(2022) 11 NCLT CK 0031

In the National Company Law Tribunal

Case No : CP(CAA) No. 90/KB/2022 Connected with CA (CAA) No. 25/KB/2022

SRD Stock Broking Private Limited Vs

Date of Decision : 09-11-2022

Acts Referred:

Companies Act, 2013 — Section 133, 217, 219, 221, 224, 225, 230, 230(6), 232, 232(3), 232(3)(i)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2022) 11 NCLT CK 0031

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Madhrui Pandey, Harihar Sahoo

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

i. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of SRD Stock Private Limited, being the Petitioner Company / Transferor Company No. 1, with Millenium Stock Broking Private Limited, Non-Petitioner Company / Transferee Company whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz. 1st April 2019 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). The transferee company being under the Jurisdiction of RoC Gujrat, the requisite approval from the NCLT bench Ahmedabad is being processed separately.

ii. This Petition has now come up for a final hearing. Counsel for the Applicants submits as follows: -

a. The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Company and Non-Petitioner Company at their meetings held on 3rd June 2021 and 14th September 2021 respectively. The Board Resolutions approving the Scheme are filed with Company Petition.

b. The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows: -

i. The Scheme of Amalgamation has been proposed to consolidate the group structure and provide advantages of synergies in business activities.

ii. The business of all the Transferor Company and the Transferee Company can be combined and carried forward conveniently with the combined strength of both the Applicant Companies.

iii. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company;

iv. The amalgamation will result in usual economies of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources and the business of the companies can be conveniently and advantageously combined together and in general business of the Companies concerned will be carried on more economically and profitably under the said Scheme of Amalgamation.

v. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the Companies concerned. The aforesaid Scheme of Amalgamation will also enable the undertakings and business of the said Applicant Companies to obtain greater facilities possessed and enjoyed by one large company compared with a number of small companies for raising capital, securing and conducting trade on favorable terms and other benefits;

vi. The said scheme will contribute in furthering and fulfilling the objects of the companies concerned and, in the growth, and development of these businesses.

vii. The said scheme will strengthen and consolidate the position of the amalgamated Company and will enable the amalgamated Company to increase its profitability.

viii. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;

ix. The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;

x. The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

c. The Statutory Auditors of the Petitioner Company have by their certificates dated 8th November 2021 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

d. There are no proceedings pending under Sections 235 to 251 of The

Companies Act, 1956 and Sections 217, 219, 221, 224, and 225 of The Companies Act, 2013 against the Petitioners Companies.

e. The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis of the Valuation Report thereon of Pankaj Parakh, bearing IBBI Registration No. IBBI/RV/06/2019/11409, Registered Valuer.

f. The shares of the Petitioner Companies are not listed on any stock exchanges.

g. By an Order dated 18th May, 2022 in Company Application (CAA) No.25/KB/2022, this Tribunal made the following directions with regard to the meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act in view of the fact that the Transferor Company having its registered office under the Jurisdiction of the Hon'ble National Company Law Tribunal, Kolkata bench, for considering the Scheme, the meetings were dispensed with in view of all such class of Shareholders and Creditors have given their consent to the Scheme by way of affidavits.

h. Authorized Representative appearing for the Petitioner Company submits that all the shareholders and creditors duly approved the Scheme by way of affidavit with a requisite majority and the Petitioner Company now seeks admission of the instant petition presented by them for sanction of the Scheme.

i. The Petitioners presented the instant petition for sanction of the Scheme. By an order dated 12th July, 202 the instant petition was admitted by this Tribunal and fixed for final hearing on 20th September, 202.

j. In compliance with the said order dated 12th July, 2022 the Petitioners have duly served notices on the Official Liquidator, Calcutta High Court, on 14.07.2022, The Registrar of Companies (West Bengal) on 14.07.2022, The Regional Director (Eastern Region) on 14.07.2022 and Income-Tax authorities having jurisdiction over the Transferor Company and the Transferee Company on 14.07.2022. The Petitioner(s) have also published such advertisements once each in the Bengali Newspaper i.e., "Dainik Statesman" and in English Newspaper i.e., "Business Standards" on 16.07.2022.

k. In compliance of the aforesaid orders an affidavit was filed on behalf of the Petitioner Companies along with speed post receipts through which notices were served upon the necessary statutory authorities was submitted to the Hon'ble Tribunal on 14th July, 2022.

l. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

iii. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata("RD") and the Official Liquidator, High Court of Calcutta("OL") have filed their representations before this Tribunal.

iv. The Official Liquidator has filed his report dated 20/9/2022 and concluded as under: -

“That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor 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,1956 the Companies Act,2013 whichever is applicable.

That in View of the submission made above the Hon’ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case.”

v. The Regional Director, Eastern Region, Kolkata Vide his representation dated 23rd August, 2022 (“RD Representation”) which has been dealt with by the Petitioners by Rejoinder/Undertaking dated 8th September, 2022 (“Rejoinder”). The observations of the RD and responses of the Petitioner(s) are summarized as under: -

(a) Paragraph No.2 (a) of RD Affidavit:

It is submitted that the transferee company namely M/S Millennium Stock Broking Private Limited registered in the State of Gujarat which is not under the jurisdiction of this Deponent. Hence this Deponent has no comment on it.

Paragraph No. (ii)(a) of Rejoinder:

a) With regard to statements in Paragraph 2 (a), we say that the statements contained therein, are affirmations and submissions by the respondent to this Hon’ble Tribunal and do not require any reply on the same.

(b) Paragraph No.2 (b) of RD Affidavit:

It is submitted that as per the available record, it appears that no complaint and/ or representation has been received against the proposed Scheme of the Amalgamation in respect of Transferor Company, SRD Stock Broking Private Limited. Further, the said Petitioner Company is also up-dated in filing its statutory returns for the financial year 31/03/2021

Paragraph No. (ii)(b) of Rejoinder:

b) With regard to statements in Paragraph 2 (b), we say that the statements contained therein, are affirmations and submissions by the respondent to this Hon’ble Tribunal and do not require any reply on the same.

(c) Paragraph No.2(c) of RD Affidavit:

That the appointed date 1st April 2019 which is much older and since the Petitioners Company has already filed subsequent Financial Statements upto Financial Year ended 31/03/2021, this Appointed date apparently lacks relevance to the Scheme, as it appears Hon’ble Tribunal may peruse the same and issue order as deemed fit and proper, keeping in view the present circumstances.

Further, in terms of Circular no. 09/2019 dated 21.08.2019 of the Ministry Of Corporate Affairs, "where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/ amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against the public interest". It is not ascertainable from the documents provided by the Applicant whether the application for the scheme was filed before the Hon'ble Tribunal within a year from 1st April 2019. If the application for the scheme was filed with the Hon'ble Tribunal after more than one year from the appointed date, Hon'ble Tribunal may kindly direct the Applicant to bring out the justification for the appointed date being more than one year before the date of filing of the application for the Scheme, in the Scheme according to the Circular.

Paragraph No. (ii)(c) of Rejoinder:

With regard to the statements in Paragraph 2(c), we say that the Appointed Date as mentioned in the scheme is 01st April, 2019. As clarified by the Circular dated 21st August, 2019 of Ministry of Corporate Affairs in respect to the provision of Section 232(6), 'appointed date' may either be a specific calendar date or may be tied to the occurrence of an event such as, the fulfillment of a precondition that the parties to the scheme may have agreed upon. In this regard we would further like to draw your kind attention that the companies have obtained No Objection from Banks (Creditors of the Company) and it took longer time than expected.

There is no public interest involved in the said Scheme of Amalgamation as all companies are private limited companies.

We undertake that whatever date the Hon'ble Tribunal will decide to be the Appointed Date in our Scheme, we will accept the same.

c) Paragraph No.2(d) of RD Affidavit:

That the Petitioner Company should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Company to the Transferee Company upon sanctioning of the proposed scheme.

Paragraph No. (ii)(d) of Rejoinder:

d) With regard to the statements in Paragraph 2(d), the Assets and Liabilities of all the Transferor Companies will be vested to the Transferee Company as per the terms mentioned in the Scheme of amalgamation. However, the Transferee Company undertakes to submit the list/ details of Assets, if any to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the Proposed Scheme at the time of application of the Drawn up Order from the Hon'ble NCLT Bench, Kolkata upon sanctioning the Scheme of Amalgamation as directed by the Hon'ble Bench.

(e) Paragraph No. 2(e) of RD Affidavit:

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph No. (ii)(e) of Rejoinder:

e) With regard to the statements in Paragraph 2(e), we undertake that if required, the Transferee Company shall pay the requisite amount of fees with respect to increase in Authorized Capital of the Transferee Company subsequent to approval of Scheme of Amalgamation to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.

(f) Paragraph No. 2(f) of RD Affidavit:

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph No. (ii)(f) of Rejoinder:

f) With regard to the statements in Paragraph 2(f), we say that we undertake to pay the applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

(g) Paragraph No. 2(g) of RD Affidavit:

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph No. (ii)(g) of Rejoinder:

g) With regard to the statements in Paragraph 2(g), we affirm that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no change or discrepancy made.

(h) Paragraph No. 2(h) of RD Affidavit:

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 26/05/2022 for their views/ observation in the matter but the same is still awaited.

Paragraph No. (ii)(h) of Rejoinder:

h) With regard to the statements in Paragraph 2(h), we say that the statements contained therein, are affirmations and submissions by the Petitioner to this Hon’ble Tribunal and do not require any reply on the same.

Heard submissions made by the Ld. Counsel appearing for the Petitioner and the representative of RD(ER). Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders which shall be subject to the scheme being approved by NCLT Ahmedabad, as the Transferee Company falls in its jurisdiction.

(a) That the Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal with appointed date as 1st April 2019 ("Appointed Date") on SRD Stock Broking Private Limited, ("Transferor Company" or "Petitioner Company") and their respective shareholders and all concerned with Millennium Stock broking Private Limited ("Transferee Company" or "Non-Petitioner"),

(b) Pursuant to Section 230 to 232 of the Companies Act, 2013 and as stated in the Scheme of Amalgamation all the property, rights, powers, interests, assets and undertakings of the Transferor Company, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

(c) All the debts, liabilities, duties and obligations of the Transferor Company be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

(d) The employees of the Transferor Company shall be transferred to and be engaged by the Transferee Company, as provided in the Scheme;

(e) All proceedings and/or suits and/or appeals now pending by or against the Transferor Company be continued by or against the Transferee Company, as provided in the Scheme;

(f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Company, the shares in the Transferee Company to which they are entitled in terms of the Scheme;

(g) Leave is granted to the Petitioners to file the Schedule of Assets of the Transferor Company in the form as prescribed in the Schedule to Form No. CAA-10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

(h) The Transferor Company and the Transferee Company shall each within thirty days obtaining the certified copy of the order to be made herein, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved without winding up with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the

Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

(i) Any person interested be at liberty to apply to this tribunal in the above matter for any direction that may be necessary.

vi. In case of any default, including in provisions of income tax in respect of transferred company, the income tax department, the ROC West Bengal, and all others statutory departments/authorities shall be at liberty to initiate appropriate proceedings against the transferee company which after the sanction of the scheme by this tribunal is in any case shall be responsible for the liabilities/non-compliances of the transferee company as well.

vii. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.

viii. Company Petition (CAA) No.90/KB/2022 connected with Company Application (CAA) No.25/KB/2022 is disposed of accordingly.

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

