(2022) 05 NCLT CK 0026

In the National Company Law Tribunal

Case No : CP (CAA) No.21/Chd/Hry/2021

Slocum Healthcare Private Limited Vs

Date of Decision : 10-05-2022

Acts Referred:
Companies Act, 2013 — Section 133, 230, 230(4), 232, 232(3)(i)

Citation : (2022) 05 NCLT CK 0026

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Rohit Khanna, Tejender Joshi

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a second motion application filed by Petitioner Company namely; Vama Sundari Investments (Delhi) Private Limited (Transferee Company/Petitioner Company) in relation to the Scheme of Amalgamation between Slocum Healthcare Private Limited (Transferor Company No.1/Non-Petitioner Company No.1), HCL Investments and Finance Private Limited (Transferor Company No.2/ Non-Petitioner Company No.2) and Vama Sundari Investments (Delhi) Private Limited (Transferee Company/Petitioner Company) under Section 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules).

2. The Petitioner Company has prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is attached as Annexure A-1 of the application.

3. The registered office of the Transferee Company/Petitioner Company is situated in the State of Haryana and the registered office of Transferor Company No.1/Non-Petitioner Company No.1 and Transferor Company No.2/Non-Petitioner Company No.2 is situated in New Delhi. Therefore, the jurisdiction of Transferee

Company/Petitioner Company lies with this Bench.

4. The Petitioner Company has filed first motion application bearing CA (CAA) No.47/Chd/Hry/2020 before this Tribunal for seeking directions for dispensing with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company. The first motion application was disposed of by order dated 06.08.2021, with directions to dispense with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company for the reasons mentioned in the aforesaid orders.

5. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme had been discussed in detail in the order dated 06.08.2021.

6. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 18.11.2021 and the same were compiled by filing an affidavit of compliance by diary No.01031/3 dated 13.01.2022. The notice of hearing was published in "Business Standard" (English) Delhi NCR Edition and "Business Standard" (Hindi) Delhi NCR Edition on 09.12.2021. The original copies of the newspapers are attached as Annexure-2 of the aforesaid affidavit. It has also stated in the affidavit that copies of notices were served upon the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (b) Registrar of Companies, NCT of Delhi and Haryana; (c) the Official Liquidator (attached to Punjab and Haryana High Court; and (d) the jurisdictional Income Tax Department, and (e) Reserve Bank of India by way of speed post. Copy of speed post receipts of the notices are attached as Annexure-3 of the aforesaid affidavit.

7. It is also deposed by the authorised signatories of the petitioner companies that the petitioner company has not received any objection under sub-Section (4) of Section 230 of the Companies Act, 2013. The aforesaid affidavits are filed by Diary No. 01031/3 dated 13.01.2022.

8. In response to the abovementioned notices, the statutory authorities have furnished their replies.

8.1 Registrar of Companies (RoC)/Regional Director (RD)

The Registrar of Companies (RoC) has along with the report of the Regional Director (RD) has been attached as Annexure - A of diary No.01031/2 dated 28.02.2022. The R.D. in its report has observed that as per Para 32 of the report of RoC, Delhi, dated 25.06.2021, the following observations have been made:-

"Refer to clause 17 of the Scheme, the Transferee Company shall comply with Section 232(3)(i) of the Companies Act, 2013 and pay the difference fee on consolidated authorized share capital of Transferee Company, after setting off the fee already paid by the Transferor Companies on their respective and authorized share capital."

8.2 In response to the Report of RoC/RD, the Petitioner Companies have filed response by Diary No.01031/5 dated 03/03/2022 wherein the Petitioner Company undertakes that "it shall comply with the provisions of Section 232(3(i) of the Companies Act, 2013 and shall pay the applicable fee, if any, post the consolidation of the authorized share capital of the Transferor Companies with the authorized share capital of the Transferee Company after setting off the fee already paid by the Transferor Companies".

Thus, the observations of RD/RoC in respect of the petitioner Company stand satisfied.

8.3 Official Liquidator

Notices were also issued to the Official Liquidator and the original postal receipts are attached as Annexure -4 of Diary No.01031/3 dated 13.01.2022. However, there is no reply from the concerned authorities till now. Considering the lapse of time in the matter, it is presumed that there is no objection to the proposed Scheme of Amalgamation. Moreover, in this matter, the petitioner company is a transferee company and will continue to exist after the sanctioning of the Scheme of Amalgamation. Therefore, there is no requirement of Official Liquidator in the present case.

8.4 Income Tax Department

Notices were also issued to the Income Tax Department and the original postal receipts are attached by the Applicant as Annexure-4 of Diary No.01031/3 dated 13.01.2022. It is further observed that there is no reply from the Income Tax Authorities till now, despite service of notices to the department. Considering the lapse of time, it is presumed that there is no objection from the concerned department to the proposed Scheme of Amalgamation. It is stated that the petitioner company will continue to exist even after the proposed amalgamation. it is further submitted that as per Clause 14.1 of the Scheme that "Any tax liabilities under the Income-tax Act, 1961, Customs Act, 1962, State Sales Tax Laws, Central Sales Tax Act, 1956, Central Excise Act, 1944, Service Tax laws or other applicable laws/regulations dealing with taxes/duties/levies (hereinafter in this Clause referred to as "Tax Laws") allocable or related to the business of the Transferor Companies to the extent not provided for or covered by tax provision in the accounts made as on the date immediately preceding the Appointed Date shall be transferred to the Transferee Company. Any surplus in the provision for taxation/duties/levies account including advance tax, withholding tax, service tax and any tax credit entitlements as on the date immediately proceeding the Appointed Date will also be transferred to the account of the Transferee Company. Any refund under the Tax Laws due to the Transferor Companies consequent to the assessments made on the Transferor Companies and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received by the Transferee Company."

It is noted that the Income Tax Department is at liberty to take actions as per the relevant provisions of the Income Tax Act and the Scheme takes care of the liabilities of the Petitioner Company towards Income Tax Department.

8.5 Reserve Bank of India

Notices were also issued to the Reserve Bank of India and the original postal receipts are part of Diary No.Diary No.01031/3 dated 13.01.2022. The Petitioner Company has attached no objection certificate in respect to the proposed Scheme of Amalgamation which is attached as Annexure A-2 of the Diary No.00322 dated 02.03.2022. Thus, in view of the aforesaid no objection certificate and considering that there is no response from the Reserve Bank of India, it is presumed that there is no objection from the Reserve Bank of India.

9. The certificate of the Statutory Auditors with respect to the Scheme between Applicant-Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles was filed as Annexure-5 of Diary No.01031/3 dated 13.01.2022.

10. The petitioner company has submitted that Hon'ble National Company Law Tribunal, New Delhi Principal Bench has passed an order dated 24.12.2021 approving the Scheme of Amalgamation for the Transferor Companies. The order dated 24.12.2021 is attached as Annexure A-3 of Diary No.00322 dated 02.03.2022.

11. We have heard the learned Counsel for petitioner companies and learned Senior Standing Counsel for the Income Tax Department and perused the record carefully.

12. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. In the absence of any objections before us and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the scheme of amalgamation appended as Annexure "A-1" with the company petition in respect of the Petitioner Company.

13. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal 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.

14. While approving the scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

(i) That all the property, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same;

(ii) That 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 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;

(iii) That the Appointed Date for the scheme shall be 01.04.2020 as specified in the scheme;

(iv) That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;

(v) That the employees of the Transferor Companies shall be transferred to the Transferee Company in terms of the 'Scheme';

(vi) That the fee, if any, paid by the Transferor Companies on its 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';

(vii) That the Transferee Company shall file the revised memorandum and articles of association with the Registrar of Companies, N.C.T. of Delhi & Haryana and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;

(viii) That the Petitioner Company shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Companies and Transferee Company shall be consolidated accordingly, as the case may be;

(ix) That the Transferee Company shall deposit an amount of ☐ 1,00,000/- (Rupees One Lakh Only) to be paid in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi ” and ☐ 50,000/- (Rupees Fifty Thousand Only) in favour of "The Company Law Tribunal Bar Association" Chandigarh within a period of four weeks from the date of receipt of the certified copy of this order;

15. As per the aforesaid directions, Form No. CAA-7 of Companies

(Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioners to the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order.

16. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.

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

18. The Company Petition CP (CAA) No.21/Chd/Hry/2021 is disposed of accordingly.

