

(2024) 04 NCLT CK 0041

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

Case No : Company Application No. (CAA) 30 (ND)/2024

Sterling Tools Limited Vs

Date of Decision : 15-04-2024

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 232

Companies (Compromises Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2024) 04 NCLT CK 0041

Hon'ble Judges : Manni Sankariah Shanmuga Sundaram, Member (J);Dr. Sanjeev Ranjan, Member (T)

Bench : Division Bench

Advocate : Lokesh Dhyani, Ashima Jain, Yash Jain

Final Decision : Disposed Of

Judgement

Dr. Sanjeev Ranjan, Member (Technical)

1. This is a first motion application jointly filed by the applicant companies herein namely M/s Haryana Ispat Private Limited (hereinafter referred Applicant Company No. 1/Transferor Company) and M/s Sterling Tools Limited (hereinafter referred Applicant Company No. 2/Transferee Company) under sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME") which is placed on record.

2. Affidavit in support of the above application sworn by Mr. Virendra Kumar Puri on behalf of Applicant Company No. 1 and Mr. Abhishek Chawla on behalf of Applicant Company No. 2, Authorized Signatory, and duly authorized by the said company vide their respective board resolutions dated 01.02.2024, is filed. It is also represented that the registered office of Applicant Companies is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and within the territorial jurisdiction of this Tribunal.

3. The Transferor Company/Applicant Company No. 1 i.e., M/s Haryana Ispat Private Limited is a private limited company which was incorporated on 02.03.1971, under the provisions of the Companies Act, 1956 bearing CIN: U99999DL1971PTC005553, having its registered office at Unit No. 515, DLF Tower A Jasola District Centre, New Delhi-110025. The Authorized Share Capital of the Transferor Company/Applicant Company No. 1 is Rs. 1,00,00,000/- divided into 10,00,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of Transferor Company/Applicant Company No. 1 is Rs. 10,00,000/- divided into 1,00,000 Equity Shares of Rs. 10/-each.

4. The Transferee Company/Applicant Company No. 2 i.e., M/s Sterling Tools Limited is a public limited company which was incorporated on 07.06.1979, under the provisions of the Companies Act, 1956 bearing CIN: L29222DL I 979PLC009668, having its registered office at Unit No. 515, DLF Tower A Jasola District Centre, New Delhi-110025. The Authorized Share Capital of the Transferee Company/Applicant Company No. 2 is Rs. 10,00,00,000/- divided into 5,00,00,000 Equity shares of Rs. 2/- each. The Issued, Subscribed and Paid-up Share Capital of Transferee Company/Applicant Company No. 2 is Rs. 7,20,48,422/- divided into 3,60,24,211 Equity Shares of Rs. 2/- each. The equity shares of the Applicant Company No. 2 are listed on National Stock Exchange of India Limited and BSE Limited.

5. The Transferor Company and Transferee Company have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses, as well as audited financial statements for the financial year ended 31.03.2023 and provisional financial statement for the period commencing from 01.04.2023 to 31.12.2023 are also placed on record.

6. The Board of Directors of Transferor Company and Transferor Companies, have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of respective board resolutions dated 01.02.2024 passed in the said board meetings have been placed on record.

7. The appointed date as specified in the Scheme is 1st April 2024 or such other date as may be approved by the Tribunal.

8. The Applicant Companies submits that in terms of clause 18, Transferor Company is a wholly owned subsidiary of the Transferee Company, accordingly, upon the Scheme becoming effective, all the equity shares as held by the Transferee Company in the Transferor Company either by itself or through its subsidiaries/nominees shall stand cancelled and extinguished. Therefore, there will be no issue and allotment of shares as consideration by the Transferee Company to the shareholders of the Transferor Company upon coming into effect of the Scheme.

9. The Applicant Companies have placed on record an additional document dated 11.03.2024 which clarifying regarding non-requirement of valuation report since, the Transferor Company is a wholly owned subsidiary of the Transferee Company.

10. The Ld. Counsel for the Applicant Companies submits that the rationale for the Scheme of Amalgamation between the Applicant Companies are as follows:

10.1 The Transferor Company was incorporated to carry on the object of manufacturing, processing, importing, exporting cold or hot rolling, re-rolling, slitting, edge milling, sheering, stamping, pressing, extruding, forging, drawing, flattening, straightening, heat treatment of all kinds of steel and other metals or any other kind of steel and other metals or any other kind of strips, sheets, foils, tapes, wires, rods, plates and any other sections, shapes or forms. However, due to various market constraints, the Transferor Company is unable to carry on its business and resultantly, as on date, earns only income from its other sources.

10.2 Since the Transferor Company is not engaged in any revenue-generating activities, accordingly, it is not feasible for the Transferor Company to continue as a separate legal entity as it involves various cost/ expenses in respect of legal compliances.

10.3 Considering that the Transferor Company is wholly owned subsidiary of the Transferee Company, therefore, the board of directors of the Companies have decided to merge the Transferor company with and into the Transferee Company.

10.4 The said amalgamation shall also result in following benefits:

(i) The amalgamation would result in simplification in the group companies' structure to cut complexity and significant reduction in multiplicity of cost, legal and regulatory compliances, multiple record-keeping and cost saving by way of reduction of overheads, administrative, managerial and other expenditure.

(ii) Structures, shaper and better management focusing on holistic growth of the business could be achieved by the proposed amalgamation.

Further, there is no adverse effect of this Scheme on the directors, key management personnel, promoters, non-promoter members, creditors and employees of the Companies and the same would be in the best interest of all stakeholders.

In view of the aforesaid, the Board of Directors of the Companies have considered and proposed the Amalgamation (as defined hereinafter,) of the Transferor Company with and into the Transferee Company in order to benefit the stakeholders of all the Companies. Accordingly, the Board of Directors of the Companies have formulated this Scheme pursuant to the provisions of Sections 230 to 232 and other relevant provisions of the Act (as defined hereinafter).

11. The Applicant Companies submits the dispensation is hereby sought on the following grounds:- since the Applicant Company No. 1 are wholly owned subsidiary of the Applicant Company No. 2, no new no shares will be issued by the Applicant Company No. 2 to the shareholders of the Applicant Company No.1 pursuant to the Composite Scheme of Amalgamation; No compromise or

arrangement is sought with any of the stakeholders; Pursuant to amalgamation, the net-worth of the Transferee Company will be highly positive; Secured creditors holding more than 90% of the total value of Applicant Company No. 1, have given their consent to the Scheme and its unsecured creditors are operational in nature; The Scheme would not result in any prejudicial affect upon the stakeholders of the Applicant Companies The Ld. Counsel further submits that since no shares will be issued by the Applicant Company No. 2, there shall be no impact on the equity Shareholders of the Applicant Company No. 2.

12. The Applicant Companies submits that the Applicant Company No. 1 has 7 (seven) Equity Shareholders and that the Applicant Company No.1 has procured the consent affidavits, in writing agreeing to the proposed Scheme from 5 (five) Equity Shareholders holding in form of 99994 equity shares of Rs. 10/- each, constituting 99.99% of the total paid-up capital of the Company. The list of Equity Shareholders of the Applicant Company No. 1 as on 31.12.2023 along with the consent affidavits executed by 5 equity shareholders of the Applicant Company No.1 is annexed as 'Annexure B-4 (Coll.)' at page no. 136-156 to the Company Scheme Application. The Learned Counsel for the Applicant Companies further submits that as far as Equity Shareholders of the Applicant Company No.1 is concerned, the Applicant Company No.1 is not required to convene the meeting of its Equity Shareholder in view of the fact that the Applicant Company No.1 is a wholly owned subsidiary of the Applicant Company No. 2.

13. The Learned Counsel for the Applicant Companies submits that there are 'Nil' Secured Creditors in the Applicant Company No.1. Therefore, there is no requirement of convening and holding such meeting of Secured Creditors of the Applicant Company No.1. The certificate of the chartered accountant certifying nil list of the Secured Creditors of the Applicant Company No.1 as on 31.12.2023 is annexed as 'Annexure B-5' at page no. 157 to the Company Scheme Application.

14. The Ld. Counsel for the Applicant Companies submits that there is a sole unsecured creditor aggregating the value of Rs. 11,800/- as on 31.12.2023 in the Applicant Company No. 1. The Certificate from Chartered Accountants certifying list of unsecured creditors is annexed at Page No. 158-159 to the Company Scheme Application. The Ld. Counsel for the Applicant Companies sought dispensation of the meeting of the unsecured creditors of the Transferor Company/Applicant Company No.1 in view of the Transferor Company being Wholly Owned Subsidiary of the Transferee Company/ Applicant Company No. 2 and the net worth of both Transferor and Transferee Company being positive.

15. The Learned Counsel for the Applicant Companies submit that the Applicant Company No. 2 has 24,341 equity shareholders as on 31.12.2023. A shareholding pattern of the Applicant Company No. 2 as filed with BSE and NSE is attached as Annexure-C4 at Page No. 258 to the Company Scheme Application. The Learned Counsel for the Applicant Companies submits that there are 4 secured creditors having an outstanding amount of Rs. 97,08,81,494/- and 515 unsecured creditors having an outstanding amount of Rs. 20,53,85,260/- as

on 31.12.2023. The Chartered Accountant certified list of the Secured Creditors of the Applicant Company No. 2 as on 31.12.2023 and Chartered Accountant certified list of the Unsecured Creditors of the Applicant Company No. 2 as on 31.12.2023 are annexed as 'Annexure C5 (Colly)' at page no. 259-269 and 'Annexure-C6' at page no. 270-282 to the Company Scheme Applications. The Learned Counsel for the Applicant Companies further submits that as far as Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 2 are concerned, the Applicant Company No. 2 is not required to convene the meeting in view of the fact that the Applicant Company No.1 is wholly owned subsidiary of the Applicant Company No. 2. Further, the Ld. Counsel for the Applicant Companies had placed reliance on the following citations: -

A) The National Company Law Appellate Tribunal in the matter of Ambuja Cements Limited in Company Appeal (AT) No. 19 of 2021;

B) The National Company Law Appellate Tribunal in the matter of Patel Hydro Power Private Limited [Company Appeal (AT) No. 137 of 2021]

16. Heard. Record perused thoroughly. On a meticulous perusal of the proposed Scheme of Amalgamation between the Applicant Companies, we observe that in relation to Transferor Company/Applicant Company No.1 and Transferee Company/ Applicant Company No. 2 with respect to Part-II of the proposed Scheme of Arrangement which provides for Amalgamation of the Transferor Company/Applicant Company No.1 with the Transferee Company/ Applicant Company No.2

i. From the submissions averred by the Applicant Companies and documents placed on record, we find that the Applicant Company No.1 is the wholly owned subsidiary company of the Applicant Company No. 2 and the proposed Scheme for Amalgamation in Part-II provides Amalgamation of the Transferor Company/ Applicant Company No.1 with the Transferee Company/ Applicant Company No.2. Further, there will be no issue of equity shares to the members of the Transferor Company/Applicant Company No.1 in consideration of the amalgamation, Applicant Company No.1 being a wholly owned subsidiary of the Transferee Company/Applicant Company No.2.

ii. The Hon'ble NCLAT in 'Mohit Agro Commodities Processing Pvt Ltd. & Ors.' in Company Appeal (AT) No. 59 of 2021 Judgement dated 28.06.2021 held that "in the present matter the amalgamation sought for is between a Wholly Owned Subsidiary and the Holding Company; Further, observes that the rights and liabilities of secured and unsecured creditors were not getting affected in any manner by way of the proposed scheme as no new shares were being issued by the Transferor company, and no compromise was offered to any creditor of the Transferee company. Thus, reiterates that when the Transferor and Transferee Company involve a parent Company and a Wholly Owned Subsidiary, the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can

be dispensed with, as the facts of this case substantiate that the rights of the Equity Shareholders of the Transferee Company are not being affected’.

iii. The same view is taken by the Hon’ble NCLAT in ‘Ericsson India Private Limited’ in Company Appeal (AT) No. 148 of 2021 wherein the Hon’ble NCLAT observed that ‘as the merger is of a Wholly Owned Subsidiary Company into its holding Company, no shares would be allotted as consideration pursuant to the merger; the proposed Scheme will not result in any dilution in the Shareholding of the Shareholders of the ‘Transferee Company’, the net worth of the ‘Transferee Company’ is positive, and ‘Unsecured Creditors’ are paid off in the ordinary course of business and their liability is not affected as it is neither reduced nor extinguished, the meeting of the shareholders and creditors of the Transferee Company may be dispensed with.’

17. The applicant companies have placed on record respective certificate from statutory auditors of the Transferor Company and Transferee Company certifying that the accounting treatment provided in the scheme is compliant with the applicable Accounting Standards as specified under Section 133 of the Companies Act, 2013.

18. The applicant companies filed an affidavit dated 29.02.2024 stating and confirming that all the material facts relation to the Applicant Companies, such as the latest financial position of the Applicant Companies, latest auditor report on the accounts have been attached; there is no investigation or proceedings pending against the Applicant Companies; there is no reduction contemplated in the Scheme of Amalgamation; there is no scheme of corporate debt restructuring involved in the Scheme of Amalgamation; and the valuation report issued by the registered valuer as required in the scheme is attached to the company application.

19. Taking into consideration aforesaid discussions and the judgements, we issue the following directions:

A. In relation to the Applicant Company No. 1/Transferor Company:

a) With respect to Equity Shareholders: In view of the fact that the Applicant Company No.1 have obtained consents affidavits from 99.99% of the Equity Shareholders and the consent affidavits filed by 5 Equity Shareholders of the Applicant Company No.1 are placed on record as well as the fact that the Applicant Company No.1 is a wholly owned subsidiary of the Transferee Company/ Applicant Company No.2, the meeting of the Equity Shareholders of the Applicant Company No.1, for the purpose of considering and, approving the Scheme is hereby dispensed with.

b) With respect to Secured Creditors: Since there are no Secured Creditors, therefore the necessity of convening/holding a meeting does not arise.

c) With respect to Unsecured Creditors: There is a sole Unsecured Creditors aggregating to the value of Rs. 11,800/- as on 31.12.2023 in the Applicant

Company No.1. However, in view of the aforesaid discussions and the ratio laid down by the Hon'ble NCLAT in 'Ambuja Cements Limited' in Company Appeal (AT) No. 19 of 2021 Judgement dated 06.04. 2021, 'Mohit Agro Commodities Processing Pvt Ltd. & Ors.' In Company Appeal (AT) No. 59 of 2021 Judgement dated 28.06. 2021 and 'Ericsson India Private Limited' in Company Appeal (AT) No. 148 of 2021; Judgement dated 18.01.2022, and also considering the fact that the Part – II of the proposed scheme of arrangement provide for amalgamation between the Applicant Company No.1 and Applicant Company No.2 being the wholly owned subsidiary and holding company respectively and net worth of both the Applicant Company No.1 and Applicant Company No.2 are positive, the requirement of convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.1 is hereby dispensed with.

B. In relation to the Transferee Company/Applicant Company No. 2

a. With respect to the Equity Shareholders: It is observed that the Applicant Company No. 2 has 24,341 Equity Shareholders as on 31.12.2023. Further, the Applicant Company No.1 is wholly owned subsidiaries of the Applicant Company No.2 and net worth of both the Applicant Companies i.e., Applicant Company No.1 and Applicant Company No.2 are positive. Further, there will be no dilution in the shareholding of shareholders of Applicant Company No.2 as no shares are issued in consideration to the composite Scheme of Amalgamation. Accordingly, the meeting of the Equity Shareholders of the Applicant Company No.2, for the purpose of considering and, approving the proposed Scheme is hereby dispensed with.

b. With respect to convening the meeting of the Secured Creditors: - In view of the facts that Applicant Company No. 2 have '4' Secured Creditors aggregating to the value of Rs. 97,08,81,494/- as on 31.12.2023 and in the light of the aforementioned discussions specifically in Para 15 of the present order and in view of the ratio laid down in the judgements cited therein, the meeting of Secured Creditors of the Applicant Company No.2, for the purpose of considering and, approving the proposed Scheme is hereby dispensed with.

c. With respect to the Unsecured Creditors: - In view of the facts that Applicant Company No. 2 have 515 Unsecured Creditors aggregating to the value of Rs. Rs. 20,53,85,260/- as on 31.12.2023 and in the light of the aforementioned discussions specifically in Para 15 of the present order and in view of the ratio laid down in the judgements cited therein, meeting of the Unsecured Creditors of the Applicant Company No.2, for the purpose of considering and, approving the proposed Scheme is hereby dispensed with.

20. The Applicant Companies is further directed to serve notice along with copy of scheme upon: (1) the Regional Director (Northern region), Ministry of Corporate Affairs, Delhi; (2) the Registrar of Companies, NCT of Delhi & Haryana; (3) Income Tax Authority within whose jurisdiction the Applicant Companies is assessed to tax; (4) Securities and Exchange Board of India

('SEBI'); (5) BSE; (6) NSE and any other sectoral authorities who may have bearing on the operation of the Applicant Companies, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

21. The Applicant Companies shall also host the notices directed herein, on their respective websites, if any.

22. The Applicant Companies are directed to file compliance report with this Tribunal in regard to the directions given in this Order proving dispatch of notices to the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

23. Having heard the submissions made by Ld. Counsel and having perused the records as well as documents placed on record, we allow the prayer for dispensation of the meetings of the Shareholders and creditors of Applicant Company No. 1 and 2.

24. The instant application C.A. NO. (CAA) 30 (ND)/2024 stands allowed on the aforesaid term and accordingly disposed of.