(2021) 12 NCLT CK 0003

In the National Company Law Appellate Tribunal

Case No : Company Petition CAA-159/(ND)/2019

?Shorewala Investment And Properties Private Limited Vs

Date of Decision : 02-12-2021

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

Citation : (2021) 12 NCLT CK 0003

Hon'ble Judges : P.S.N. Prasad, Member (J);Hemant Kumar Sarangi, Member (T)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

P.S.N. Prasad. Member (Judicial)

1. This application has been filed by the applicant 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 of the Transferor Companies 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 No.l, A.K.S Finstock Private Limited was incorporated under the provisions of companies Act 1956 on 17.07.1997, having its registered office situated at 2524, Lajpat Rai Street, Bazar Sitaram, New Delhi-110006.

3. The "Transferor Company No.2, Ashirwad Fincap Private Limited was incorporated under the provisions of companies Act 1956 on 11.06.1997, having its registered office situated at 3402, Lajpat Rai Street, Bazar Sitaram, New Delhi-110006.

4. The "Transferor Company No. 3 , Shorewala & Co. Private Limited, was incorporated under the provisions of companies Act 1956 on 22.12.1997, having its registered office situated at 5, Delhi Stock Exchange Building, Delhi- 110002.

5. The "Transferee Company, Shorewala Investment and Properties Private Limited, was incorporated under the provisions of companies Act 1956 on 13.11.1989, having its registered office situated at 2524, Lajpat Rai Street, Bazar Sitaram, New Delhi- 110006.

6. A perusal of the petition discloses that initially the First Motion application, seeking dispensation from convening the meetings of Shareholders of the Applicant companies, was filed before this Bench, vide Company Application (CAA) No. 156/(ND)/2019 and based on such joint application, moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders of the Applicant Companies and Unsecured Creditors of the Transferee companies, were dispensed with, vide order dated 05.11.2019 passed by this Hon Tile Tribunal.

7. The Applicant Companies were directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit dated 13.01.2020 affirming compliance and discloses that the applicants have effected publication in 'Financial Express' English edition as well as in 'Jansatta' Hindi edition, both dated 01.01.2020. In addition to the public notice, notices were served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

8. Pursuant to the notice issued to the Regional Director, RoC, and Official Liquidator, they have filed their report and participated in the proceedings.

9. The Regional Director has filed its representation dated 28.02.2020, in which it is submitted in para 11. "that the Transferee Company i.e. M/s Shorewala Investment & Properties Pvt Ltd is a NBFC registered with Reserve Bank of India (RBI) and has obtained NOC issued by RBI vide letter dated 01.07.2019". Para 12 of the said representation states that "As per the Report of Roc, both the Transferor and the Transferee Company have filed the Balance Sheet and Annual Return up to 2018-19. No prosecution has been filed and no inspection or investigation has been conducted in respect of the petitioner companies." RoC in its report dated 17.02.2020, has observed that, " As per MCA records, the Transferor Company No. 1 has a secured charge of Rs. 15 Lacs, however, in petition the company has stated that there are no secured creditors in the company. The Transferor Company No. 1 may kindly be directed to clarify the same." Accordingly, the Transferor Company No. 1 was asked to clarify the same. The Transferor Company No. 1 has filed an affidavit dated 10.11.2021 stating that the said charge was created in favour of Canara Bank in 1999 and was fully paid sometime in the year 2003/2004 and charge satisfaction form has been filed with the RoC vide SRN- R35374255.

10. The Official Liquidator has filed its report dated 13.02.2020, 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 all the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

11. The Income Tax Department filed its report affidavit dated 05.12.2020 wherein, the Income Tax Officer, Ward 3 (3), New Delhi, has stated the following w.r.t Transferee Company:

? That, the company is being assessed under the jurisdiction of the Deponent holding a valid PAN No. AABCS8435K.

? That, no other proceeding is pending against the assessee company before the undersigned.

? The proposal of the scheme of arrangement may be accepted only after protecting the rights of the Revenue to examine the tax implication of all the companies' w.r.t the scheme of amalgamation, at the time of their respective assessment/re¬assessment proceedings.

12. Vide same affidavit, the following w.r.t Transferor Company No. 3 has been observed:

? That, the company is being assessed under the jurisdiction of the Deponent holding a valid PAN No. AABCS7540R.

? That, Rs. 19,46,576/- outstanding demand was pending against the assessee company for A.Y 2010-11.

? That, the company has opted for direct tax vivid se vishwas scheme 2020 and has filed form 1 & 2 as per which Rs 10,08,589/- is paid by the company.

? That, for A.Y 2010-11, the company filed an appeal before IT AT against order of CIT(A)-25, which is pending disposal.

? That, no other proceeding is pending against the assessee company before the undersigned.

? The proposal of the scheme of arrangement may be accepted only after protecting the rights of the Revenue to examine the tax implication of all the companies' w.r.t the scheme of amalgamation, at the time of their respective assessment/re¬assessment proceedings.

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.

13. The Transferor Company No. 3 has filed its reply affidavit dated 30.03.2021 stating that it has paid the Income Tax Demand due under Vivad se Vishwas Scheme for A.Y 2010-11 and has withdrawn its appeal pending with the Hon'ble

ITAT. Order in Form 5 of the Income Tax Dept, acknowledging full and final settlement has been enclosed. Order of ITAT dismissing the appeal as withdrawn has also been attached.

14. In this 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.

15. Certificates of respective Statutory auditors of all 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.

16. 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 shareholders and creditors.

i.It has also been affirmed in the petition that the Scheme is in the interest of all the transferor companies and the transferee company, including their shareholders, creditors, employees and all concerned.

ii.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.

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

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

3. 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.

4. 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.

5. THIS TRIBUNAL DO FURTHER ORDER

1. That the Transferor Companies shall stand dissolved without following the process of winding-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 Companies Act, 2013, be transferred to and vest in the transferee company.

3. That all the liabilities and duties 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 become the liabilities and duties of the transferee company; and

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

5. That all the employees of the Transferor Companies 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 Companies 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 all the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to all 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; 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.