
(2019) 08 NCLT CK 0029

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : Company Petition No. CAA-69 (PB) Of 2019

SPI Cinemas Private Limited

APPELLANT

Vs

PVR Limited

RESPONDENT

Date of Decision : 23-08-2019

Acts Referred:

Companies Act, 2013 — Section 133, 230, 231, 232, 232(3)(2)(i), 233, 234

Citation : (2019) 08 NCLT CK 0029

Hon'ble Judges : M.M. Kumar, CJ; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Deepak Diwan, Shailendra Singh, Vibhooti Malhotra, Ajinkya Tiwari, Chetna Khandpal, Amish Tondon

Final Decision : Disposed Of

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This Joint application has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme") has been placed on record.

2. The "Transferor Company", SPI Cinemas Private Limited was incorporated on 30.09.1991 under the provisions of companies Act 1956, having its registered office situated at 61, Basant Lok, Vasant Vihar, New Delhi.

3. The "Transferee Company", PVR Limited was incorporated on 26.04.1995 under the provisions of companies Act 1956, having its registered office situated at 61, Basant Lok, Vasant Vihar, New Delhi.

4. It is seen from the records that the First Motion application seeking dispensation/convening the meetings of Shareholders and Creditors of petitioner companies was filed before this Bench vide CA (CAA) No. 24 (PB) 2019 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders and Secured Creditors of the transferor company were dispensed with vide order dated 27.02.2019 passed by this Bench. In relation to the unsecured creditors of Transferor Company and equity shareholders, secured creditors and unsecured creditors of the transferee company, directions were issued in the same order for convening their respective meetings. Subsequently, the aforesaid meetings were duly held on 24.04.2019 wherein the proposed Scheme was unanimously approved by the members present and voting in the said meetings. The reports of the Chairperson and the scrutinizer in respect of the respective meetings have been placed on record.

5. Subsequently, on 08.05.2019 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Business Standard' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

6. It is seen from the records that the Petitioners have filed an affidavit dated 18.06.2019 affirming compliance of the order passed by the Tribunal dated 08.05.2019. A perusal of the affidavit discloses that the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 11.06.2019 as well as in 'Business Standard' Hindi edition again on 11.06.2019 in relation to the date of hearing of the petition.

7. Additionally, it is also confirmed in the same affidavit that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, Official Liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been placed on record.

8. The Regional Director has filed its representation dated 03.07.2019 in which no objection against the Scheme has been raised by the Regional Director/ Registrar of Companies. It is stated in the report that all the petitioner companies have filed their updated annual returns and balance sheet up to the year ending 31.03.2018 and there is no prosecution or technical scrutiny has been initiated/pending against the petitioner companies.

9. It is further submitted by the Regional Director that in reference to Clause 33 of the Scheme the transferee company should comply with the provisions of Section 232 (3) (2) (i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital.

10. In response to the aforesaid observation the transferee company has filed an undertaking vide affidavit dated 12.07.2019 affirming that the transferee

company will comply with the provisions of Section 232 (3) (2) (i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital. The observation raised by the Regional Director thus stands satisfied.

11. The Official Liquidator has filed its report dated 28.06.2019 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

12. The Department of Income Tax has also filed its report in respect of both the petitioner companies dated 30.01.2019 wherein it is stated that they have no objection against approval of the Scheme subject to protection of the interest of the Revenue.

13. Therefore, in order to protect the interest of the Revenue it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.

14. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

15. Certificates of respective Statutory auditors of both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

16. The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

17. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three Judges Bench of Hon'ble Supreme Court held that:

'A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.'

18. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

19. The petitioner companies have also filed affidavit on 06.07.2019 confirming that no objection has been received against the Scheme from any party or from any person interested in the Scheme in any manner.

20. It has also been affirmed in the petition that the Scheme is in the interest of the transferor company and the transferee company including their shareholders, creditors, employees and all concerned.

21. In view of the foregoing, upon considering the approval accorded by the members and creditors of both the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator; there appears to be no impediment in sanctioning the present Scheme.

22. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

23. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

24. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme 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.

25. While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

26. THIS TRIBUNAL DO FURTHER ORDER

i. That the Transferor Company shall stand dissolved without following the process of winding-up; and

ii. That all the property, rights and powers of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.

iii. That all the liabilities and duties of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the

liabilities and duties of the transferee company; and

iv. That all proceedings now pending by or against the Transferor Company, be continued by or against the transferee company; and

v. That all the employees of the Transferor Company in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the Transferor Company on the said date.

vi. That Petitioner companies shall within thirty days of the date of the 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 Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the transferee company and the files relating to both the petitioner companies shall be consolidated accordingly; and

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

The petition stands disposed of in the above terms. Let copy of the order be served to the parties.