(2024) 03 NCLT CK 0013

In the National Company Law Tribunal

Case No : C.P.(CAA)/178/MB/2023 c/w C.A.(CAA)/276/MB/2021

Shahbazker?s Diagnostics Private Limited Vs

Date of Decision : 07-03-2024

Acts Referred:
Companies Act, 2013 — Section 230, 232
Income Tax Act, 1961 — Section 2(19AA)

Citation : (2024) 03 NCLT CK 0013

Hon'ble Judges : Kishore Vemulapalli, Member (J);Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Nawaz Haindaday, Parth H. Zaveri, Bhagwati Prasad

Final Decision : Allowed

Judgement

1. This is a Company Scheme Petition filed under Sections 230 to 232 of the Companies Act, 2013 seeking for sanctioning of the Scheme of Arrangement between Shahbazker?s Diagnostics Private Limited (Petitioner Company-1) and Shahbazker?s Diagnostic Centre Private Limited (Petitioner Company-2) and their respective shareholders.

2. Heard the Ld. Counsel for the Petitioner Companies and the Representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme.

3. The Counsel for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies approved the Scheme in their respective Board Meetings held on 29.10.2021. The appointed date is 01.12.2021.

4. The Counsel for the Petitioner Companies further submits that the present Company Petition has been filed in consonance with the Order dated 08.02.2023 passed in C.A.(CAA)/276/MB/2021 by this Tribunal.

5. The Petitioner Company-1(Demerged Company) carries on the business of primarily providing pathology and various other healthcare and disease detection

and mitigation services and each such service has its own respective requirements, risks, financing, security provisions, regulatory requirements, etc. The Promoters of the Demerged company also by virtue of their varied qualifications intend to diversify into various areas other than healthcare in order to optimize their finances.

6. The Scheme of Arrangement provides to enable the Demerged Company to simplify its management structure by separating its diagnostics business division into a distinct legal entity, the Resulting Company, and providing financial and investment independency, to the demerged and resulting companies which shall result into following benefits:

i. Focused execution and management approach towards the Business Division in the Resulting Company.

ii. Enabling different ventures to be executed under separate legal entities and avoid overlap of risks of independent business on each other.

iii. Providing scope for independent financing, investment, security creation and collaboration in the Demerged Company as well as the Resulting Company.

iv. Unlocking the economic value of projects which would enable optimal development of both the Demerged Company and the Resulting Company respectively.

v. Enabling the promoters to invest in existing businesses or promote new entities in diverse areas other than healthcare services so as to optimize their finances.

7. The meetings of the shareholders and the creditors of the Petitioner Companies were dispensed with vide Order dated 08.02.2023 passed in C.A. (CAA) 276/MB/2021.

8. The Counsel for the Petitioner Companies submits that the Petitioner Companies have complied with all requirements as per directions of this Tribunal vide order dated 10.07.2023 in C.P(CAA)/178/MB-IV/2023 and they have made requisite filings to demonstrate compliance with this Tribunal. The Affidavit of Service has been filed on 10.08.2023. Moreover, the Petitioner Companies undertake to comply with all statutory / regulatory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the Rules made thereunder to give effect to the Scheme.

9. Consideration:

Upon the Scheme becoming effective, the Resulting Company shall without any further application, issue and allot to the shareholders of the Demerged Company, 2 (two) equity shares of Rs.10/- (Rupees Ten only) each credited as fully paid-up of the Resulting Company, to the equity shareholders of the Demerged Company for every 1 (one) equity share of Rs.10/- (Rupees Ten only) each fully paid up held by the equity shareholders in the Demerged Company.

10. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 30.08.2023. In response to the observation made by the RD in the said report, the Petitioner Company-1 has given necessary clarification vide its reply dated 28.11.2023. The observations made by the RD and the clarifications given by the Petitioner Company-1 are summarized in the table below:-

Sr.

No.

Query of the Regional Director

Petitioner Company No.1?s response

1.

(i) No representations were received regarding the proposed Scheme of Arrangement.

(ii) Petitioner Companies had not filed their Financial Statements after 31/03/2022

(i) Petitioner companies had made due representations and had subsequently received communication from the Office of the Regional Director vide its letter dated. 29/09/2022. The Petitioners filed their response vide letter dated 02/11/2022.

(ii)As on the date of the rejoinder, the Petitioner Companies had already filed the Audited Annual Accounts for F. Y. 2022-23, within the statutory time limit as prescribed under the Act.(Para 3)

2.

(i) E-form GNL-1 and MGT-14 not filed by Petitioner Companies

(ii) Valuation Report of CA M N Roghay & Co. does not justify the consideration payable to the Demerged Company

(iii) Interest of the Creditors should be protected

(i) Acknowledgement for filing of GNL-1 attached. MGT-14 not applicable.

(ii) Valuation Report provided.

(iii) Financial as well as Operational creditors have already provided their consent to the Scheme.

3.

The Resultant Company shall pass such accounting entries as are required in compliance with AS-14 or IndAS-103 and also with other applicable Accounting Standards including AS-5 or IndAS-8

Petitioners undertake to comply with AS-

14 and / or IndAS-103, along with Accounting Standards, including AS-5 and / or AS-8, if applicable.

4.

The Company may be directed to place on records how the Scheme is in compliance with Section 2(19AA) of the Income Tax Act, 1961

The Appropriate Authority to deal with such a query would be the jurisdictional income tax officer to whom copy of the Scheme has already been submitted. The concerned ITO has also filed its response which is on record and have given their no-objection to the said Scheme. (para 9)

5.

Petitioner Companies have not defined the Effective Date and should undertake to amend the Scheme to the extent of defining Effective Date.

Petitioners should also undertake to amend the Appointed Date as it is ante dated.

Petitioners should also be asked to comply with requirements as clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21/08/2019 issued by the Ministry of Corporate Affairs.

Para 2(f) of the Scheme defines. Described the effective date and the operative date. The Effective date is defined as the deemed date being the appointed date with effect from which the Scheme is duly approved.

The Petitioners rely upon Para 6 sub- clause (c) which states that if the Appointed Date is significantly ante dated then a justification was required. However, in the present case, the date of filing of the Application is 24/12/2021 and

the Appointed date set out is 01/12/2021. The Appointed Date is therefore not significantly ante dated.

6.

Petitioner Companies should also undertake to comply with the directions of the Income Tax Department and GST Authority based on observations received from Income Tax Department vide letters dated 15/09/2022 and 27/09/2022

Petitioners undertake to comply with any directions as may be issued by the relevant authorities.

7.

(i) Petitioner Companies to undertake to comply with necessary provisions of the Companies Act, 2013 r/w applicable rules to comply with change of name of the demerged company.

(ii) There seems to be some typographical error in the Scheme with respect to change of

name of the Resultant Company which is the same as the Petitioner Company No.2

(i) Petitioners undertake to comply with the necessary provisions of the Companies Act, 2013 r/w applicable rules with respect to change of name of demerged company

(ii) The Petitioners clarify that the Petitioner Company No.2?s name would remain unchanged and therefore it would not require to comply with the provisions of change of name. (Para 14)

9.

The Petitioner Companies may be directed to furnish statement of Assets and Liabilities to be transferred to Resulting Company by Petitioner No. 1 and the Hon?ble Tribunal may ask the Petitioner Companies as to how the interest of creditors is protected in this demerger.

The Petitioner Companies have clarified that the details of all the Assets and Liabilities being transferred to the Resulting Company are very clearly laid down in Paras 2.3 and 2.4 of the Scheme of Arrangement. However, if so directed by the Hon?ble Tribunal, the Petitioner Companies shall provide a list of the Assets and Liabilities being transferred.

11. The observations made by the Regional Director (RD), Western Region, Mumbai are enlisted hereinabove together with response of the Petitioner Company on the observations of the RD, which is also filed vide affidavit of the Petitioner Company dated 28.11.2023. Mr. Bhagwati Prasad, Ld. Authorised Representative of the Regional Director during the course of final hearing submitted that they have no further objection to the Scheme.

12. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.

14. Since all the requisite statutory compliances have been fulfilled, the Petition

in C.P.(CAA)/178/MB/2023 filed by Petitioner Companies is made absolute in terms of prayer clauses of the said Company Scheme Petition. Therefore, the Scheme is hereby sanctioned. This Bench further orders that -

i. The Appointed Date is fixed as 01.12.2021.

ii. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.

iii. The Petitioner Company-1 shall be Demerged and the business operations shall be transferred to the Petitioner Company-2 which shall become the Resulting company with effect from the Appointed Date.

iv. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.

v. The Petitioner Companies are directed to file a certified copy of this order and the Scheme duly authenticated by the Deputy / Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, payable, if any, within 60 clear working days from the date of receipt of certified copy of the Order from the Registry of this Tribunal.

vi. The Petitioner Companies shall comply with all the undertakings given by them.

vii. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

viii. All concerned regulatory authorities shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.

ix. Any person or any Authority, whose interest is adversely affected, shall be at liberty to approach appropriate Forum or to take appropriate action as permissible under law.

15. With the above directions, C.P.(CAA)/178/MB/2023 c/w CA(CAA)/276/MB/2021 is allowed and disposed-of. File to be consigned to records.

