**(2020) 08 NCLT CK 0057**

**In the National Company Law Appellate Tribunal**

**Case No :** Company Appeal (CAA) No. 167/Nd Of 2018

Spy Infrastructure Private Limited And Ors — APPELLANT

Vs

Pranshu Residency Private Limited — RESPONDENT

**Date of Decision :** 05-08-2020

**Acts Referred:**
Companies Act, 2013 — Section 133, 230, 230(7), 231, 232, 232(4)

**Citation :** (2020) 08 NCLT CK 0057

**Hon'ble Judges :** Ch. Mohd. Sharief Tariq, J;Narender Kumar Bhola, Member (Technical)

**Bench :** Division Bench

**Advocate :** Anjani Kumar, Tania Sharma, Deepak Anand, Vipul Agrawal

**Final Decision :** Allowed

# Judgement

Narender Kumar Bhola, Member (T)

1. Under consideration is the CA (CAA)-167/ND/2018 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The present petition has been filed by the Petitioner Companies named above for the purpose of the approval of the Scheme of Amalgamation, as contemplated between the Companies and its Shareholders by way of Amalgamation of Transferor Companies with the Transferee Company. As per the Scheme of Amalgamation (in short, 'Scheme'), "SPY Infrastructure Private Limited" "Enakshi Towers Private Limited" "Enakshi Residency Private Limited" "Enakshi Infrastructure Private Limited" "VMS Towers Private Limited" "VMS Infrastructure Private Limited." (hereinafter referred to as 'Transferor Companies') are proposed to be merged with "Pranshu Residency Private Limited." (hereinafter referred to as Transferee Company') as a going concern.

2. The Transferor Company 1 being a private limited Company was incorporated on 17th September 2007 under the Companies Act 1956 The Transferor

 

Company's Corporate Identification Number (in short TIN") is U45400DL2007PTC168250.

3. The Transferor Company 2 being a private limited Company was incorporated on 18th September 2007, under the Companies Act, 1956. The Transferor Company's CIN is U45209DL2007PTC68350.

4. The Transferor Company 3 being a private limited Company was incorporated on 7th September 2007, under the Companies Act, 1956. The Transferor Company's CIN is U45400DL2007PTC167895.

5. The Transferor Company 4 being a private limited Company was incorporated on 7th September 2007, under the Companies Act, 1956. The Transferor Company's CIN is U45400DL2007PTC167894.

6. The Transferor Company 5 being a private limited Company was incorporated on 10th September 2007, under the Companies Act, 1956. The Transferor Company's CIN is U45400DL2007PTC167944.

7. The Transferor Company 6 being a private limited Company was incorporated on 17th September 2007, under the Companies Act, 1956. The Transferor Company's CIN is U45400DL2007PTC168249.

8. The Transferee being a private limited company was incorporated on 14th September 2007 under the Companies Act, 1956. Its CIN is U55204DL2007PTC168226.

9. The main object of the Transferee Company is to get engaged in the work of developers, promoters, colonizers, builders, town planners, designers, civil engineers, construction contractors for real estate development of all kind whether on freehold or leasehold properties, owned by the company or otherwise, sale and purchase of land and properties, plotted development and generally to deal in the real estate business.

10. The Board of Directors of the Transferor Companies have approved the present Scheme vide Resolution dated 16th July 2018. The other necessary requirements have also been fulfilled as per the directions given by this Bench from time to time in CA(CAA)-167(ND)/2018.

11. Clause 1 of the Scheme states the rationale of the scheme i.e. Amalgamation has been envisaged to create a single robust entity which would carry on businesses that are integrated and complimentary in nature. The combined entity will have the ability to leverage on its large asset base and vast pool of intellectual capital. It will have large net worth and borrowing capacity to expand its business at a faster rate. Moreover, it would help the management to achieve greater integration and better financial strength which would result in improving the competitive position of the combined entity. Benefit of the operational synergies to the combined entity in various operational areas can be put to the best advantage of all the stakeholders.

 

12. The proposed scheme provides that, all properties, being movable or immovable, tangible or intangible, intellectual property rights belonging to the Transferor Companies and rights, titles and interest therein, if any, shall pursuant to provisions of Section 232(4) of the Act be transferred to and stand vested in the transferee Company.

13. Clause 8 of the Scheme provides about Treatment of Taxes, duties, cess payable by the (sic) companies, accruing and (sic) to the transferor Companies from the appointed date onwards, including but not limited to advance tax payments, tax deducted at source, minimum alternate tax, any refund and interest due thereon on any such credits, claims and exemption or refunds as the case may be of the Transferee Company. Upon scheme becoming effective the Transferee Company is permitted to file or revise returns of the Transferor Companies including but not limiting to TDS return, sales tax/value added tax returns, service tax returns, GST returns and all other relevant returns filed with the governmental and registration authorities for the period either prior to the appointed date and period commencing on and from the appointed date, to claim refunds and interest due, if any thereon, credits, exemptions pursuant to provisions of this Scheme.

14. Clause 6 of the scheme provides that all suits, actions and other proceedings including legal and taxation proceedings, if any, by or against the Transferor Companies pending and arising on or before the effective date shall be continued and or be enforced by or against the Transferee Company as effectually and in the same manner and extent as if the same has been instituted and/or pending and/or arising by or against the Transferee Company. It is further submitted by the Counsel for the Petitioners that no winding up petitions are initiated/pending against the Transferor Companies and there are no other investigations pending or proceedings initiated under the Companies Act, 2013/1956.

15. Further, the Counsel for Regional Director (RD) & Official Liquidator (OL) submitted during hearing on 01.07.2020 that the objection of RD is with regard to the payment of the 50% of increased authorised capital on the implementation of the scheme and this Bench directed the transferee company to file an affidavit to that effect, which has been filed.

16. The report of Income Tax w.r.t. Transferor Company 1 was filed on 13.07.2020, w.r.t. Transferor Companies 2 to 5 was filed on 21.07.2020, w.r.t. Transferor Company 6 was filed on 14.07.2020 and w.r.t. Transferee Company was filed on 28.06.2020. the assess in a officers of the respective companies have no objection regarding the proposed amalgamation.

17. Clause 14 of the Scheme provides with regard to accounting treatment, which states that the amalgamation of the Transferor Companies with and into the Transferee Company shall be accounted for as per "Pooling of Interest method" as provided under the "Indian Accounting Standard (Indian AS) 103 for Business Combination prescribed under Section 133 of the Act, as notified under

 

the Companies Rules, 2015 as amended from time to time.

18. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013.

19. Taking into consideration the above, the Company Petition is allowed and the Scheme of Amalgamation annexed as annexure A-1 with the Petitions is hereby Sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Companies involved in this Scheme. The Appointed date of the Scheme is 01.04.2018.

20. While approving the Scheme as above, it is further clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

21. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

22. A certified copy of this Order shall be filed with the concerned Registrar of Companies (ROC) within 30 days of the receipt of this Order.

23. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned Registrar of Companies.

24. Upon receiving the certified copy of this Order, the RoC concerned is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Companies shall be consolidated with the files and records of the Transferee Company.

25. In compliance with requirements of Section 230(7) of the Companies Act, 2013, the Transferee Company herein shall until the scheme is fully implemented, file with the Registrar of Companies, the statement in Form No. CAA. 8 along with such fee as specified in the Companies (Registration Offices and Fees) Rules, 2014 within two hundred and ten days from the end of each financial year.

26. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14.12.2016

27. Accordingly, the Scheme stands sanctioned and CA(CAA)-167/ND/2018 is allowed.

 