(2023) 03 NCLT CK 0024

In the National Company Law Tribunal

Case No : C.P. (CAA) No. 77/ KB /2022 Connected with C.A. (CAA) No. 212/ KB /2021

S.K. Yarns Private Limited & Ors Vs

Date of Decision : 01-03-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(1), 230(6), 232, 232(3), 232(3)(i)

Citation : (2023) 03 NCLT CK 0024

Hon'ble Judges : Bidisha Banerjee, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Gopal Kumar Khetan, Chennakeshava

Final Decision : Disposed Of

Judgement

Bidisha Banerjee, Member (Judicial):

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") for sanction of the Scheme of Arrangement of S.K. Yarns Private Limited, being the Applicant No. 1 above named ("Demerged Company" or "Applicant No. 1") will be Demerged by transferring and vesting of the same in SKAK Textile Private Limited, being the Applicant No. 2 above named ("Resulting Company" or "Applicant No. 2") and their respective shareholders and creditors. The Scheme provides for the demerger from the Appointed Date, viz. 01st day of April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Arrangement for Demerger.

2. The Petition has now come up for final hearing. The Counsel for the Applicants submits as follows:

(a) The Scheme was approved unanimously by the respective Board of Directors of the Applicant Companies at their meetings held on the 11th day of April, 2022.

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

i. The Demerged Company and Resulting Company are engaged in different kind of business.

ii. The Scheme of Arrangement for Demerger has been proposed to concentrate on the business to create a more competitive business both in terms of scale and operations. The Resulting Companies would develop combined long term corporate strategies and financial policies, thus enabling better management and accelerated growth of the business.

iii. The said Scheme provide scope for independent collaboration, consolidation and expansion of activities of the respective undertaking of the Demerged Company.

iv. The said Scheme leads to better flexibility in accessing capital, focused strategy and specialization for sustained growth.

v. The Scheme of Arrangement for Demerger will enable the Demerged Company for creating value for all stakeholders including the shareholders.

(c) The Statutory Auditors of the Demerged Company and the Resulting Companies have by their certificates dated 26th day of November, 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) The exchange ratio of shares in consideration of the demerger has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr. Vikash Goel, Registered Valuer.

(e) The shares of none of the Petitioner Companies are listed on any Stock Exchange(s).

(f) By an order dated 21st March, 2022 in Company Application (CAA) No. 212/ KB/2021, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:

(a) Meeting dispensed:

Meeting of Equity Shareholders, Secured Creditors, Unsecured Creditors/ Liability Holders of the Applicant Company No. 1 and Meeting of Equity Shareholders, Unsecured Creditors/Liability Holders of the Applicant Company No. 2 are dispensed with under Section 230(1) read with Section 232(1) of the Act and in view of all such Equity Shareholders, Secured Creditors and Unsecured Creditors/ Liability Holders having respectively given their consent to the Scheme by way of affidavits.

(b) No requirement of Meetings:

NIL Secured Creditors of Applicant Company No. 2 as verified by auditor’s certificate.

(c) Meetings to be held:

No meeting is required to be held.

(g) Consequently, the Applicant(s) presented the instant petition for sanction of the Scheme. By an Order dated 27th June, 2022, the instant petition was admitted by this Tribunal and fixed for hearing on the 19th day of January, 2023 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of the date of hearing. In compliance with the said order, the Petitioner(s) have duly served such notices on the:

SERVICE MADE TO

MODE OF

SERVICE

DATE OF

SERVICE

REFERENCE

Regional Director,

Eastern Region, Kolkata

Hand

Delivery

22-07-2022

Annexure-A

Registrar of Companies,

West Bengal

Hand

Delivery

22-07-2022

Annexure-B

Official Liquidator, High

Court, Calcutta

Hand

Delivery

22-07-2022

Annexure-C

Income Tax Officer -

Ward 9(1)

Hand Delivery

22-07-2022

Annexure-D

Income Tax Officer -

Ward 11(1)

Chief Commissioner of

Income Tax, Kol- 1

Hand

Delivery

22-07-2022

Annexure-E

The Applicant(s) have also published advertisements in two newspapers viz. “Financial Express” and “Aajkaal” on 19-07-2022. An affidavit of service in this regard has also been filed by them on 02-08-2022.

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

3. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata and the Official Liquidator, High Court, Kolkata have filed their representations before this Tribunal.

4. The Official Liquidator has also filed a Report on August 03, 2022 wherein it has been stated that on the basis of the information submitted by the Applicants Companies, the Official Liquidator is of the view that :

“the affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interests of its members or to public interest as per the provisions of the Companies Act, 2013. Further, the Official Liquidator stated that the Tribunal may be pleased to pass such further order or orders as may be deem fit and proper in the matter’.

5. The Regional Director, Eastern Region, Ministry of Corporate Affairs (MCA), Kolkata vide his affidavit filed on October 31, 2022 has reported certain observations in respect whereof the Petitioner Companies have filed their rejoinder dated November 01, 2022. The said observations and the reply thereof

is given underneath:-

Paragraph 2(a) of the Regional Director's Affidavit:

It is submitted that as per available records, it appears that no complaint and/ or representation regarding the proposed Scheme of Arrangement (Demerger) has been received against the Petitioner Companies. Further both the Petitioner Companies are updated in filing their statutory returns for the year ended on 31-03-2021.

Paragraph 3(a) of the Rejoinder:

Since the statements made in Para 2(a) of the Regional Director's Affidavit are general statements, hence no comments are required to the said statements.

Paragraph 2(b) of the Regional Director's Affidavit:

The Petitioner Companies should provide list/details of Assets, to be demerged/ transferred from the Demerged/Transferor Company to the Resulting/Transferee Company upon sanctioning of the proposed scheme.

Paragraph 3(b) of the Rejoinder:

The list/ details of Assets to be demerged/transferred from the Demerged/ Transferor Company to the Resulting/Transferee Company upon sanctioning of the proposed Scheme of Arrangement (Demerger) is enclosed with the rejoinder vide "ANNEXURE - A".

Paragraph 2(c) of the Regional Director's Affidavit:

It is submitted that in the Scheme attached with the Company Petition, in Clause I of Part-IV of the scheme, it is stated in sub-clause (b) that the share entitlement ratio shall be 41:10. But it then stated in same sub-clause that 20,47,950 equity shares of the resulting company of face value Rs. 10/- shall be issued and allotted to the shareholders of the demerged company for every 100 equity shares of the demerged company having face value of Rs. 10/- each. Then again in sub-clause (c) it is stated, "in aggregate", the resulting company shall issue and allot 20,47,950 equity shares having face value of Rs. 10/- each fully paid up.

However, by a subsequent communication along with an affidavit duly affirmed, the Petitioner Companies stated that the instant affidavit is being filed to make certain deletion and substitution to the Scheme of Arrangement (Demerger) between S.K. Yarns Private Limited and SKAK Textile Private Limited and accordingly it is stated that the Paragraph 2 of Clause 1(b) of Part IV of the said Scheme titled "Payment of Consideration for the Demerged Undertaking and the Relevant Accounting Treatment shall be deleted and constituted with the following paragraph:

Therefore, 20,47,950 Equity Shares of Resulting Company having a face value of Rs. 10/- each shall be issued and allotted to the shareholders of the Demerged

Company. Resulting Company will issue 41 Equity Shares having face value of Rs. 10/- each for every 10 Equity shares of the Demerged Company having a face value of Rs. 10/-each, held by the shareholders of the Demerged Company as of record date.

Paragraph 3(c) of the Rejoinder:

Since there were one typographical error in the Scheme of Arrangement (Demerger) which has been rectified and has been filed by way of an affidavit before the Hon'ble National Company Law Tribunal, Kolkata Bench on 27-10-2022 and same has been (corrected) also mentioned by the Regional Director office.

Paragraph 2(d) of the Regional Director's Affidavit:

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

Paragraph 3(d) of the Rejoinder:

The Petitioner Company undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013.

Paragraph 2(e) of the Regional Director's Affidavit:

The Transferee Company/Resulting Company should be directed to pay applicable stamp duty on the demerger/transfer of the immovable properties from the Demerged/Transferor Company to it.

Paragraph 3(e) of the Rejoinder:

The Petitioner state that the Transferee Company/Resulting Company shall, if applicable, pay the applicable stamp duty on transfer of the immovable properties from the Transferor Company to it.

Paragraph 2(f) of the Regional Director's Affidavit:

The Petitioner 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 3(f) of the Rejoinder:

The Petitioner states that the Scheme enclosed to the Company Application and Company Petition are one and the same and that there is no discrepancy or no change is made.

Paragraph 2(g) of the Regional Director's Affidavit:

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 29/07/2022 with a request to forward their comments/observations/objections.

However, the said report of the authority is still awaited

Paragraph 3(g) of the Rejoinder:

Since the statements made in Para 2(g) of the Regional Director's affidavit are general statements, hence no comments are required to the said statements.

6. Heard the submissions made by the Ld. Counsel appearing for the Petitioner, Authorized Person from the office of the Regional Director, MCA. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

a. The Scheme of Arrangement for Demerger mentioned in Paragraph 1 of the Petition, being Annexure "A" is hereby sanctioned by this Tribunal with the Appointed Date fixed as 01st April, 2021 ("Appointed Date") and the same shall be binding on S.K. Yarns Private Limited, being the Applicant No. 1 above named ("Demerged Company" or "Applicant No. 1") and SKAK Textile Private Limited, being the Applicant No. 2 above named ("Resulting Company" or "Applicant No. 2") and their respective shareholders and creditors and all concerned;

b. All the property, rights and interest of Polyester Yarn Division of the Demerged Company be transferred to and vested in without further act or deed in SKAK Textile Private Limited, being the Resulting Company and accordingly the same shall pursuant to the provisions of Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in SKAK Textile Private Limited;

c. All debts, liabilities, duties and obligations in relation to Polyester Yarn Division of the Demerged Company be transferred to without any further act or deed to SKAK Textile Private Limited, being the Resulting Company and the same shall pursuant to the provisions of Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in SKAK Textile Private Limited;

d. All proceedings and/or suits and/or appeals including any proceedings under IT Act, now pending or contemplated by or against the Demerged Company be continued by or against the Resulting Companies, as provided in the Scheme, for which all the necessary records shall be preserved by the Resulting company till the culmination of such proceedings.

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

f. Leave is granted to the Applicant(s) to file the Schedule of Assets & liabilities of the Resulting 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;

g. The Demerged Company and the Resulting Companies 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 (Effective date).

7. The Applicant(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, after verification, to the certified copy of the order.

8. Company Petition being C.P. (CAA) No. 77/KB/2022 is disposed of accordingly.

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

