(2022) 08 NCLT CK 0043

In the National Company Law Tribunal

Case No : CP (CAA) No. 01/230, 232/JPR/2022 Connected with CA (CAA) No. 147/230, 232/JPR/2020

Shree Gajanan Spintex Private Limited Vs

Date of Decision : 12-08-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(4), 230(7), 232, 232(3)(i)
Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 — Rule 15

Citation : (2022) 08 NCLT CK 0043

Hon'ble Judges : Deep Chandra Joshi, Member (J);Prasanta Kumar Mohanty, Member (T)

Bench : Division Bench

Advocate : Sandeep Kumar Jain

Final Decision : Disposed Of

Judgement

Deep Chandra Joshi, Judicial Member

1. This Joint Second Motion Petition under Sections 230 & 232 of the Companies Act, 2013 ('Act') is filed by the Petitioner Companies in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('Rules') for the sanction of Scheme of Amalgamation of Shree Gajanan Spintex Private Limited ('Applicant Company No. 1 / Transferor Company') and Sri Ridhi Sidhi Yarns Private Limited ('Applicant Company No. 2 / Transferee Company'). The registered office of the Transferor Company and the Transferee Company is situated in the state of Rajasthan, within the jurisdiction of this Bench.

2. From the records, it is seen that the First Motion Application seeking directions for dispensing with the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies was filed before this Tribunal vide CA (CAA) No. 147/230-232/JPR/2020 and based on such joint Application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the meetings of Equity shareholders, Secured Creditors and Unsecured Creditors of the Transferor Companies and Transferee Company were dispensed with vide Order dated

22.11.2021.

3. Thereafter, the Petitioner Companies filed second motion joint petition before this Tribunal on 20.12.2021 within the time prescribed. Consequently, the matter was listed on 24.01.2022 and following order was passed on 11.03.2022: -

(i) The date of hearing of the petition filed by the petitioner for the approval of the Scheme is fixed on 21.04.2022.

(ii) Notice of the hearing shall be advertised in the Newspapers, namely, Dainik Bhaskar (Jaipur Edition) and Times of India (Jaipur Edition) not less than 15 days before the aforesaid date fixed for hearing.

(iii) In addition to the above public notice, each petitioner company shall serve the notice of the Petition on the following Authorities, namely, Income Tax Authorities (indicating the respective PAN Nos.), Registrar of Companies, Jaipur, Official Liquidator and Regional Director (North Western Region), RBI as well as other sectoral regulators which may govern the working of the company in the Scheme, at least 30 days before the date fixed for hearing of the above petition.

(iv) Further, notices shall also be served to objector(s) or to the representative(s) as contemplated under Sub-section (4) of Section 230 of the Companies Act who may have made representations and who have desired to be heard in their representation along with a copy of the Petition and the extracts filed therewith at least 15 days before the date fixed for hearing.

(v) The Petitioner Companies shall at least 7 days before the date of hearing of the petition, file an affidavit of service concerning said publication effected as well as service of notice on the authorities mentioned above including the Sectoral Regulator(s) as well as to Objectors, if any.

(vi) Objections, if any, to the Scheme contemplated by the Authorities to whom notice has been given on or before the date of hearing fixed herein may be filed, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities by this Tribunal and subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant Regulations/ Rules framed thereunder.

(vii) The Petitioner Companies shall comply with proviso to Sub-section(7) of Section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of Company’s auditor.

4. The Transferor Company/Applicant No.1 and Transferee Company/Applicant No.2 have filed compliance affidavit of the order dated 11.03.2022 and 12.05.2022 vide Diary No. – 1785/2022 dated 14.06.2022 along with copies of the newspaper publications and copies of proof of service of notice to the statutory authorities. The respective affidavits also state that the provisions of the Competition Act, 2002 are not applicable to the Scheme of Amalgamation.

5. On perusal of the records, it is found that notices were issued to the

Department of Income Tax on 22.03.2022. The Income Tax Department has not filed its response for the same. For the proposed scheme if there will be any liability with regard to Income Tax Department, the Petitioner shall be liable and pay according to Rules and Regulations of Income Tax Act, 1961 and Income Tax Rules, 1962.

6. The Regional Director, North Western Region, MCA to whom notice was issued has filed its report vide Diary No. 1505/2022 dated 17.05.2022 requesting this Tribunal to direct compliance of Section 232(3)(i) of the Companies Act, 2013 to the Applicant Companies. It is also stated that the report of the Office of the Registrar of Companies, Rajasthan, Jaipur has been received vide Letter No. ROC/ Amal/2020-21/452 dated 05.02.2021; as per the said report, there are no complaints against the petitioner transferee company and also there is no complaint / representation against the Scheme of Amalgamation of the Companies. A copy of ROC report is enclosed and marked as Annexure-A to the Report of the RD. The Petitioner Company be directed to pay such amount of legal fees / cost to the Central Government which may be considered appropriate.

7. The Office of the ROC cum OL, Jaipur, Rajasthan has forwarded its report vide Diary No. 584/2021 dated 03.02.2021. The Office of the ROC has stated that the Scheme of Amalgamation is not prejudicial to the interest of its shareholders, creditors and public at large and nothing is found objectionable in the Scheme of Amalgamation.

8. It is further stated that the Petitioner Companies have not received any objection/representation from any person against the proposed Scheme of Amalgamation till date. In this regard affidavits of the authorized representative of the Transferor Company and Transferee Company have been filed vide Diary No. 1785/2022 dated 14.06.2022.

9. The Petitioner Companies have already submitted at the first motion stage that no investigation proceedings are pending against the Applicant Companies.

10. In compliance of the proviso to sub-section (7) of Section 230 of the Companies Act, 2013, the Transferor Company and Transferee Company have placed the certificates of the Chartered Accountant on record vide Diary No. 1785/2022 dated 14.06.2022 at Annexure-III, confirming that the accounting treatment envisaged under the Scheme of Arrangement is in compliance with the applicable accounting standards notified by the Central Government under Section 133 of the Companies Act, 2013.

11. The Audited Financial Statements of the Transferee and Transferor Companies as on 31.03.2020 is annexed as Annexures-6 and Annexure-3 of the Company Application, respectively vide Diary No.-870/2020 dated 25.09.2020

12. As per the Scheme, the appointed date shall mean 01.04.2020 or such other date as this Tribunal may propose and approve. The effective date, as stated in the Scheme, is reproduced below: -

“Effective Date” means the date on which a certified copy of the order of the National Company Law Tribunal, Jaipur Bench, confirming this Scheme, is filed with the Registrar of Companies, Jaipur.

13. The Share Exchange Ratio under the Scheme has been determined in accordance with the report of Mr. Shashank Maloo, CA, Registered Valuer bearing No. IBBI/RV/07/2019/12701 dated 30.07.2020 The Share Exchange Ratio is as follows:

For every 192 (One Hundred Ninety-Two) fully paid-up Equity Shares of Shree Gajanan Spintex Private Limited of the Face value Rs. 10/- (Rupees Ten each), 100(One Hundred) full paid-up Equity Shares of the face value of Rs. 10/- (Rupees Ten) of Sri Ridhi Sidhi Yarns Private Limited will be issued.

14. Having heard learned counsel for the Petitioners and perusal of documents placed on record, and also considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, and the affidavits/ no objection filed by the respective regulatory authorities, there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 - 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law including but not limited to Section 232 (3)(i) and other directions as pointed by the Regional Director.

15. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal 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.

16. While approving the Scheme as above, we further clarify that this order should not be construed as an order in a manner granting exemption from payment of stamp duty, or taxes including income tax, GST etc., or any other charges or payment in accordance with law, or any kind of waiver in respect of any permission / compliance with any other requirement which may be specifically required under any law.

17. THIS TRIBUNAL DOES FURTHER ORDER:

I. Upon the Scheme becoming effective, on and from the Appointed Date in the Scheme, i.e. 01.04.2020, the respective undertakings of the Transferor Companies shall, together with all the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly, pursuant to Section 232 of the Act, shall stand transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same.

II. All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Companies stand transferred to and vested in the Transferee Company, without any further act or deed and shall be in full force and effect in favor of the Transferee Company, as if the same were originally given to, issued to or executed in favor of the Transferee Company. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.

III. All the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

IV. All contracts, agreements, undertakings, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Transferor Companies which are subsisting or having effect immediately before the Effective Date as per the Scheme, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto / thereunder.

V. All taxes paid or payable by the Transferor Companies and all existing and future incentives, un-availed credits and exemptions, benefit of carried forward losses and other statutory benefits, to which the Transferor Companies are entitled to shall be available to and vest in the Transferee Company.

VI. All proceedings now pending by or against the Transferor Companies shall be continued by or against the Transferee Company.

VII. The Transferee Company shall, without further application, allot to the existing members of the Transferor Companies the quantum of shares of the Transferee Company to which they are entitled under the said Scheme of Amalgamation and subject to appropriate uniform mechanism in respect of fractional entitlements.

VIII. The fee, if any, paid by the Transferor Companies on its / their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the Scheme.

IX. The Transferor Companies shall be dissolved without winding up and the Board of Directors and any committees thereof of the Transferor Companies shall without any further act, instrument or deed stand dissolved.

X. The Petitioner Company within 30 days after the date of receipt of the certified copy of this Order, cause the same to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The

Scheme will become effective on filing of the certified copy of this order with the concerned Registrar of Company. The concerned Registrar of Companies shall transfer all documents relating to the Transferor Company registered with him to the file relating to the said Transferee Company and the files relating to the Transferor and Transferee Companies shall be consolidated accordingly, as the case may be;

XI. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

XII. The Transferee Company shall deposit an amount of ☐ 25,000/- to be paid in favor of "The Prime Minister's National Relief Fund", ☐ 30,000/- to be paid in the Online Miscellaneous fee account of Ministry of Corporate Affairs within a period of four weeks from the date of receipt of the certified copy of this order.

XIII. The Copy of Scheme of Amalgamation filed at Page No. 23-45 of the first motion Application shall form integral part of this Order.

18. As per the above directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioners on filing of the Schedule of Property, i.e. (i) freehold property of the Transferor and Transferee Companies; and (ii) leasehold property of the Transferor and Transferee Companies by way of affidavits of the Transferor and Transferee Companies respectively.

19. Copy of this order be communicated to the Counsel for the Petitioners.