(2024) 04 NCLT CK 0018

In the National Company Law Appellate Tribunal

Case No : Company Application (CAA) No. 21 Of 2024

Shree Jee Laboratory Private Limited Vs

Date of Decision : 09-04-2024

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232

Citation : (2024) 04 NCLT CK 0018

Hon'ble Judges : Manni Sankariah Shanmuga Sundaram, Member (J);Dr. Sanjeev Ranjan, Member (T)

Bench : Division Bench

Advocate : P. Nagesh, Suman Kumar Jha, S. Shiva, Suhas Puthige

Final Decision : Disposed Of

Judgement

Manni Sankariah Shanmuga Sundaram, Member (Judicial)

1. This is an first motion application jointly filed by the applicant companies herein, M/s Shree Jee Laboratory Private Limited (hereinafter referred to as Transferor Company No. 1/Applicant Company No. 1), M/s JPR Labs Private Limited (hereinafter referred to as Transferor Company No. 2/Applicant Company No. 2), M/s Jaspack Industries Private Limited (hereinafter referred to as Transferor Company No. 3/Applicant Company No. 3), and M/s Mankind Pharma Limited (hereinafter referred to as Transferee Company/Applicant Company No. 4) and their respective shareholders and creditors jointly under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the “SCHEME”) proposed between the applicants.

2. Affidavits in support of the above application sworn by Mr. Sumit Dhawan on behalf of Applicant Company No. 1, Mr. Vivek Aggarwal on behalf of Applicant Company No. 2, Mr. Rahul Rastogi on behalf of Applicant Company No. 3 and Mr. Pradeep Chugh on behalf of Applicant Company No. 4, Authorized Representative, is filed. It is also represented that the registered office of all the applicant companies is under the domain of Registrar of Companies, NCT of New

Delhi & Haryana and within the territorial jurisdiction of this Tribunal.

3. The Transferor Company No. 1/Applicant Company No. 1 i.e., M/s Shree Jee Laboratory Private Limited is a private limited company which was incorporated on 05.10.2011, under the provisions of the Companies Act, 1956 bearing CIN: U24232DL2011PTC272907, having its registered office at 208, Okhla Industrial Estate, Phase-III, New Delhi- 110020. The Transferor Company 1 is involved in the business of manufacturing of active pharmaceutical ingredients. The Authorized Share Capital of the Transferor Company No. 1/Applicant Company No. 1 is Rs. 140,50,00,000 divided into 14,05,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 140,49,87,300 divided into 14,04,98,730 Equity Shares of Rs. 10/-each fully paid up.

4. The Transferor Company No. 2/Applicant Company No. 2 i.e., M/s JPR Labs Private Limited is a private limited company which was incorporated on 5th July, 2010, under the provisions of the Companies Act, 1956 bearing CIN: U24232DL2010PTC365041, having its registered office at 208, Okhla Industrial Estate, Phase-III, New Delhi-110020. The Transferor Company No. 2 is engaged in the business of manufacturing of active pharmaceutical ingredients. The Authorized Share Capital of the Transferor Company No. 2/Applicant Company No. 2 is Rs. 18,27,60,000/- divided into 1,82,76,000 Equity Shares of Rs. 10/- each; Rs. 42,72,40,000 divided into 4,27,24,000, 0.01% Optionally Convertible Non- Cumulative Redeemable Preference Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 17,47,39,400/- divided into 1,74,73,940 Equity Shares of Rs. 10/- each fully paid up; Rs. 32,21,88,600 divided into 3,22,18,860, 0.01% Optionally Convertible Non- Cumulative Redeemable Preference Shares of Rs. 10/- each fully paid up.

5. The Transferor Company No. 3/Applicant Company No. 3 i.e., M/s Jaspack Industries Private Limited is a private limited company was incorporated on 16th March, 2015, under the provisions of the Companies Act, 2013 bearing CIN: U36912DL2015PTC277915, having its registered office at 208, Okhla Industrial Estate, Phase-III, New Delhi- 110020. The Authorized Share Capital of the Transferor Company No. 3/Applicant Company No. 3 is Rs. 9,01,00,000 divided into 90,10,000 Equity Shares of Rs. 10/- each; Rs. 151,00,00,000/-divided into 15,10,00,000, 0.01% Optionally Convertible 151,00,00,000 Non-Cumulative Redeemable Preference Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 9,01,00,000 divided into 90,10,000 Equity Shares of Rs. 10/- each fully paid up; Rs. 147,01,00,000 divided into 14,70,10,000, 0.01% Optionally Convertible Non-Cumulative Redeemable Preference Shares of Rs. 10/- each fully paid up.

6. The Transferee Company/Applicant Company No. 4 i.e., M/s Mankind Pharma Limited was incorporated on 3rd July, 1991, under the provisions of the Companies Act, 1956 bearing CIN: L74899DL1991PLC044843, having its registered office at 208, Okhla Industrial Estate, Phase-III, New Delhi- 110020. The Transferee Company is a listed company having its shares listed on BSE

Limited ('BSE') and National Stock Exchange of India Limited ('NSE'). The Transferee Company is principally engaged in the manufacturing and trading of pharmaceutical and healthcare products. The Authorized Share Capital of the Transferee Company is Rs. 41,35,00,000/-divided into 41,35,00,000 Equity Shares of Re. l/- each. The Issued, Subscribed and Paid-up Capital is Rs. 40,05,88,440 divided into 40,05,88,440 Equity Shares of Re. 1/- each fully paid up.

7. The Transferor Company No. 1 to 3 as well as the Transferee Company have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses, as well as their audited financial statements as on 31.03.2023 an unaudited financial result for the period ended 30.09.2023.

8. The Board of Directors of all the Applicant Companies i.e., Applicant Company No. 1, Applicant Company No. 2, Applicant Company No. 3 and Applicant Company No. 4, have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of respective board resolutions dated 31.10.2023 passed in the said board meetings have been placed on record.

9. The Applicant Companies submits that the Applicant Company No. 1, 2 and 3 is a wholly owned subsidiaries of the Transferee Company/Applicant Company No. 4 as entire share capital of Applicant Company No. 1, 2 and 3 are held by Applicant Company No. 4/Transferee Company.

10. The Ld. Counsel for the Applicant Companies submits that the rationale for the scheme of Amalgamation between the Applicant Companies are as follows:

i.The Transferor Companies are wholly owned subsidiaries of Transferee Company. Hence, the proposed amalgamation of entities involved in similar business would result in consolidation of wholly owned subsidiaries with its parent company and pooling of their resources into a single entity.

ii. The Transferee Company is the flagship company of the group, the amalgamation will enable the Transferee Company to integrate its business operations and provide impetus to the operation of the Transferee Company. The consolidation of the activities by way of an amalgamation will provide seamless access to the assets of the Transferor Companies, which will lead to operational rationalization, organizational efficiency competitive advantage and optimal utilization of resources eventually enhancing the growth and reputation of the group.

iii. The independent operations of the Transferor Companies and Transferee Company lead to incurrence of significant costs, duplication of administrative & establishment costs. The proposed amalgamation would enable economies of scale by attaining critical mass, achieving cost saving and better financial management of resources. The amalgamation will eliminate a multi-layered structure and reduce managerial overlaps, which are necessarily involved in running multiple entities.

iv. The proposed arrangement will provide greater integration and flexibility to the Transferee Company and strengthen its position in the industry, in terms of the asset base, revenues and service range.

11. All the applicant companies, the Transferor Company No. 1 to 3 and Transferee Company have annexed the certificate issued by the respective statutory auditors clearing the compliance of Section 133 of the Companies Act, 2013 for accounting standards by the respective company.

12. With respect to the Applicant Company No. 1/Transferor Company No. 1, it is stated:

a) It is having 2 (two) Equity Shareholders. The list of shareholders as on 01.12.2023 is annexed at Page No. 131 and both of them have given their respective consents by way of affidavit which are annexed to the application at Page No. 132-142.

b) It is further represented that the Company has no Secured Creditors. Certificate from Chartered Accountants certifying list of secured creditors as on 25.11.2023 which is placed on record.

c) The Company has 58 Unsecured Creditors. Certificate from Chartered Accountants certifying list of unsecured creditors as on 25.11.2023 is annexed at Page No. 146-150. Out of 58 unsecured creditors, 21 unsecured creditors have given consent by way of affidavits aggregating 92.09% in value which is annexed to the application.

d) In relation to the Equity Shareholders, it seeks dispensing with convening/ holding the meetings as consent of both the shareholders are placed on record. Since there are no secured creditor therefore the necessity of convening and holding a meeting does not arise. In relation to the Unsecured Creditors, it seeks dispensing with convening/holding the meetings as consent of 21 unsecured creditors out of 58 unsecured creditors aggregating 92.09% in value are placed on record.

13. With respect to the Applicant Company No. 2/Transferor Company No. 2, it is stated:

a) It is having 2 Shareholders. The list of equity shareholders as on 01.12.2023 is annexed at Page No. 324 and all of them have given their respective consents by way of affidavits which are annexed to the application.

b) It is having a sole preference shareholder. Certificate from Chartered Accountants certifying list of preference shareholder is annexed at Page 336-338 and given his consent by way of affidavit which is annexed to the application.

c) It is further represented that the Company has a sole Secured Creditors. Certificate from Chartered Accountants certifying list of secured creditors is annexed at Page No. 348-349 and given his consent by way of affidavit which is annexed to the application.

d) It is further represented that the Company has 84 Unsecured Creditors. Certificate from Chartered Accountants certifying list of unsecured creditors is annexed at Page No. 363-370. Out of 84 unsecured creditors, 25 unsecured creditors aggregating 91.67% in value given consent by way of affidavit which is placed on record.

e) In relation to the equity shareholders, preference shareholders and unsecured creditors, it seeks dispensing with holding/convening the meetings as consents of equity shareholders, preference shareholders and unsecured creditors are place on record. Since there are no secured creditor, therefore the necessity of convening and holding a meeting does not arise.

14. With respect to the Applicant Company No. 3/Transferor Company No. 3, it is stated:

a) It is having 2 (two) Shareholders. The list of shareholders as on 01.12.2023 is annexed at Page No. 567 and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented that the Company has a sole preference shareholder as on 01.12.2023 and Certificate from Chartered Accountants in this regard is annexed to the application at Page No. 579-580 and given his consent by way of affidavit which is placed on record.

b) It is further represented that the Company has no Secured Creditors. Certificate from Chartered Accountants certifying list of creditors is annexed at Page No. 586-587 which is placed on record.

c) The Company has a sole unsecured creditor. Certificate from Chartered Accountants certifying list of unsecured creditors as on 25.11.2023 is annexed at Page No. 588-589 and given his consent by way of affidavit which is placed on record.

d) In relation to the Equity Shareholders, Preference Shareholder and Unsecured Creditors, it seeks dispensing with convening/holding the meetings as consent of Equity Shareholders, Preference Shareholder and Unsecured Creditors are placed on record. Since there are no secured creditor and unsecured creditors, therefore the necessity of convening and holding a meeting does not arise.

15. With respect to the Applicant Company No. 4/Transferee Company, it is stated:

a) The Company has 1,25,576 Equity Shareholders. The shareholding pattern of the Company is annexed at Page No. 681-687 which is placed on record.

b) It is further represented that the Company has a sole Secured Creditor as on 25.11.2023 amounting to Rs. 24,95,25,000/-. Certificate from Chartered Accountants certifying list of secured creditors is annexed at Page No. 690-691 which is placed on record.

c) The Company has 1,270 unsecured creditors as on 25.11.2023 amounting to

Rs. 311,35,41,562/-. Certificate from Chartered Accountants certifying list of unsecured creditors is annexed at Page No. 692-751 which is placed on record.

d) In relation to the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferee Company/Applicant Company No. 4 are concerned, the Applicant Company No.4/Transferee Company is not required to convene the meeting in view of the fact that the Applicant Company No. 1, Applicant Company No. 2 and Applicant Company No. 3 are wholly owned subsidiary of the Applicant Company No. 4/Transferee Company. Further, the Ld. Counsel for the Applicant Companies had placed reliance on the following citations: -

i. The Hon’ble NCLAT Judgment dated 18.10.2022 in the matter concerning the amalgamation between wholly owned subsidiary companies namely Momagic Technologies Private Limited, [Company Appeal (AT) No. 147/2022].

ii. The Hon’ble High Court of Delhi in the matter of Masterji Mettaloys Pvt. Ltd. With Goodluck Steel Tubes Limited [Company Appeal (M) No. 9/2016 dated 18.01.2016].

iii. The Han'ble High Court of Delhi in the matter of SHILPI CABLETRONICS LTD. & ORS. in CO. APPL. (M) No. 22/2012 dated 03.02.2012

iv. Mohit Agro Commodities Processing Pvt Ltd. & Ors.’ in Company Appeal (AT) No. 59 of 2021 Judgement dated 28.06.2021

16. The Learned Counsel for the Applicant Companies submit that the pursuant to the present Scheme of Arrangement, no new shares will be issued by the Transferee Company, and there would not be any dilution in the shareholding of the Shareholders of the Transferee Company since 100% of the share capital of the Transferor Companies are held by the Transferee Company. Further, the Transferee Company will remain in existence even after the effectiveness of the Scheme.

17. Further, the net worth of the Transferee Company prior to and post the amalgamation will remain highly positive. Accordingly, the Transferee Company will be in a position to discharge all its liabilities towards its Secured Creditors and Unsecured Creditors and the creditors of the respective Transferor Companies.

18. The appointed date as specified in the Scheme is 1st April 2024 or such other date as may be approved by the Tribunal.

19. The Applicant Companies have filed an affidavit dated 25.01.2024 confirming that there is no material investigation or proceeding pending against the Applicant Companies under any law for the time being in force. If there exists/ arises any legal or other proceeding by/against the Applicant Companies on/from the date of execution of this affidavit, the same shall be continued, prosecuted and enforced against the Transferee Company/ Applicant Company No. 4 pursuant to the abovementioned Scheme.

20. Heard. Record perused thoroughly. On a meticulous perusal of the proposed Scheme of Arrangement for Amalgamation between the Applicant Companies, in relation to the Transferor Company No. 1/Applicant Company No. 1, Transferor Company No. 2/Applicant Company No. 2, Transferor Company No. 3/Applicant Company No. 3, and Transferee Company with respect to the proposed Scheme of Arrangement which provides for Amalgamation of the Transferor Company No. 1, 2 and 3 with the Transferee Company.

i. The Hon'ble NCLAT in 'Mohit Agro Commodities Processing Pvt Ltd. & Ors.' in Company Appeal (AT) No. 59 of 2021 Judgement dated 28.06.2021 held that "in the present matter the amalgamation sought for is between a Wholly Owned Subsidiary and the Holding Company; Further, observes that the rights and liabilities of secured and unsecured creditors were not getting affected in any manner by way of the proposed scheme as no new shares were being issued by the Transferor company, and no compromise was offered to any creditor of the Transferee Company. Thus, reiterates that when the Transferor and Transferee Company involve a parent Company/Holding Company and a Wholly Owned Subsidiary, the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with, as the facts of this case substantiate that the rights of the Equity Shareholders of the Transferee Company are not being affected'.

ii. The same view is taken by the Hon'ble NCLAT in 'Ericsson India Private Limited' in Company Appeal (AT) No. 148 of 2021 wherein the Hon'ble NCLAT observed that 'as the merger is of a Wholly Owned Subsidiary Company into its holding Company, no shares would be allotted as consideration pursuant to the merger; the proposed Scheme will not result in any dilution in the Shareholding of the Shareholders of the 'Transferee Company', the net worth of the 'Transferee Company' is positive, and 'Unsecured Creditors' are paid off in the ordinary course of business and their liability is not affected as it is neither reduced nor extinguished, the meeting of the shareholders and creditors of the Transferee Company may be dispensed with.'

iii. The Hon'ble NCLAT in the matter of DLF Phase IV, Commercial Developers Limited and Ors. in Company Appeal (AT) No. 180 of 2019 in its judgement dated 19.08.2019 has set aside the order dated 07.06.2019 passed in CA.(CAA)No.39/ Chd/Hry/2018 to the extent it relates to directions for convening of the meetings of Unsecured Creditors of Appellant No. 4 (Demerged Company) and the meetings of the Equity Shareholders, Secured and Unsecured Creditors of Appellant No.5 (Transferee Company) and observed as follow:-

" After hearing learned counsel for Appellants we find that the Appellants DLF Phase IV Commercial Developers Ltd. (Transferor Company No. 1), DLF Real Estate Builders Ltd. (Transferor Company No. 2), DLF Residential Builders Ltd. (Transferor Company No.3) and DLF Utilities Ltd. (Demerged Company) are wholly owned subsidiaries of the Holding Company 'DLF Ltd.' (Transferee Company). The Appellant Companies proposed a scheme of arrangement interse them, under Section 230-232 of the Act and to achieve the said object filed first motion being CA NO. 39 before the Tribunal seeking directions for dispensation of the meetings of Shareholders, separate debenture holders, warrant holders, compulsorily convertible debenture (CCD) holders and Secured and Unsecured Creditors of the Appellant Companies. According to the case setup by Appellants, the proposed scheme would not result in any dilution in the shareholding of shareholders of Transferee Company, which has highly positive net worth. It appears that in regard to meetings of Unsecured Creditors of Appellant No. 4 (Demerged Company) and Shareholders, Secured and Unsecured Creditors of the Appellant No. 5 (Transferee Company) the Appellants submitted before the Tribunal that in view of settled legal position and various judicial precedents such meetings were not required to be held. It was further submitted that creditors are also not affected since the Scheme does not envisage any reduction in their claims and the Transferee Company."

21. Taking into consideration aforesaid discussions and the judgments, we issue the following directions:

A. In relation to the Transferor Company No. 1/Applicant

a) With respect to Equity Shareholders: In view of consent affidavits, from 2 (two) Equity Shareholders, convening/holding the meeting of shareholders is dispensed with.

b) With respect to Secured Creditors: Since there are no Secured Creditors, therefore the necessity of convening/holding a meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavits, out of 58 unsecured creditors, 21 unsecured creditors holding 92.09% in value, convening/ holding a meeting of unsecured creditors is dispensed with.

B. In relation to the Transferor Company No. 2/Applicant Company No. 2:

a) With respect to Equity Shareholders: In view of consent affidavits, from both the 2 (two) Equity Shareholders, convening/holding the meeting of equity shareholders is dispensed with.

b) With respect to Preference Shareholders: In view of consent affidavits, from a sole preference shareholder, convening/holding the meeting of preference shareholder is dispensed with.

c) With respect to Secured Creditors: In view of consent affidavits, from a sole Secured Creditor, convening/holding the meeting of Secured Creditor is dispensed with.

d) With respect to Unsecured Creditors: In view of consent affidavits, out of 84 Unsecured Creditors, 25 unsecured creditors holding 91.67 in value, convening/ holding the meeting of Unsecured Creditors is dispensed with.

C. In relation to the Transferor Company No. 3/Applicant Company No. 3:

a) With respect to Equity Shareholders: In view of consent affidavits, from both the 2 (two) Equity Shareholders, convening/holding the meeting of shareholders is dispensed with.

b) With respect to Preference Shareholders: In view of consent affidavits, from a sole preference shareholder, convening/holding the meeting of preference shareholder is dispensed with.

c) With respect to Secured Creditors: Since there are no Secured Creditors, therefore the necessity of convening/holding a meeting does not arise.

d) With respect to Unsecured Creditors: In view of consent affidavits, from a sole unsecured creditor, convening/holding the meeting of unsecured creditor is dispensed with.

D. In relation to the Transferee Company/Applicant Company No.4:

a) With respect to Equity Shareholders: It is observed that the Transferee Company has 1,25,576 equity shareholders. Further, the Applicant Company No. 1, 2 and 3 are wholly owned subsidiaries of the Applicant Company No. 4 and net worth of all the Applicant Companies are positive. Further, there will be no will be no dilution in the shareholding of shareholders of Applicant Company No.3 as no shares are issued in consideration to the composite Scheme of Arrangement for the Amalgamation. Accordingly, the meeting of the Equity Shareholders of the Applicant Company No. 4, for the purpose of considering and, approving the proposed Scheme is hereby dispensed with.

b) With respect to Secured Creditors: In view of the facts that Applicant Company No. 4 have a sole secured creditor aggregating to the value of Rs. 24,95,25,000/- as on 25.11.2023 and in the light of the aforementioned discussions specifically in Para 20 of the present order and in view of the ratio laid down in the judgements cited therein, the meeting of Secured Creditors of the Applicant Company No. 4, for the purpose of considering and, approving the proposed Scheme is hereby dispensed with.

c) With respect to Unsecured Creditors: -In view of the facts that Applicant Company No. 4 have 1,270 Unsecured Creditors aggregating to the value of Rs. 311,35,41,562/- as on 25.11.2023 and in the light of the aforementioned discussions specifically in Para 20 of the present order and in view of the ratio laid down in the judgements cited therein, meeting of the Unsecured Creditors of the Applicant Company No. 4, for the purpose of considering and, approving the proposed Scheme is hereby dispensed with.

22. Notice of this application shall also be served on the following:

i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

iii. Official liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi-110001;

iv. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.

v. Securities and Exchange Board of India

vi. BSE Limited

vii. National Stock Exchange of India Limited

viii. Any other sectoral regulators required to be served.

23. The application stands allowed on the aforesaid term and accordingly disposed of.

