

(2020) 02 NCLT CK 0082

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

Case No : Company Petition No. (CAA) No. 154(ND) Of 2019, Company Application No. (CAA)-109(ND) Of 2019

STIC Travels Private Limited

APPELLANT

Vs

STIC GSA Services Private Limited

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 231, 232, 233, 234

Citation : (2020) 02 NCLT CK 0082

Hon'ble Judges : Dr. P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Advocate : Mahesh Agarwal, Zoheb Hussain, Tania Sharma

Final Decision : Disposed Of

Judgement

Dr. P.S.N. Prasad, J

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 Arrangement by way of Demerger. The copy of the Scheme has been placed on record.

2. A perusal of the petition reveals that initially the First Motion application seeking directions for convening/dispensing with the meetings of Shareholders and Creditors was filed before this bench bearing CA (CAA) No. 109(ND) 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 demerged company and shareholders, Secured and Unsecured Creditor of resulting company were dispensed with, vide order dated 21.08.2019 passed by this Bench. On 22.11.2019 Petitioners were directed to carry out publication in

the newspapers 'Financial Express' (English, Delhi Edition) as well as in Hindi Daily 'Jansatta' (Hindi, Delhi Edition). In addition thereto 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.

3. It is seen from the records that the Petitioners have filed an affidavit affirming compliance of the order passed by the Tribunal. A perusal of the Affidavit discloses that the petitioners have effected the newspaper publication on 16.12.2019 as directed in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition were duly served on the Regional Director, Northern Region, Registrar of Companies, Delhi and Haryana, Income Tax Department in compliance of the order and in proof of the same acknowledgement by the respective offices have also been placed on record.

4. The Regional Director has at the time of oral hearing has submitted no objection against the sanction of the Scheme. The same has been noted in the order dated 07.01.2020 of this Tribunal.

5. The report of Income Tax Department shows that there are some pending transaction in respect of the demerged company however the Income Tax Department has submitted that the department has no objection against the approval of the scheme of arrangement subject to the protection of revenue.

6. It is therefore clarified that 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.

7. 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.

8. 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 Arrangement 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.

9. 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 the 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.

10. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited reported in (1995) 5 SCC 491, the three Judges Bench of Hon'ble Supreme Court has 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."

11. 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.

12. It has also been affirmed in the petition that the Scheme is in the interest of both the companies 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 companies to the proposed Scheme, and the report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report filed by Income Tax Department and also as no objection from any quarter against the Scheme has been received; there appears to be no impediment in sanctioning the present Scheme.

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

15. The Petitioners 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 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.

17. 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.

18. THIS TRIBUNAL DO FURTHER ORDER(S):

1. All property, rights and powers of Demerged Company in respect of the demerged undertaking be transferred without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vested in the Resulting Company for all intents, purpose and interest of the Demerged company in respect of the demerged

undertaking subject nevertheless to all changes now affecting the same and;

2. All the liabilities (if any) and duties of Demerged company in respect of the demerged undertaking be transferred without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Resulting Company; and

3. No proceedings are pending by or against the Demerged company in respect of the demerged undertaking be continued by or against the Resulting Company; and

4. That all proceedings now pending by or against the Demerged Company in respect of the demerged undertaking by continued by or against the Resulting Company; and

5. That all the employees of the Demerged Company in respect of the demerged undertaking in Service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the Resulting Company on such date without any break or interruption in service and upon terms and conditions not-less favorable than those subsisting in concerned Demerged Companies on the said date.

6. 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 Registrar of Companies shall place all documents relating to the Demerged Company in respect of the demerged undertaking on the file kept by him in relation to the Resulting Company.

7. 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.