

(2023) 02 NCLT CK 0023

In the National Company Law Tribunal

Case No : Company Petition (CAA) No. 44/KB/2022 Connected with Company Application (CAA) No. 155/KB/2021

Shree Shelter Private Limited Vs

Date of Decision : 06-02-2023

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(1), 232, 232(3), 232(3)(i), 232(4)

Citation : (2023) 02 NCLT CK 0023

Hon'ble Judges : Rohit Kapoor, Member (J); Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Babu Lal Patni, Harihar Sahoo

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

1. This Court is convened through hybrid mode.

2. The instant petition has been filed under Section 232(3) and other applicable provisions of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of Shree Shelter Private Limited being the Petitioner No. 1 abovenamed ("Transferor Company No. 1" or "Petitioner No. 1"), Laxmi Shelter Private Limited ("Transferor Company No. 2" or "Petitioner No. 2"), Siddhi Homes Private Limited ("Transferor Company No. 3" or "Petitioner No. 3") with Ganesh Awas Private Limited being the Petitioner No. 4 abovenamed ("Transferee Company" or "Petitioner No. 4") whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1st Day of April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). The Copy of the said Scheme is annexed to the Company Petition being Annexure-I, at Page 230-247, in Volume II.

3. The Petition has now come up for final hearing. Ld. Authorized Representative for the Petitioners submits as follows: -

a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 5th July, 2021 respectively.

b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows: -

i. Simplification of corporate structure by reducing the number of legal entities and reorganizing the legal entities in the group structure;

ii. Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Transferor Companies;

iii. Elimination of duplication in administrative costs and multiple recordkeeping, thus resulting in cost savings;

iv. Concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities.

c) The Statutory Auditors of respective Petitioner Companies have by their certificates dated 01/07/2021 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on fair and reasonable basis and on the basis of the Report thereon of Mr Sanjay Jhaharia, Registered Valuer.

f) The shares of Petitioner Companies are not listed in any Stock exchange.

g) By an order dated 8th November, 2021 in Company Application (CAA) No. 155/ KB/2021, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1): -

Meeting(s) dispensed: Meeting(s) of the Equity Shareholders of all Petitioner Companies and unsecured creditors as applicable for considering the Scheme were dispensed. Further, as all Petitioner Companies had no secured creditors, no meeting of secured creditors was required to be held.

h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 15/09/2022, this Tribunal fixed this petition for hearing on 20/10/2022 upon issuance of notices to the Regional Director of date of hearing. In compliance of said order dated 15/09/2022 the Petitioner(s) have duly served such notices on the Regional Director, MCA and Official Liquidator by email on 15/09/2022 and by hand delivery on 16/09/2022. An affidavit of Compliance duly affirmed on 11/10/2022 in this regard has also been filed by them.

Statutory Authorizes

Date of Service

Through Email

15/09/2022

Regional Director (ER), MCA Kolkata

Official Liquidator, High Court at Calcutta

15/09/2022

By Hand Delivery

Regional Director (ER), MCA Kolkata

16/09/2022

Official Liquidator, High Court at Calcutta

16/09/2022

i) All statutory formalities requisite for obtaining the sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

4. Pursuant to the said notice the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD"), Official Liquidator, High Court, Calcutta have filed their representations before this Tribunal.

5. The Official Liquidator has filed his report dated 17th October, 2022 and concluded as under: -

"That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to the public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable."

6. The RD has filed his reply affidavit dated 17th October, 2022 ("RD affidavit") which has been dealt with by the Petitioner(s). The observations of the RD and responses of the Petitioner(s) are summarized as under: -

Paragraph No. 2 (a) of RD affidavit

2.(a). That it is submitted that on the examination of report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are also up-dated in filing their Financial Statements and Annual Returns for the Financial year 31/03/2021. However, in the said report, the Registrar of Companies, West Bengal, inter alia, stated regarding active

charges are pending against the Petitioner companies. Copy of the said report marked as Annexure-I is enclosed herewith for perusal and ready reference.

Paragraph No. 3 (a) of Rejoinder

3.(a). It is submitted that the above charges created by the Transferor Companies will also be transferred to the Transferee Company along with other assets, liabilities and obligations as per the scheme. The Transferee Company undertake to create/ modify necessary charges once the Schemes of Amalgamation become effective.

The Company has also filed No Objection Certificate from ICICI Bank Ltd., the charge holder which is on record.

Paragraph No. 2 (b) of RD affidavit

2.(b). The Petitioner Companies should be directed to provide list/ details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed scheme.

Paragraph No. 3 (b) of Rejoinder

3.(b). The Petitioner Companies undertake to provide list/details of Assets to be transferred from the Transferor Companies to the Transferee Companies upon sanctioning of the proposed scheme.

Paragraph No. 2 (c) of RD affidavit

2.(c). That the Petitioner Company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 thorough appropriate affirmation.

Paragraph No. 3 (c) of Rejoinder

3.(c). The Transferee Company affirm and undertake to comply with the provision of section 232(3)(i) of the Companies Act ,2013.

Paragraph No. 2 (d) of RD affidavit

2.(d). That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph No. 3 (d) of Rejoinder

3.(d). The Transferee Company undertakes to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph No. 2 (e) of RD affidavit

2.(e). The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph No. 3 (e) of Rejoinder

3.(e). The Petitioner Companies affirm and say that the scheme enclosed in the Company Application and Company Petition are one and same and there is no discrepancy or no change is made

7. Heard submissions made by the Ld. Counsel appearing for the Petitioner, Mr. Harihar Sahoo, Joint Director for and on behalf of RD, who appeared and were heard. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -

i. The Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" hereto, is hereby sanctioned by this Tribunal with appointed date as 1st Day of April, 2021 ("Appointed Date") and shall be binding on Transferor Companies and Transferee Company, their respective shareholders and creditors and all concerned;

ii. all the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be 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, as provided in the Scheme;

iii. all the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

iv. All the workmen and employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme. All the obligations/liabilities of the Transferor Companies with regard to their workmen and employees shall be the responsibilities of the Transferee Company;

v. all proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme. Any compounding/ penalties/ liabilities required to be done on behalf of the transferor companies for any violation of the companies' act shall be the responsibility of the Transferee Company.

vi. In case of any default including any Provisions of Income Tax Act in this respect of the Transferor Companies the Income Tax department, the ROC, West Bengal and all other Statutory Departments shall be at liberty to initiate appropriate proceedings against the Transferee Company, which after the sanction of the scheme by this Tribunal is in any case responsible for the liabilities/non-compliance of the Transferor Companies also. The transferee

company shall preserve the necessary records of the Transferor companies till the culmination of such proceedings, whether pending or contemplated.

vii. The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;

viii. leave is granted to the Petitioner(s) to file the Schedule of Assets and liabilities of the Transferor Companies in the form as prescribed in the Schedule to Form No. CAA 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

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

x. The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Companies shall be dissolved without winding up with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

8. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

9. This Company Petition C.P. (CAA) No. 44/KB/2022 connected with C.A. (CAA) 155/KB/2021 is disposed of accordingly.

10. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.