(2023) 06 NCLT CK 0047

In the National Company Law Appellate Tribunal

Case No : CA (CAA) No.-21/230/232/ND/2023(1st Motion)

Sidh Logistics Pvt. Ltd Vs OM Metals Ratnakar Pvt. Ltd ?

Date of Decision : 16-06-2023

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

Citation : (2023) 06 NCLT CK 0047

Hon'ble Judges : Mehendra Khandelwal, Member(J);Rahul Bhatnagar, Member (T)

Bench : Division Bench

Advocate : Neeraj Arora

Final Decision : Disposed Of

Judgement

Mahendra Khandelwal, Member (Judicial)

1. This is an application jointly filed by the applicant companies herein, M/s Sidh Logistics Private Limited (hereinafter referred to as Transferor Company No. 1/ Applicant Company No. 1) and M/s Baba Vinimay Private Limited (hereinafter referred to as Transferor Company No. 2/Applicant Company No. 2), M/s OM Metals Hydroprojects Private Limited (hereinafter referred to as Transferor Company No. 3/Applicant Company No. 3), M/s Ativeer Furnishings Private Limited (hereinafter referred to as Transferor Company No. 4/Applicant Company No. 4), M/s Prasit Dealers Private Limited (hereinafter referred to as Transferor Company No. 5/Applicant Company No. 5), M/s Plantx Natural Private Limited (hereinafter referred to as Transferor Company No. 6/Applicant Company No. 6) with OM Metals Ratnakar Private Limited (hereinafter referred to as Transferee Company/Applicant Company No. 7) 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 Arrangement by way of Amalgamation (hereinafter referred to as the “SCHEME”) proposed between the applicants.

2. Affidavits in support of the above application sworn by Nirmal Kumar Tiwari on behalf of Transferor Company No. 1 to 6 and Transferee Company, 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. It is submitted that the Transferor Company No. 1/Applicant Company No. 1 i.e., M/s Sidh Logistics Private Limited was incorporated on 05th October, 2018, under the provisions of the Companies Act, 2013 bearing CIN: U63030DL2018PTC388630, having its registered office at 506, DLF Place, Office Block, Saket, New Delhi-110017. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company/Applicant Company No. 1 is Rs. 1,00,000 divided into 10,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 1,00,000 divided into 10,000 Equity Shares of Rs. 10/- each.

4. The primarily or sole purpose of the Transferor Company No. 1/Applicant Company No. 1 is to develop the "Project" (the Project means the development, operation and maintenance of Silos for storage of wheat at Surat on DBFOO Basis under PPP mode) as per the Draft Concession Agreement issued by the Authority i.e., Food Corporation of India and to make arrange, establish, develop, handle, own, operate, organize, manage, run, charter, conduct and act as storage facility cum transporters including storage handling and transportation of food grains in bulk, bagged in containerized form on land and set up rail head storage facilities for all products and development, procurement and operations of railway tracks.

5. It is submitted that the Transferor Company No. 2/Applicant Company No. 2 i.e., M/s Baba Vinimay Private Limited was incorporated on 24th May, 2005 under the provisions of Companies Act, 1956 bearing CIN: U51109DL2005PTC390802. Its registered office was at West Bengal. Thereafter, registered office was shifted from West Bengal to New Delhi and new certificate of incorporation was issued by ROC, NCT of Delhi on 3rd December, 2021. At present, the Applicant Company No. 2 having its registered office at 506, DLF Place, Office Block, Saket, New Delhi-110017. The Authorized Share Capital of the Transferee Company/ Applicant Company No. 2 is Rs. 5,00,000 divided into 50,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital of the company is Rs. 4,36,000 divided into 43,600 Equity Shares of Rs. 10/- each.

6. The Transferor Company No. 2/Applicant Company No. 2 is engaged on the business as buyer, seller, trader, distributors, marketing, dealers, agent, stockist, commission agent, merchant of fast moving consumer goods of international repute particularly in cosmetics, perfumes, soap, essences, lotions, creams, powers, toot paster, deodorants and also act as a indenters, distributors, packers of all kinds of computer, computer stationery, rubberised cloth, paper and pulp, food grains, dairy products, soap detergents and detergents chemical, confectioners, surgical, diagnostic medical pulses, leather and leather goods, iron and steel, jute and jute products, textile cotton, leather goods, iron and steel, jute and jute products, textile cotton, synthetic fibre, silk, readymade garments,

design materials, wood and wood products timber, cosmetic stationery tools and hardware, plastics, rubber and rubber products, fertilizers, agriculture, fruit products, industrial products, computer data materials paints, alcohol, liquor, edible and non-edible oils and fats, drugs, plant and machinery, engineering goods, office equipments, hospital equipments medicines, automobile parts, electric and electronics components, toys, consumer products and all other kinds of goods and merchandise, modalities and articles of consumptions of all kinds setting up of departmental stores.

7. It is submitted that the Transferor Company No. 3/Applicant Company No. 3 i.e., M/s Om Metals Hydroprojects Private Limited was incorporated on 16th November, 2007, under the provisions of the Companies Act, 1956 bearing CIN: U29130DL2007PTC387523. Its registered office was Jammu & Kashmir. Thereafter, registered office was shifted from Jammu & Kashmir to New Delhi and new certificate of incorporation was issued by ROC, NCT of Delhi on 30th September, 2021. At present, the Applicant Company No. 3 having its registered office at 506, DLF Place, Office Block, Saket, New Delhi-110017. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company/Applicant Company No. 3 is Rs. 1,00,000 divided into 10,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 1,00,000 divided into 10,000 Equity Shares of Rs. 10/- each.

8. The Transferor Company No. 3/Applicant Company No. 3 is engaged on the business of manufactures, processors, drawers, rerollers, convertors, enamellers, galvanisers, electroplates, andoisers, plate markers, importers, exporters, buyers, sellers, stockists, distributors and/or otherwise dealer of all types of aluminium products including wires, cables strips, sheets, tubes, rods, formed sections manufactured by extrusion or otherwise and also product made of copper, brass, bronze, zinc, lead, tin, iron and steel, stainless steel and of all other ferrous and non -ferrous metals, its alloys and to buy, sell, import, export, manufacture, process, repair, convert, take on lease or on hire, let on hire act as agents, distributors or otherwise deal in such products, their raw materials, stores packing materials, by products, and allied commodities, machineries, rolling stock, tools and for this purpose to acquire all or any of the assets, liabilities, rights and benefits of Messer's, Rajasthan Metals a partnership firm of Jaipur.

9. It is submitted that the Transferor Company No. 4/Applicant Company No. 4 i.e., M/s Ativeer Furnishings Private Limited was incorporated on 25th May, 2006, under the provisions of the Companies Act, 1956 bearing CIN: U36993DL2006PTC149153, having its registered office at M-22, First Floor, Mandir Marg, Saket, New Delhi-110017. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company No. 4/ Applicant Company No. 4 is Rs. 1,00,000 divided into 10,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 1,00,000 divided into 10,000 Equity Shares of Rs. 10/- each.

10. The Transferor Company No. 4/Applicant Company No. 4 is in business of manufacture, purchase, sale, import, export, device, design, lease or take on lease, exchange or otherwise deal in all kinds of furnishing for houses, bungalows, shops and other buildings.

11. It is submitted that the Transferor Company No. 5/Applicant Company No. 5 i.e., M/s Prasit Dealers Private Limited was incorporated on 6th August, 2013, under the provisions of the Companies Act, 1956 bearing CIN: U51909DL2013PTC388551. Its registered office was at Maharashtra. Thereafter, registered office was shifted from Maharashtra to New Delhi and new certificate of incorporation was issued by ROC, NCT of Delhi on 21st October, 2021. At present the Applicant Company No. 5 having its registered office at 506, DLF Place, Office Block, Saket, New Delhi-110017. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company No. 5/Applicant Company No. 5 is Rs. 1,00,000 divided into 10,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 1,00,000 divided into 10,000 Equity Shares of Rs. 10/- each.

12. The Transferor Company No. 5/Applicant Company No. 5 is engaged on business as brokers and traders in all agricultural and non-agricultural, commodities and its derivatives, and to act as market makers, underwriters, sub-underwriters, warehouse and providers of various services in relation to these commodities.

13. It is submitted that the Transferor Company No. 6/Applicant Company No. 6 i.e., M/s Plantx Natural Private Limited was incorporated on 29th June, 2015, under the provisions of the Companies Act, 2013 bearing CIN: U11100DL2015PTC282092, having its registered office at C-1/4, First Floor, Sainik Farm, Lane-1, Khanpur New Delhi-110062. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company No. 6/Applicant Company No. 6 is Rs. 1,00,000 divided into 10,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 1,00,000 divided into 10,000 Equity Shares of Rs. 10/- each.

14. The Transferor Company No. 6/Applicant Company No. 6 is engaged on the business of providing consultancy, supplying manpower and other allied consultancy services to the management of Oil and 6-as companies and also to provide service of rope access training schools to train technicians and act a advisors and consultant on all matters and problems relating to technology, engineering in respect of oil and gas industry and to advice in matters relating to setting of new projects, Marketing, Management suggesting cost reduction programmes, improvement/expansion of all the existing projects & to deal in industrial equip-tent, provide all types of engineering services to oil and gas Industries and to give consultancy to other companies, for procurement of industry & to deal in Oil and Gas Equipment.

15. It is submitted that the Transferee Company/Applicant Company No. 7 i.e., M/

s Om Metals Ratnakar Private Limited was incorporated on 30th March, 2007, under the provisions of the Companies Act, 1956 bearing CIN: U61100DL2007PTC388968. Its registered office was at Rajasthan. Thereafter, registered office was shifted from Rajasthan to New Delhi and new certificate of incorporation was issued by ROC, NCT of Delhi on 26th October, 2021. At present, the Transferee Company having its registered office at 506, DLF Place, Office Block, Saket, New Delhi-110017. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferee Company/Applicant Company No. 7 is Rs. 5,00,000 divided into 50,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Capital is Rs. 1,00,000 divided into 10,000 Equity Shares of Rs. 10/- each.

16. The Transferee Company is engaged on business of developing, running, managing, take on lease port, dry port, jetty, including developing infrastructure facility for and at port, cargo handling, custom clearance, loading and unloading of ships, parking space for ships, and all other activities related to running port.

17. The Transferor Company No. 1 to 6 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 balance sheet and Profit and Loss Account for the Financial Year 31.03.2022.

18. The Board of Directors of all Applicant Companies i.e., Transferor Company No. 1 to 6 and Transferee Company, have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of respective board resolutions dated 02.01.2023 passed in the said board meetings have been placed on record.

19. All the applicant companies, i.e., the Transferor Company No. 1 to 6 and Transferee Company have annexed the certificate issued by the respective statutory auditors clearing the compliance of Section 133 for accounting standards by the respective company.

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

a) It is having 4 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application.

b) It is further represented that the Company has no Secured Creditors but having one Unsecured Creditor. Certificate from Chartered Accountants certifying list of Unsecured Creditor is annexed and Unsecured Creditor has given its respective consents by way of affidavit which is placed on record.

c) In relation to the Shareholders and Unsecured Creditor, it seeks dispensing with convening/holding the meetings as consent of all shareholders are placed on record. Since there are no secured creditor, therefore the necessity of convening and holding their meeting does not arise.

21. With respect to the Transferor Company No. 2, it is stated:

a) It is having 6 Shareholders and Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application.

b) It is further represented that the Company has no Secured Creditor and but having Unsecured Creditor. Certificate from Chartered Accountants certifying list of unsecured creditor is annexed and said unsecured creditor has given its respective consents by way of affidavit which is placed on record.

c) In relation to the Shareholders and Unsecured Creditor, it seeks dispensing with convening/holding the meetings as consent of all shareholders and unsecured creditor are placed on record. Since there are no secured creditor, therefore the necessity of convening and holding their meeting does not arise.

22. With respect to the Transferor Company No. 3, it is stated:

a) It is having 5 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application.

b) It is further represented that the Company has no Secured Creditor and Unsecured Creditor, since there is no secured creditor and unsecured creditor, therefore the necessity of convening and holding a meeting does not arise.

c) In relation to the Shareholders, it seeks dispensing with convening/holding the meetings as consent of all shareholders are placed on record.

23. With respect to the Transferor Company No. 4, it is stated:

a) It is having 4 Shareholders. Certificate from Chartered Accountant certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application.

b) It is further represented that the Company has no Secured Creditor but having 2 Unsecured Creditor. Certificate from Chartered Accountant certifying list of creditors is annexed and all of them have given their respective consents by way of affidavits which is placed on record.

c) In relation to the Shareholders and unsecured creditors, it seeks dispensing with convening/holding the meetings as consent of all shareholders and unsecured creditors are placed on record. Since there are no secured creditor, therefore the necessity of convening and holding their meeting does not arise.

24. With respect to the Transferor Company No. 5, it is stated:

a) It is having 2 Shareholders. Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application.

b) It is further represented that the Company has no Secured Creditor and Unsecured Creditor. Since there is no secured creditor and unsecured creditor, therefore the necessity of convening and holding their meeting does not arise.

c) In relation to the Shareholders, it seeks dispensing with convening/holding the meetings as consent of all shareholders are placed on record.

25. With respect to the Transferor Company No. 6, it is stated:

a) It is having 2 Shareholders. Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application.

b) It is further represented that the Company has no Secured Creditor but having 1 Unsecured Creditor. Certificate from Chartered Accountants certifying list of unsecured creditor is annexed and unsecured creditor has given their respective consents by way of affidavits which is placed on record.

c) In relation to the Shareholders and Unsecured creditor, it seeks dispensing with convening/holding the meetings as consent of all shareholders and unsecured creditors are placed on record. Since there are no secured creditor, therefore the necessity of convening and holding their meeting does not arise.

26. With respect to the Transferee Company, it is stated:

a) It is having 6 Shareholders. Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application.

b) It is further represented that the Company has no Secured Creditor but having 2 Unsecured Creditors. Certificate from Chartered Accountants certifying list of unsecured creditors is annexed and all of them have given their respective consents by way of affidavits which is placed on record.

c) In relation to the Shareholders and Unsecured creditor, it seeks dispensing with convening/holding the meetings as consent of all shareholders and unsecured creditors are placed on record. Since there are no secured creditor, therefore the necessity of convening and holding their meeting does not arise.

27. The Applicant Companies submit that the proposed scheme of amalgamation of the Transferor Company and Transferee Company would have the following benefits: -

a) Achieving business and administrative synergies.

b) Cost savings due to reduction in overhead and other expenses, consolidation and simplification of the group structure and simplification of business processes.

c) Improved organizational capability arising from pooling of financial resources

d) Avoiding duplication of costs of administrative, distribution, selling and marketing and reduction in legal and regulatory compliances.

28. The appointed date as specified in the Scheme is 1st April 2022 or such other date as may be approved by the Tribunal.

29. The Applicant Companies have stated that no investigation and or proceedings are pending under the Companies Act, 2013 and/or the Companies Act, 1956 against the Applicant Companies.

30. Taking into consideration the submissions and the documents filed therewith, the following directions are issued forthwith in respect of convening/holding or dispensing with the meetings of the Shareholders, Secured and Unsecured Creditors as well as issue of notices including by way of paper publication as follows:

A. In relation to the Transferor Company No. 1:

a) With respect to Equity Shareholders: In view of consent affidavits, from all the 4 Equity Shareholders having 100% voting share of the company 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, from all the 1 Unsecured Creditors having 100% voting share of the company convening/ holding the meeting of shareholders is dispensed with.

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

a) With respect to Equity Shareholders: In view of consent affidavits, from all the 6 Equity Shareholders having 100% voting share of the company 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, from all the 1 Unsecured Creditors having 100% voting share of the company convening/ holding the meeting of shareholders is dispensed with.

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

a) With respect to Equity Shareholders: In view of consent affidavits, from all the 5 Equity Shareholders having 100% voting share of the company 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: Since there are no Unsecured Creditors, therefore the necessity of convening/holding a meeting does not arise.

D. In relation to the Transferor Company No. 4:

a) With respect to Equity Shareholders: In view of consent affidavits, from all the 4 Equity Shareholders having 100% voting share of the company 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, from all the 2 Unsecured Creditors having 100% voting share of the company convening/ holding the meeting of shareholders is dispensed with.

E. In relation to the Transferor Company No. 5:

a) With respect to Equity Shareholders: In view of consent affidavits, from all the 2 Equity Shareholders having 100% voting share of the company 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: Since there are no Unsecured Creditors, therefore the necessity of convening/holding a meeting does not arise.

F. In relation to the Transferor Company No. 6:

a) With respect to Equity Shareholders: In view of consent affidavits, from all the 2 Equity Shareholders having 100% voting share of the company 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, from all the 1 Unsecured Creditors having 100% voting share of the company convening/ holding the meeting of shareholders is dispensed with.

G. In relation to the Transferee Company:

a) With respect to Equity Shareholders: In view of consent affidavits, from all the 6 Equity Shareholders having 100% voting share of the company 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, from all the 2 Unsecured Creditors having 100% voting share of the company convening/ holding the meeting of shareholders is dispensed with.

31. 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. Any other sectoral regulators required to be served.

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

