(2020) 05 NCLT CK 0050

In the National Company Law Appellate Tribunal

Case No : Company Petition No. CAA-150/PB Of 2019, Company Application No. CAA-114/PB Of 2019

Spring Air Bedding Company (India) Limited — APPELLANT

Vs

Kurlon Enterprise Limited — RESPONDENT

Date of Decision : 05-05-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2020) 05 NCLT CK 0050

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : P. Nagesh, Afnaan Siddiqui, Suman Kumar Jha, Easha Kadian, Tania Sharma

Final Decision : Disposed Of

Judgement

B.S.V. Prakash Kumar, J

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

2. A perusal of the Petition discloses that initially the First Motion application seeking directions for calling and convening with the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Transferor Company was filed before this Bench vide Company Application (CAA) No. 114/PB/2019 and based on such application moved under Sections 230-232 of the Companies Act, 2013, the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Transferor Company were

directed to be convened with vide order dated 23.08.2019 read with order dated 20.09.2019 passed by this bench.

3. Thereafter, on 08.11.2019 the Petitioner was directed to carry out publication in the newspapers "Business Standard" (English, Delhi edition) and "Business Standard" (Hindi, Delhi edition). In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region), Official Liquidator, Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department.

4. It is seen from the records that the Petitioner Transferor Company has filed an affidavit dated 12.12.2019 affirming compliance of the order passed by the Tribunal dated 08.11.2019. A perusal of the affidavit discloses that the petitioner has effected the newspaper publication as directed in one issue of the "Business Standard" English edition as well as in "Business Standard" Hindi edition on 07.12.2019 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of the 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 enclosed.

5. It is pertinent to state here that Income Tax Department made the following observations:

"The Income Tax Department must be permitted to retain its recourse for recovery in respect of any existing or future tax liabilities of the Transferor Company, in respect of the assets sought to be transferred under the proposed scheme, and that this protection must be explicit by this Court in its final order and has to bind all the parties to the Scheme, particularly the Transferor and Transferee Company. There should be no limitation on the power of the Income Tax Department for recovery, including imposition of penalties etc.

That without prejudice to the above the approval of the scheme, should in no manner affect the tax treatments of the transactions under the Income Tax Act, 1961 or any other applicable taxing statute, nor would sanction of the scheme or the effect thereof serve as defence for the companies concerned against tax treatment under the aforementioned statutes ".

6. in response to the aforesaid comments Petitioner Companies have given following undertaking by way of affidavit:

Para 3 - "That the Income Tax Department vide its report dated 28.02.2018 has issued its comments to the Scheme of Amalgamation, thereby issuing no objection to the Scheme of Amalgamation. That as per point 15 of aforesaid report assessment proceeding for the A.Y. 2018-2019 are pending against Transferor Company. In this regard it is submitted that on completion of assessment proceeding for A.Y. 2018 - 2019 demand if any, arises for the said A.Y. 2018 -2019 same shall be paid by Transferee Company on effectuation of

Scheme of Amalgamation. Further, Clause 5.2 of Part B of Scheme of Amalgamation provides for payment of any tax liability outstanding on Transferor Company shall be borne by Transferee Company on approval of Scheme of Amalgamation. "

7. The Official Liquidator has filed its report 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 affairs of the Petitioner Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 2013 whichever is applicable.

8. Regional Director has filed its report wherein no specific objection has been raised against the approval of the Scheme. Income Tax Department and the Official Liquidator have also not raised any objections in respect of the approval of the Scheme.

9. The Petitioner has affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of Companies Act, 1956 is pending against the Petitioner Company.

10. It is also submitted in the Petition that the appointed date of the Scheme shall be effective from Appointed Date i.e. 01.04.2018.

11. Certificate of Statutory auditor of the Petitioner Company has 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.

12. It has also been affirmed in the Petition that Scheme is in the interest of the Transferor Company and the Transferee Company including their shareholders, creditors, employees and all concerned.

13. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Company to the proposed Scheme and the report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, Official Liquidator and Income Tax Department and as there are no objection received from any quarter; there appears to be no impediment in sanctioning the present Scheme.

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

15. The Petitioner shall however remain bound to comply with the statutory requirements in accordance with law.

16. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted

by this Tribunal to the Scheme will not come in any way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the Petitioner.

17. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting the exemption from payment of stamp duty, taxes or any other changes, 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.

18. THIS TRIBUNAL DO FURTHER ORDER

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

2. 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; and

3. 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

4. That all proceedings now pending by or against the Transferor Company, be continued by or against the Transferee Company; and

5. 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.

6. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Principal Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same, within 60 Days from date of receipt of copy of order.

7. That Petitioner Company 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 concerned Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the concerned Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to both the Companies shall be consolidated accordingly; and

8. 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.

