(2023) 10 NCLT CK 0078

In the National Company Law Tribunal

Case No : C.P.(CAA)/42(MB)/2023 Connected with C.A.(CAA)/253(MB)/2022

Snowcem India Private Limited Vs

Date of Decision : 26-10-2023

Acts Referred:
Companies Act, 2013 — Section 90, 230, 230(1), 230(3), 230(5), 230(7), 230(6), 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B)
Reserve Bank of India Act, 1934 — Section 45IA

Citation : (2023) 10 NCLT CK 0078

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah

Final Decision : Disposed Of

Judgement

Anil Raj Chellan, Member (Technical)

1. The Bench is conveyed by Physical hearing today.

2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme of Amalgamation and nor has any party controverted any averments made in the Petitions to the said Scheme.

3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of SNOWCEM INDIA PRIVATE LIMITED, the Transferor Company 1 and DRYCHEM BUSINESS SOLUTIONS PRIVATE LIMITED, the Transferor Company 2 with MIRAJ DRYMIX PRIVATE LIMITED, the Transferee Company.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 3 May 2022 which are annexed to the Company Scheme Petition.

5. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Company Scheme Petition have been filed in consonance with the Order

passed in the Company Scheme Application No. 253 of 2022 of the Hon'ble Tribunal.

6. The Learned Advocate appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

7. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company was incorporated to engaged in inter-alia the business of manufacturers and dealer in all kinds of paints, admixtures and building construction material Wall putty and all kind of cement based plaster products for walls internal and ceilings including plasters of all other varieties and that the Second Petitioner Company was incorporated to engaged in inter-alia the business of manufacturing whether manual or mechanized, marketing, supplying, trading, exporting and importing and application of all kinds of cement based plaster products for walls internal and ceilings including plasters of all other varieties and that the Third Petitioner Company is engaged in the business of manufacturing whether manual or mechanized, marketing, supplying, trading, exporting and importing and application of all kinds of cement-based plaster products for walls internal and ceilings including plasters of all varieties.

8. The rationale and benefits for the Scheme of Amalgamation of the Petitioner Companies is:

RATIONALE FOR THE PROPOSED SCHEME

All the companies involved in the Scheme are part of the same group of companies. It is desired to consolidate the undertakings of the Transferor Companies under a single entity i.e., the Transferee Company. Accordingly, it is proposed to consolidate the operations of the Transferor Companies with the Transferee Company by way of amalgamation. The aforesaid Scheme of Amalgamation would inter alia have the following benefits:

– Reduction in number of entities within the group;

– Simplification of group structure;

– Reduction in administrative inefficiencies and overheads resulting in cost savings.

9. The Regional Director has filed his Report dated 22 June 2023 praying that this Tribunal may dispose the case as it deem fit, considering the submissions made in paragraph 2 (a) to (g) of the Report. In response to the observation made by the Regional Director, the Petitioner Companies have also given necessary undertakings/ clarification vide their rejoinder affidavit dated 31 July 2023. The observations made by the Regional Director and the clarifications/ undertakings given by the Petitioner Companies are summarized in the table

below:

Para

Observation by the Regional Director

Undertaking of the Petitioner

Company/ Rejoinder

2(a)

In compliance of AS-14 (IND AS- 103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.

So far as the observation in paragraph 2(a) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5, as applicable.

2(b)

As per Definition of the Scheme, "Appointed Date" means 1st April, 2022, or such other date as may be fixed by the NCLT or such other competent authority as may be applicable;

And

"Effective Date" means the date on which the certified copies of the Orders sanctioning this Scheme of Amalgamation, passed by the National Company Law Tribunal ("NCLT"), Mumbai Bench or such other competent authority, as may be applicable, are filed with the Registrar of Companies, Mumbai by

the Transferor Companies and the Transferee Company. Any references in this Scheme to "upon this Scheme becoming effective" or “upon coming into effect of this Scheme" or "upon the Scheme coming into effect” shall be construed to be a reference to the Effective Date;

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon’ble Tribunal taking into account its inherent powers.

The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 712/2019/CL-I dated 21.08.2019

issued by the Ministry of Corporate Affairs.

So far as the observation in paragraph 2(b) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Appointed Date is 1st April 2022 in accordance with the Scheme. The Petitioner Companies further submits that they will comply with the requirements as to Appointed Date and Effective Date, as clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

2(c)

Petitioner Company have to

undertake to comply with section 232(3)(i) of Companies Act, 2013,

where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the

difference of fees and stamp duty.

So far as the observation in

paragraph 2(c) of the Report of the Regional Director is concerned, the

Petitioner Companies submits that the setting off of RoC fees paid by the First Petitioner Company and Second Petitioner Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013. The Petitioner Companies further submits that the Transferee Company shall pay the difference of RoC fees, if any.

2(d)

The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7

subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

So far as the observation in paragraph 2(d) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the meetings of the equity shareholders of the Petitioner Companies were dispensed with by the Hon'ble NCLT vide the Order dated 23rd December 2022. All the Equity Shareholders of the Petitioner

Companies have submitted consent affidavits consenting and giving their no- objection to the Scheme and the same have been placed before the Hon'ble NCLT along with the Company Scheme Application.

The Petitioner Companies further submits that the meetings of the Secured Creditors and Unsecured Creditors of the Transferee Company were dispensed with by the Hon'ble NCLT vide their Order dated 23rd December 2022 and there were no Secured Creditors and Unsecured Creditors in the First Petitioner Company and Second Petitioner Company. Pursuant, to the directions contained in the Order dated 23rd December 2023, the Petitioner Companies submits that the notices were served on all the Secured Creditors and Unsecured Creditors having value of INR 1,00,000/- or more of the Transferee

Company.

2(e)

The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regards, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;

So far as the observation in paragraph 2(e) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Transferee Company shall comply with provisions of Section 2(1B) of the Income-tax Act, 1961 and all the other provisions of the Income Tax Act and Rules &

Regulations thereunder.

2(f)

It is observed from latest MGT-7 for the year ending 31.03.2022 filed by the petitioner companies that

transferor company has following corporate body shareholders having

more than 10% shareholding but form Ben-2 has not been filed:-

So far as the observation in paragraph 2(f) of the Report of the Regional Director is concerned, the

Petitioner Companies submits that Form BEN-2 is not applicable to First Petitioner Company as the ultimate beneficial owners does not hold 51% or more of the shareholding of the First Petitioner Company through its Holding Company. The Petitioner Companies hereby undertake to comply with provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018, amended from time to time and make necessary filings with Registrar of Companies, if applicable, or comply with directions, if any issued by the concerned Registrar of Companies in this regard.

Name of the Comp

any

Name of the sharehol

der

Percentag e of sharehold

ing

Status of Ben- 2

SNOW CEM INDIA PRIV ATE LIMIT ED

(Transf eror Compa ny No.

1)

Miraj Drymix Pvt Ltd

100%

Not filed

Therefore, petitioner company nay be directed to clarify and comply with the sane as required u/s. 90 of the Companies Act, 2013 r.w. Companies (Significant Beneficial

Owners) Rules, 2018.

2(g)

That on examination of the report of the Registrar of Companies, Mumbai dated 24.03.2023 (Annexed as Annexure A-1) that all the Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and/ or representation

regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the petitioner companies have filed Financial Statements up to 31.03.2022 further observations in ROC report are as under:-

i. Form DPT-3 not by the Applicant Companies which is to be filed within 90 days from the end of the F.Y.

ii. Notices should be served to the Secured and Unsecured Creditors of the Transferee Company.

iii. As per the provisions of Section 230(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting- off the fees already paid by the transferor company on its authorized

capital, must be paid by the transferee company on the increased authorized capital subsequent to the amalgamation.

iv. Interest of the Creditors should be protected.

v. May be decided on its merit.

So far as the observation in paragraph 2(g) of the Report of the Regional Director is concerned, the Petitioner Companies submits that:

i. eForm DPT-3 is not applicable to the First Petitioner Company and the Second Petitioner

Company. Further, the Third Petitioner Company has filed Form DPT-3 vide SRN No. AA3182638 dated 28 June 2023. Enclosed herewith are the Form DPT-3 along with their challan copies of the Third Petitioner Company as Annexure A.

ii. The notices were served on all the Secured Creditors and Unsecured Creditors having value of INR 1,00,000/- or more of the Transferee Company in accordance with the directions of this Hon’ble Tribunal.

iii. The setting off of fees paid by the Transferor Companies on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013. The Petitioner Companies further submits that the Transferee Company shall pay the difference of RoC fees, if any payable after set-off of RoC Fees already paid by the Transferor Companies.

iv. the interest of creditors will be

protected, as a result of the Scheme, since the Scheme does not provide for arrangement with its Creditors

10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The Representative of the Regional Director has submitted that the explanations and clarifications given by the Petitioner Companies are found satisfactory and that they have no objection to the Scheme.

11. The Official Liquidator has filed his Report dated 16 August 2023 in the Company Scheme Petition No. 42 of 2023, inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner not prejudicial to the interest of the shareholders of the Transferor Companies and

that the Transferor Companies may be ordered to be dissolved by this Tribunal, considering the submissions made in paragraph 5 and 6 of the Report. In response to the observation made by the Official Liquidator, the Petitioner Companies have also given necessary undertakings/ clarification vide their affidavit dated 23 August 2023. The observations made by the Official Liquidator and the clarifications/ undertakings given by the Petitioner Companies are summarized in the table below:

Para

Observation by the Official

Liquidator

Undertaking of the Petitioner

Company/ Affidavit

5

From the Assets and Revenue of the

Snowcem India Private Limited (1st

So far

paragraph

as

5

the observation

of the Report of

in

the

Transferor Company) as at 31.03.2022 it appears to be a deemed NBFC. There may be applicability of provisions of Section 45-IA of Reserve Bank of India Act. Hon'ble Tribunal may require the Company to clarify on this.

Official Liquidator is concerned and the clarification sought therein, the Petitioner Companies hereby states and clarifies that the First Petitioner Company is not in the business of accepting loans and deposits except in the ordinary course of business from the group companies, which are in the nature of Inter-Corporate Deposits and the asset size of the First Petitioner Company is less than INR 100 crores. Accordingly, First Petitioner Company may be considered as Core Investment Company and not liable for registration, Hence, provisions of Section 45-IA of

Reserve Bank of India Act does not apply to First Petitioner Company.

6

With reference to clause No. 7.3 of the scheme it is stated that such clauses overrides the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-aha provides that, 'if a company is dissolved the fee paid by such company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital.

Accordingly, clause No. 7.3 may be

modified.

So far as the observation in paragraph 6 of the Report of the Official Liquidator is concerned, the Petitioner Companies submits that the setting off of RoC fees paid by the First Petitioner Company and Second Petitioner Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013. The Petitioner

Companies further submits that the Transferee Company shall pay the difference of RoC fees, if any.

12. The observations made by the Official Liquidator have been explained by the Petitioner Companies in Para 10 above. The Representative of the Official Liquidator has submitted that the explanations and clarifications given by the Petitioner Companies are found satisfactory and that they have no objection to the Scheme.

13. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 42 of 2023 is made absolute in terms of clauses 33 to 36 of the said Company Scheme Petition.

15. The First Petitioner Company and Second Petitioner Company be dissolved without winding up.

16. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.

17. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date

of receipt of the Order, if any.

18. All authorities concerned to act on a copy of this Order along with the Scheme of Amalgamation duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

19. The Appointed Date is 1 April 2022.

20. Ordered Accordingly.