(2020) 06 NCLT CK 0021

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

Case No : Company Petition No. CP (CAA) 167 (ND) Of 2019, Company Application No. CA (CAA) 148 (ND) Of 2019

Sarvlok Vintrade Pvt. Ltd. And Ors — APPELLANT

Vs

Yuthika Sales Pvt. Ltd — RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232, 232(3)(i)

Citation : (2020) 06 NCLT CK 0021

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

Bench : Division Bench

Advocate : Rajeev K. Goel

Final Decision : Allowed

Judgement

Sumita Purkayastha Member (T)

1. The Present Petition is filed by Petitioner Companies under Sections 230 & 232 of the Companies Act, 2013 read with Rules framed thereunder, as in force from time to time, for the Sanction of the proposed Scheme of Amalgamation of Sarvlok Vintrade Pvt. Ltd. and Ladios Dealcom Pvt. Ltd. with Yuthika Sales Pvt. Ltd. and their respective Shareholders and Creditors (hereinafter referred to as "Scheme" or "Scheme of Amalgamation").

2. The Transferor Companies as well as Transferee Company have their registered offices which lie within the jurisdiction of this Tribunal.

3. A perusal of the present Petition discloses that initially the Petitioner Companies had filed Company Application No. 148 (ND) of 2019 seeking directions of this Tribunal to dispense/convene meetings of Shareholders, Secured Creditors and Un-secured Creditors of the Petitioner Companies for the purpose of the considering and approving, with or without modification, the aforesaid Scheme of Amalgamation. Accordingly, this Hon'ble Tribunal vide its

order dated 9th December, 2019, was pleased to dispense with the requirement of convening all the meetings of Shareholders and Un-secured Creditors of the Transferor Companies No. 1 & 2 and the Transferee Company.

There were no secured creditors of Transferor Companies No. 1 and 2 and the Transferee Company.

4. The report of the statutory auditors certifying that the Accounting Standards as required u/s 133 of the Companies Act 2013 had been adhered to is on record.

5. The Rational of the proposed Scheme of Amalgamation is elaborately described in the present Company Petition which may be summarized as under:

a. All the Transferor Companies and the Transferee Company are closely held private limited Group Companies under common shareholding, management and control. The proposed amalgamation of the Transferor Companies with the Transferee Company would result in business synergy, consolidation and pooling of their resources.

b. The Transferor Companies and the Transferee Company are engaged in similar business activities. The proposed amalgamation will enable these Companies to consolidate their present activities and to explore new business opportunities. The proposed Scheme of Amalgamation would result in pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity. Post Scheme, the Transferee Company will enjoy large net worth and financial resources.

c. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

d. The said Scheme of Amalgamation will contribute in fulfilling and furthering the objects of these Companies. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.

e. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.

f. The said Scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

6. It has also been stated in the Petition that none of the Directors of the Petitioner Companies have any material interest in the Scheme, save as except

to the extent of shareholding in the abovementioned Petitioner Companies.

7. It has also been stated in the Petition that the Scheme is not prejudicial to the interest of the Shareholders and Creditors of the Petitioner Companies and the Petition is made bona fide and is in the interest of all the Petitioner Companies and their Shareholders and Un-secured Creditors as a whole and is also just and equitable.

8. That as per the proposed Scheme, the Share Swap ratio in terms of the valuation dated 18th September, 2019 conducted by Mr. Sandeep Kumar Agrawal, Chartered Accountant of the petitioner companies. The Board of Directors of the Applicant Companies have approved the Scheme.

The scheme provides the Share Swap ratio as:

a. The Transferee Company will issue 40 (forty) Equity Shares of ` 1 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of ` 1 each held in the Transferor Company No. 1-Sarvlok Vintrade Put Ltd.

b. The Transferee Company will issue 42 [forty two) Equity Shares of ` 1 each, credited as fully paid up, for every 100 (one hundred) Equity Shares of ` 1 each held in the Transferor Company No. 2-Ladios Dealcom Put Ltd.

9. The applicant companies have now initiated the Second Motion. An affidavit discloses that the petitioners have effected publication in the daily newspapers "Business Standard" in English and Hindi, (Delhi Edition) inviting objections if any to the proposed Scheme of Amalgamation. The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of Companies, Regional Director, Northern Region, Income Tax Dept. and the Official Liquidator in compliance with the order of the Tribunal.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector has appeared before us.

Additionally, it has been deposed that no objection to the proposed Scheme has been received by the applicant companies or their counsel. The replies of the Regional Director, NR, MCA, Report of Official Liquidator as well as the response of the IT Dept. have been placed before us.

10. We have heard the counsels for the petitioners and also considered the representation made by the Regional Director, Northern Region. Their only observation is that in compliance of Sec 232(3)(i) of the Companies Act, the Petitioner the Transferee Company be made liable to pay fees on the increased share capital, if applicable.

The Petitioners have also filed Affidavits confirming the same on 5th June, 2020. No other objection has been raised by the RD and ROC to the proposed Scheme of Amalgamation.

11. The Official Liquidator has also filed his report and no objection has been

raised by him to the proposed Scheme of Amalgamation.

12. The Income Tax Department has also filed its reports with respect to all the Petitioner Companies and no objection has been raised by it to the proposed Scheme of Amalgamation.

13. We have gone through the report of the Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, the Official Liquidator, New Delhi and the Income Tax Department and after perusing the same, we are of the view that the sanction of the present Scheme is not against public policy, nor it would be prejudicial to the public interest at large.

14. In addition to above, all the statutory compliance either seems to have been complied with or further undertaken for making compliances by Petitioner Companies. Therefore, the present Company Petition deserves to be allowed in terms of its Prayer clause. In the result, the Scheme of Amalgamation annexed to Company Petition is duly approved and hereby sanctioned.

15. In the result, the proposed Scheme of Amalgamation which is annexed to the Company Petition stand approved and sanctioned. Petitioner Companies are required to act upon as per terms and condition of the sanctioned Scheme and the same to be binding on its Shareholders and Un-secured Creditors of the above named Petitioner Companies and also on the Petitioner Companies with effect from the appointed date, i.e., 1st day of April, 2019.

16. While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any is applicable), taxes (including Income Tax, GST or any other charges, if any are applicable) 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. Also, the Transferor Companies No. 1 & 2 shall stand dissolved without undergoing the process of winding up.

17. The 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.

18. All concerned regulatory authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar, National Company Law Tribunal, New Delhi Bench, New Delhi.

19. Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.

20. Accordingly, the present Company Petition bearing CP (CAA) No. 167 (ND) of 2019 is allowed and stands disposed of.

