(2023) 10 NCLT CK 0006

In the National Company Law Tribunal

Case No : C.P. (CAA)/133/MB/2022 In C.A. (CAA)/41/MB/2022

Shouri Properties Private Limited Vs

Date of Decision : 04-10-2023

Acts Referred:
Companies Act, 2013 — Section 230, 232, 232(3)(i), 232(6)

Citation : (2023) 10 NCLT CK 0006

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Devanshi Sethi, Tushar Wagh

Final Decision : Disposed Of

Judgement

V.G. Bisht, Member (Judicial)

1. Heard the Counsel for the Petitioners 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.

2. The sanction of the Tribunal is sought under Section 232 r/w Section 230 and other relevant provisions of the Companies Act, 2013 for the Scheme of Amalgamation between Shouri Properties Private Limited (Transferor Company) and PVR Inox Limited [Formerly known as PVR Limited] ("Transferee Company") and their respective Shareholders.

3. The Transferor Company holds a license to operate a multiplex cinema theatre. The Transferor Company has taken one multiplex cinema theatre on lease and sub-leased the same to its holding company.

4. The Transferee Company is an India-based multiplex company and engaged in the business of cinema exhibition, movie distribution, related food & beverages and allied activities.

5. The Petitioner Companies filed a Company Application No.146 of 2023 for amendment of Scheme consequent of merger of erstwhile INOX Leisure Limited

with the Transferee Company vide order dated 12th January 2023 passed in C.P. (CAA)/207/MB /2022 wherein the Transferor Company now became subsidiary of the Transferee Company. The said application was allowed and disposed by order dated 13th April 2023.

6. The Scheme was unanimously approved by the Board of Directors of the Petitioner Companies in their meeting held on 21st January, 2022. The Appointed Date of the Scheme is 1st Day of February 2022.

7. The Rational for the scheme is "with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of the Transferor Company with the Transferee Company. The merger by absorption of all undertaking of Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the merger would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances."

8. The Regional Director has filed his report dated 15.06.2023 making certain observations. The Petitioner Companies have submitted/undertaken that:

i. The Appointed date is in conformity with MCA circular no. F.No.7/12/20219/ CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs;

ii. The provisions set out in Section 232(3)(i) of the Companies Act, 2013 and where the Transferor Company is dissolved, the stamp duty, if any, paid by the Transferor Company on its authorized share capital shall be set off against any stamp duty payable by the Transferee Company on their authorized share capital subsequent to the amalgamation;

iii. The approval of the Scheme by this Tribunal may not deter Income-tax authorities to deal with Income-tax related issues arising after giving effect to the Scheme and the Petitioner Company submit that any Income-tax related issues arising out of the Scheme will be met and answered during the course of regular Income-tax assessment in accordance with the provisions of the Income-tax Act, 1961.

iv. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company; and

v. The Transferor company is not engaged in the business of Construction, hence no approval from RERA is required.

9. Mr. Tushar Wagh, Deputy Director from the Office of Regional Director of Western Region, Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

10. The Official Liquidator has filed his report dated 23rd June 2022 stating therein that on perusal of Chartered Accountant's report it is notices that the affairs of the Transferor Company have been conducted in a proper manner.

11. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

12. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P. (C.A.A.)/133/MB/2022 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.

13. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the amended Scheme attached to the Company Petition with the concerned Registrar of Companies, electronically, along with e-Form INC-28, within 30 days from the date of receipt of order, duly certified by the Designated Registrar of this Tribunal.

14. The Petitioner Companies to lodge a certified copy of this order and the amended Scheme duly certified by the Deputy Registrar/Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of certified copy of the order from the Registry of this Tribunal.

15. The Transferor Company would be dissolved without winding up.

16. All concerned regulatory authorities to act on a certified copy of this Order along with the amended scheme duly certified by the Designated Registry of this Tribunal.

17. The Scheme of Amalgamation and Arrangement is hereby sanctioned, and the Appointed Date of the Scheme is fixed as 1st Day of February 2022, for the purposes of Section 232(6) of the Companies Act, 2013.

18. Ordered Accordingly.