhi Edition) as well as in Hindi Daily 'Business Standard' (Delhi Edition). In addition thereto notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana,

the Income Tax Department and to the other relevant sectoral regulators.

3. It is seen from the records that the Petitioners have filed an affidavit affirming compliance of the order passed by the Tribunal. A perusal of the Affidavit discloses that the petitioners have effected the newspaper publication as directed in English Daily 'Business Standard' (Delhi Edition) as well as in Hindi Daily 'Business Standard' on 07.10.2019 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition were duly served on the Regional Director, Northern Region, Registrar of Companies, Delhi and Haryana, and Income Tax Department in compliance of the order and in proof of the same acknowledgement by the respective offices have also been place on record.

4. The Regional Director has filed its representation dated 13.11.2019 and has granted its no-objection to the Scheme. The Official Liquidator has also filed his no-objection to the Scheme.

5. It is pertinent to note, Income Tax Department has stated that the Scheme be allowed without prejudice to the rights of the Income Tax Department i.e. the Department shall be free to proceed against the Resulting Company for all its pending or future proceedings.

6. In the joint petition it has also been affirmed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 are pending against the Petitioner Companies.

7. Certificates of respective Statutory auditors of the both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Arrangement 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.

8. 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, the reports of official Liquidator and Reports of Income Tax Department, there appears to be no impediment in sanctioning the present scheme. Consequently, sanction is hereby granted to the scheme under section 230 to 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

9. 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.

While approving the Scheme as above, we further clarify that this order should not be construed as an order in granting any exemption from payment of stamp duty, taxes including income tax, GST etc or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

10. THIS TRIBUNAL DO FURTHER ORDER

1. That the Transferor Company stands dissolved without being wound-up; and

2. That all the property, rights and powers of all the Transferor Companies, 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 interests of the Transferor Companies therein but subject nevertheless to all charges now affecting the same; and

3. That all the liabilities and duties of the Transferor Companies be transferred without further act or deed, to 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 Companies in service, if any, 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 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 Company for registration and on such certified copy being so delivered the Transferor Companies shall be dissolved and the Registrar of Company shall place all documents relating to the Transferor Companies 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 consolidated accordingly.

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.

