

(2023) 10 NCLT CK 0086
In the National Company Law Tribunal
Case No : CA (CAA) No. 27/ALD/2023
SAS Colonisers Private Limited Vs

Date of Decision : 26-10-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(7), 232, 232(3)

Citation : (2023) 10 NCLT CK 0086

Hon'ble Judges : Praveen Gupta, Member (J); Ashish Verma, Member (T)

Bench : Division Bench

Advocate : Rajeev K Goel, Viplav Goel, Ankit K Singh

Final Decision : Disposed Of

Judgement

1. This is a First motion Application filed by the Applicant Companies namely-SAS Colonisers Pvt Ltd (the Transferor Company No. 1/Applicant Company No. 1), Shalimar Buildwell Pvt Ltd (the Transferor Company No. 2/Applicant Company No. 2) and Sadabahar Constructions Pvt Ltd (the Transferor Company No. 3/Applicant Company No. 3) under Sections 230 & 232 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the National Company Law Tribunal Rules, 2016, and other applicable provisions, if any, in relation to the Scheme of Amalgamation of SAS Colonisers Pvt Ltd, Shalimar Buildwell Pvt Ltd, Sadabahar Constructions Pvt Ltd, Shalimar Maintenance Services Pvt Ltd, Supreme Real Estate Developers Pvt Ltd, N.G. Colonisers Pvt Ltd and Maina Dealers Pvt Ltd with Shalimar Corp Ltd. The said Scheme is attached as Annexure: A-10 of the Application.

2. The Applicant Transferor Companies No. 1 to 3 have prayed for dispensation from requirement of convening meetings of their Equity Shareholders and Un-Secured Creditors. The Applicant Companies do not have any Secured Creditor.

3. The Applicant Transferor Companies No. 1 to 3 are engaged in real estate business and other related activities. The Companies have also made investments in the shares of other Group Companies.

4. The Transferor Companies No. 1 to 3 have their respective registered office in

the State of Uttar Pradesh and hence are under the jurisdiction of this Bench whereas the Transferor Companies No. 4 to 7 and the Transferee Company have their respective registered office in the NCT of Delhi and hence are under the jurisdiction of the New Delhi Bench. The Learned Counsel for the Applicant Companies submits that a separate 1st Motion joint Application on behalf of the Transferor Companies No. 4 to 7 and the Transferee Company has already been filed before the New Delhi Bench.

5. The rationale of the Scheme is given below:

a. All the Transferor and Transferee Companies are closely held un-listed Group Companies under common management and control. The proposed amalgamation of the Transferor Companies with the Transferee Company would result in consolidation of Group Companies and pooling of their resources into a single entity.

b. The Transferee Company is the Flagship Company of the Group, engaged in real estate business spread across various verticals like real estate development, real estate maintenance, real estate leasing and other related activities. The Transferor Companies are also engaged in real estate business and other related activities. It would be advantageous to combine the activities and operations in a single company, to grow the business in an efficient manner, achieve operational synergies and benefits from economies of scale by combining all the Transferor companies with the Transferee Company by way of amalgamation; and build strong capability to effectively meet future challenges in a competitive business environment. The proposed amalgamation will enable integration of respective business activities of the Transferor Companies with those of the Transferee Company.

c. The proposed Amalgamation would result in business synergy, pooling of physical, financial and human resource of these Companies for the optimal utilization of these factors in the combined entity.

d. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of redundancies, reduction of overheads, optimal utilization of financial, human and other resources and enhancement of overall business efficiency. The proposed Scheme of Amalgamation 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.

e. The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present are required to be made separately by the Transferee Company as well as by the Transferor Companies.

f. The proposed Amalgamation will streamline and simplify the shareholding structure.

g. The proposed amalgamation would enhance the shareholders' value of the

Transferor and the Transferee Companies.

h. The proposed 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 is stated that the Board of Directors of the Applicant Transferor Companies No. 1 & 2 in their meetings held on 3rd July, 2023 and of the Transferor Company No. 3 in its meeting held on 4th July, 2023, considered and unanimously approved the proposed Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the Board Resolution of the Applicant Companies No. 1 to 3 are attached as Annexure: A-1/4, A-2/4 & A-3/4, respectively with the application.

7. The appointed date of the Scheme is 01.04.2023 as mentioned in the Para 1.1.4 of Scheme of Amalgamation which is annexed as Annexure-A-10 with the Application.

8. It is stated that Applicant Transferor Companies No. 1 to 3 have filed their Audited Financial Statements for the year ended 31.03.2023 which are attached as Annexure A-1/2, A-2/2 & A-3/2, respectively with the Application.

9. It is submitted that in terms of the provisions of Section 230(7) and Section 232(3) of the Act, the Applicant Companies No. 1 to 3 have filed Certificates dated 25.07.2023, 02.09.2023 & 22.07.2023, respectively and the Non-Applicant Companies have filed Certificates dated 25.07.2023, 02.08.2023, 03.08.2023, 25.07.2023 & 27.07.2023, respectively issued by their respective Statutory Auditors, certifying that the Scheme is in compliance with the Accounting Standards prescribed under Section 133 of the Act and the same are annexed as Annexure: A-11 with Application.

10. It is further submitted that the Report on Valuation of Shares and Share Exchange Ratio for the proposed Scheme of Amalgamation has been issued by Ms Mallika Goel, Registered Valuer in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India (IBBI) vide Registration No. IBBI/RV/11/2022/14784 and the same is annexed as Annexure: A-9 with the Application. The following Share Exchange Ratio has been proposed in the aforesaid Report:

a. The Transferee Company will issue 245 (two hundred and forty-five) Equity Shares of ₹ 100 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 1 for every 100 (one hundred) Equity Shares of ₹ 10 each held in the Transferor Company No. 1-SAS Colonisers Pvt Ltd.

b. The Transferee Company will issue 2405 (two thousand four hundred and five) Equity Shares of ₹ 100 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 2 for every 100 (one hundred) Equity Shares of ₹ 10 each held in the Transferor Company No. 2-Shalimar Buildwell Pvt Ltd.

c. The Transferee Company will issue 766 (seven hundred and sixty-six) Equity Shares of ₹ 100 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 3 for every 100 (one hundred) Equity Shares of ₹ 10 each held in the Transferor Company No. 3-Sadabahr Constructions Pvt Ltd.

d. The Transferee Company will issue 4113 (four thousand one hundred and thirteen) Equity Shares of ₹ 100 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 4 for every 100 (one hundred) Equity Shares of ₹ 10 each held in the Transferor Company No. 4-Shalimar Maintenance Services Pvt Ltd.

e. Transferee Company will issue 31 (thirty-one) Equity Shares of ₹ 100 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 5 for every 100 (one hundred) Equity Shares of ₹ 10 each held in the Transferor Company No. 5-Supreme Real Estate Developers Pvt Ltd.

f. Transferee Company will issue 7 (seven) Equity Shares of ₹ 100 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 6 for every 100 (one hundred) Equity Shares of ₹ 10 each held in the Transferor Company No. 6-N.G. Colonisers Pvt Ltd.

g. Transferee Company will issue 166 (one hundred and sixty-six) Equity Shares of ₹ 100 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 7 for every 100 (one hundred) Equity Shares of ₹ 10 each held in the Transferor Company No. 7-Maina Dealers Pvt Ltd. Any fraction of share arising out of the aforesaid share exchange process, if any, will be rounded off to the nearest whole number.

11. It is submitted that the Scheme [Annexure: A-10 of the Application] also takes care of the interests of the workmen and staff (employees) of the Companies, by virtue of Clause 7 of the Scheme.

12. It is deposed by the Applicant Companies that there is no sectoral regulator in any of the Applicant Companies whose approval may be required for the sanction of the Scheme of Amalgamation except the statutory authorities, i.e., (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, Kanpur; (c) The Official Liquidator, Uttar Pradesh, Allahabad; and (d) the Income Tax Department.

13. It is also deposed that the proposed Scheme of Amalgamation will not attract the provisions of the Competition Act, 2002. Hence, no intimation to/approval from the Competition Commission of India (CCI) is required for the present Scheme of Amalgamation.

14. It is also submitted that there are no legal proceedings, inquiry, inspection, investigation, prosecution, litigation pending before any court of law or Tribunal against any of the Applicant Companies.

15. The Applicant Companies No. 1 to 3 have furnished the details of the Equity Shareholders, Secured Creditors and Un-secured Creditors along with their Consent Affidavits, as the case may be, as per the following detail:

Company

No. of Share Holders

Consent Given

No. of Secured Creditors

Consent Given

No. of Un- secured

Creditors¹

Consent Given

Page No.

Page No.

Page No.

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Transferor Company No. 1

3

All

Nil

N.A.

1

All

127

128-136

137-138

Nil

139-140

141-143

Transferor Company No. 2

4

All

Nil

N.A.

11

All

197

198-209

210-211

Nil

212-213

214-217

Transferor Company No. 3

2

All

Nil

N.A.

1

All

266

267-272

273-274

Nil

275-276

277-279

1 In addition to the aforesaid Unsecured Creditors, the Transferor Company No. 2 had some 'Statutory and Other Dues' which have either been paid in full or being provision in nature, are not due for payment. Certificate from the Chartered Accountants confirming the same is enclosed.

16. Accordingly, the directions of this Bench in the present case are as under:

I. In relation to the Applicant Transferor Company No. 1:

- a. The meeting of the Equity Shareholders of Applicant Transferor Company No. 1 is dispensed herewith, keeping in view that all Equity Shareholders have given their consents by way of affidavits.
- b. Since, there is no Secured Creditor in the Applicant Transferor Company No. 1, the requirement of convening the meeting of Secured Creditors does not arise.
- c. The meeting of the Un-secured Creditors of Applicant Transferor Company No. 1 is dispensed herewith, keeping in view that the sole Un-secured Creditor has given its consent by way of affidavit.

II. In relation to the Applicant Transferor Company No. 2:

- a. The meeting of the Equity Shareholders of Applicant Transferor Company No. 2 is dispensed herewith, keeping in view that all Equity Shareholders have given their consents by way of affidavits.
- b. Since, there is no Secured Creditor in the Applicant Transferor Company No. 2, the requirement of convening the meeting of Secured Creditors does not arise.
- c. The meeting of the Un-secured Creditors of Applicant Transferor Company No. 2 is dispensed herewith, keeping in view that the sole Un-secured Creditor has given its consent by way of affidavit.

III. In relation to the Applicant Transferor Company No. 3:

- a. The meeting of the Equity Shareholders of Applicant Transferor Company No. 3 is dispensed herewith, keeping in view that both the Equity Shareholders have given their consents by way of affidavits.
- b. Since, there is no Secured Creditor in the Applicant Transferor Company No. 3, the requirement of convening the meeting of Secured Creditors does not arise.
- c. The meeting of the Un-secured Creditors of Applicant Transferor Company No. 3 is dispensed herewith, keeping in view that the sole Un-secured Creditor has given its consent by way of affidavit.

17. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, Kanpur; (c) The Official Liquidator, Uttar Pradesh, Allahabad; and (d) the Income Tax Department by disclosing the PAN number of the Applicant Companies in the Second Motion Petition.

18. The Company Petition for confirmation of the Scheme is to be filed within the time period prescribed under the provisions of the Act and corresponding rules

made thereunder.

19. That appropriate prayer would also be made in the second motion petition for publication in newspaper

20. With the aforesaid directions, the First Motion Application bearing CA(CAA)No.27/ALD/2023 is disposed of accordingly.

21. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.