(2022) 10 NCLT CK 0032

In the National Company Law Tribunal

Case No : CP(CAA) NO. 48/KB/2022 Connected with CA(CAA) NO. 134/KB/2021

Sultania Trade Private Limited Vs

Date of Decision : 19-10-2022

Acts Referred:

Companies Act, 2013 — Section 117, 117(3)(g), 133, 179(3)(g), 179(3)(i), 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(1), 230(5), 230(6), 232, 232(1), 232(3), 232(3)(i)

Companies (Prospectus and allotment of securities) Rules, 2014 — Rule 9A(8)

Citation : (2022) 10 NCLT CK 0032

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

Bench : Division Bench

Advocate : Mohan Ram Goenka, S.K.Khemka, Harihara Sahoo

Final Decision : Disposed Of

Judgement

Balraj Joshi (Technical)

1. 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 SULTANIA FOODS & BEVERAGES PRIVATE LIMITED (SFBPL / Transferor Company 1), SULTANIA ENTERPRISES LIMITED (SEL / Transferor Company 2) and SUPER BUSINESS LIMITED (SBL/ Transferor Company 3) with SULTANIA TRADE PRIVATE LIMITED (STPL / Transferee Company) and their respective shareholders and creditors. The Scheme provides for the Amalgamation from the Appointed Date i.e. 01.04.2020 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation.

2. The Petition has now come up for final hearing. Ld. Counsel for the Applicants submits as follows:-

(a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 06th March, 2021 respectively.

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

i. STPL (Transferee Company) is engaged in the business of trading in securities and liquors and other business as stated in its Memorandum of Association of the Company as stated. SFBPL (Transferor Company1) is presently engaged in the business of food & beverages and other business as stated in its Memorandum of Association, SEL (Trasnferor Company 2) and SBL (Trsnaferor Company 3) are engaged in the business of beverages & liquors and other business as stated in its Memorandum of Association.Therefore, the amalgamation of Transferor Companies with the Transferee Company, will combine synergies and enable the amalgamated (Transferee) company to focus on its core business and other connected business more effectively.

ii. The Transferor Companies and Transferee Company are closely held company being identical set of shareholders and under similar management group. Therefore, the amalgamation of Transferor Companies with the Transferee Company will combine synergies and enable the amalgamated company to focus on its business. Further by the proposed Scheme of Amalgamation the shareholdings of the Transferee Company will be simplified and financial resources of all the companies will be conveniently merged and pooled together leading to a more effective and centralized management and reduction of administrative and manpower expenses, overheads and multiple record keeping, thus resulting in cost savings;

iii. The proposed merger will also result in the larger pool of various resources as well as manpower and will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace;

iv. The proposed scheme will lead to the benefits of Operating and Financial Synergies. The financial, managerial, technical resources, and personnel's capabilities, skills, expertise etc. of Transferor Companies, pooled in the Transferee Company, will lead to increase in the size, competitive strength, cost reduction and efficiencies, productivity, and logistic advantages, thereby will enhance the credit worthiness, contribute to the future growth and better cash flow management..

v. The proposed Scheme will contribute in furthering and fulfilling the objects of the Company concerned and enabling the optimum growth and development of their combined business.

vi. The proposed scheme will optimize/ simplify legal corporate structure by eliminating crossholding, reducimg the number of legal entities and reorganizing the legal entities in the group structure.

vii. The proposed scheme will thus have beneficial results for all the Companies and will lead to significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out.

(c) The Statutory Auditors of the Transferee Company had by its certificates dated 13th March, 2021confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

(d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

(e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Hansraj Jaria, Registered Valuers.

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

(g) By an order passed by the Hon'ble Tribunal dated November 3,2021 read with corrigendum order dated November 24, 2021 in Company Application (CAA) No.134/KB/2021, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-

Meeting dispensed / convened:

i. In view of the consents given on affidavit form by all the Shareholders of the Transferee and the Transferor Companies, meetings of shareholders of the Transferee and the Transferor Companies are hereby dispensed with.

ii. In view of the fact that both the Transferee and the Transferor Companies, have Nil Secured creditors and as verified by the Auditor's Certificate, therefore the question of holding separate meeting of the Secured Creditors does not arise, hence dispensed with

iii. In view of the consent given in the form of Affidavit by the Unsecured creditors of both the Transferee Company and the Transferor Companies as verified by the Auditor's Certificate, meeting of Unsecured Creditors of the transferee and transferor companies are hereby dispensed with.

iv. In view of the fact that both the Transferee Company and the Transferor Companies have Nil Debenture holders and as verified by the Auditor' s Certificate, therefore question of holding separate meeting of the Debenture holders does not arise hence dispensed with.

(h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 22.04.2022 read with corrigendum order dated 18.05.2022 the instant petition was admitted by this Tribunal and fixed for hearing on 11.10.2022 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing.In compliance with the said order dated 22.04.2022 read with corrigendum order dated 18.05.2022, the Petitioner(s) have duly served such notices upon the (i) Central Government, through the Regional Director(Eastern Region)-Ministry of Corporate Affairs, Kolkata, (ii) the Registrar of Companies, Bihar, (iii) Official Liquidator,Patna on

01.06.2022 respectively [via Emails on 01.06.2022]and (iv) Income Tax authority on 01.06.2022 respectively [email sent on 01.06.2022] having jurisdiction over the Petitioner Companies. The Petitioner(s) have also published such advertisements once each in the Morning India on 20.05.2022 and in Sanmarg on 20.05.2022, both having circulation in the State of Bihar. An affidavit of compliance in this regard has also been filed by them on 02.06.2022 .

(i) 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.

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

4. The Official Liquidator has filed his report dated 02th June,2022 and concluded as under:-

"That the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report."

"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 Companies 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/Companies Act,2013 whichever is applicable."

5. The Regional Director (Eastern Region), Ministry of Corporate Affairs, Kolkata has filed his reply affidavit dated 06.06.2022 via email ("RD affidavit") which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 13.07.2022 ("Rejoinder") and Supplementary affidavit dated 14.07.2022 & 06.10.2022. The observations of the RD and responses of the Petitioner(s) are summarized as under:-

(I) Paragraph No. 2(b) of RD Affidavit states that Petitioner Company should undertake to comply with the provision of section 232(3)(i) of the Company Act, 2013, if applicable, through appropriate affirmation.

Paragraph No. 4(ii) of Rejoinder states that "if the Authorized Share Capital is enhanced to an amount by which after set-off of fees paid by the Transferor Companies on enhanced Authorized Share Capital is payable by theTransferee Company then it will be paid as per the provisions of Section 232(3)(i) of the Companies Act, 2013 read with relevant applicable Rules and other applicable provisions of the Act, as per clause 4.7 of the said Scheme of Amalgamation of SULTANIA FOODS & BEVERAGES PRIVATE LIMITED (SFBPL / Transferor Company 1), SULTANIA ENTERPRISES LIMITED (SEL / Transferor Company 2) and SUPER BUSINESS LIMITED (SBL/ Transferor Company 3) with SULTANIA TRADE PRIVATE LIMITED (STPL / Transferee Company) (hereinafter referred to as the "Transferee

Company”).

(II) Paragraph No. 2(c) of RD Affidavit states 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. 4(iii) of Rejoinder states that “the Transferee Company undertakes to pay applicable stamp duty on the transfer of immovable properties, if any”.

(III)Paragraph No. 2(d) of RD Affidavit states that, Petitioner Companies undertakes that Scheme enclosed to the Company Application and Company Petition are one and the same and there are no discrepancy/ changes made.

Paragraph No. 4(iv) of Rejoinder states that “the Petitioner Companies undertakes that Scheme enclosed to the Company Application and Company Petition are one and the same and there are no discrepancy/ changes made.”

(IV) Paragraph No. 2(e) of RD Affidavit states that, wherein issue raised that the Transferor Company 1 namely Sultania Foods & Beverages Private Limited has no enabling object clause in its Memorandum of Association allowing it to make investment of Rs. 10 lakhs as non-current investment.

Paragraph No. 4(v) of Rejoinder states that the Transferor Company 1 namely Sultania Food & Beverages Private Limited holds one lakh shares of Bharat Cooperative Bank for Rs. 10 lakhs as non- current investment. Since they are usual investment made in the normal course of business as per the Companies Act, 2013 “in accordance with Section 230(5) of the Companies Act, 2013 and the object is merely mentioned in the clause III (B)(3) objects Association and it has no impact on the scheme under consideration, It is further submitted that since the total assets of the Company is Rs. 63,66,683/- and out of which the company has invested the surplus unused among of Rs. 10 lakhs in the shares of the listed company i.e. Bharat Cooperative Bank Ltd which hardly impact on the scheme of amalgamation. Therefore we pray to approve the Scheme”.

(V) Paragraph No. 2(f) & (g) of RD Affidavit states that, non-filing of MGT-14 u/s 179 (3) (g) of the Companies Act, 2013 for the financial year 2014-15.

Paragraph No. 4(vi) of Rejoinder states that “the petitioner Companies i.e. M/s. Super Business Limited and M/s. Sultania Enterprises Limited are under the process of filing necessary condonation of delay Application with the Central Government, Ministry Of Corporate Affairs, New Delhi under provision of section 179(3)(g) & (i) read with the sec 117 of Companies Act 2013. Therefore, we pray to approve the merger subject to above.”

(VI) Paragraph No. 2(h) of RD Affidavit states that, non-filing of MGT-14 u/s 117(3)(g) read with Section 179(3)(i) of the Companies Act, 2013 for the financial year 2014-15.

Paragraph No. 4(vii) of Rejoinder states that “the petitioner Companies i.e. M/s. Super Business Limited and M/s. Sultania Enterprises Limited are under the process of filing necessary condonation of delay Application with the Central Government, Ministry Of Corporate Affairs, New Delhi under provision of section 117(3)(g) read with Section 179(3)(i) of Companies Act 2013. Therefore, we pray to approve the merger subject to above.

(VII) Paragraph No. 2(i) of RD Affidavit states that non filing of PAS-6 regarding Reconciliation of Share Capital Audit Report (Half-Yearly) in pursuant to sub-rule (8) of rule 9A of the Companies (Prospectus and allotment of securities) Rules, 2014.

Paragraph No. 4(viii) of Rejoinder states that Petitioner Companies namely M/s Super Business Limited and M/s Sultania Enterprises Limited submits that the Companies are closely held being identical set of shareholders having more than 95% Shares being held by the 2-3 family members and relatives. That the companies does not have any public holdings and also the cross holding in investment is held, also the company does not have any business as such and the purpose of merger is to synchronize the holding in 1 (one) Company, so that the business would run more efficiently. Therefore the steps for the merger were taken and since post merger the cross holding would be cancelled and the shareholders will be their directors and relatives. Therefore, it is hereby submitted that to set the matter in private company post merger, the compliance of form filing will not arise. Therefore we pray for approval of the said merger keeping in the submission as made above, so that post merger, holding of shares will be in the private company, wherein such filing of forms is not required.

(VIII) Paragraph No. 2(j) of RD Affidavit states that forwarding of scheme to the Income Tax Department.

Paragraph No. 4(ix) of Rejoinder states that a copy of the scheme have been served by the Petitioner Companies to all the Income Tax Authority as required and an affidavit of service in this regard had also been filed before the Honb’le Tribunal and that the petitioner has not received any comments/ observation / objection from Income Tax Department till date.

Also Supplementary Rejoinder Affidavit dated 14.07.2022 with the reply summarized below:

(I) Paragraph No. 2(f) & (g) of RD Affidavit states that, non-filing of MGT-14 u/s 179 (3) (g) of the Companies Act, 2013 for the financial year 2014-15;

With reference to para 2(f) & (g) of the said affidavit, it is stated that the petitioner Companies i.e. M/s. Super Business Limited and M/s. Sultania Enterprises Limited have already filed condonation of delay in CG-1 with the Central Government Ministry Of Corporate Affairs, New Delhi under provision of section 179(3)(g) & (i) read with the sec 117 of Companies Act 2013. The Copy of Challan of CG-1 is attached with an affidavit.

(II) That, in respect to paragraph 2(h) wherein issue raised regarding non-filing of MGT-14 u/s 117 (3) (g) read with Section 179(3)(i) of the Companies Act, 2013 for the approval of Scheme of Amalgamation;

With reference to para 2(h) of the said affidavit, it is stated that the petitioner Companies i.e. M/s. Super Business Limited and M/s. Sultania Enterprises Limited have already filed condonation of delay in CG-1 with the Central Government Ministry Of Corporate Affairs, New Delhi under provision of section 117 (3) (g) read with Section 179(3)(i) of Companies Act 2013. The Copy of Challan of CG-1 is attached with an affidavit.

Further 2nd Supplementary Rejoinder Affidavit dated 06.10.2022 via email and on 10.10.2022 via hand delivery with the reply summarized below:

(I) Paragraph No. 2(f) & (g) of RD Affidavit states that, non-filing of MGT-14 u/s 179 (3) (g) of the Companies Act, 2013 for the financial year 2014-15

With reference to para 2(f) & (g) of the said affidavit, it is stated that the petitioner Companies i.e. M/s. Super Business Limited and M/s. Sultania Enterprises Limited have already filed condonation of delay in CG-1 with the Central Government Ministry Of Corporate Affairs, New Delhi and also filed form MGT-14 under provision of section 179(3)(g) & (i) read with the sec 117 of Companies Act 2013. The Copy of Challan of MGT-14 is attached with an affidavit.

(II) That, in respect to paragraph 2(h) wherein issue raised regarding non-filing of MGT-14 u/s 117 (3) (g) read with Section 179(3)(i) of the Companies Act, 2013 for the approval of Scheme of Amalgamation;

With reference to para 2(h) of the said affidavit, it is stated that the petitioner Companies i.e. M/s. Super Business Limited and M/s. Sultania Enterprises Limited have already filed condonation of delay in CG-1 with the Central Government Ministry Of Corporate Affairs, New Delhi and also filed form MGT-14 under provision of section 117 (3) (g) read with Section 179(3)(i) of Companies Act 2013. The Copy of Challan of MGT-14 is attached with an affidavit.

7. Heard submissions made by the Ld Counsel appearing for the Petitioner, RD. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

(i) That the Scheme of Amalgamation as annexed in Annexure A-1, hereto be sanctioned by the Tribunal with appointed date as 1st day of April 2020 on SULTANIA FOODS & BEVERAGES PRIVATE LI MITED (SFBPL), SULTANIA ENTERPRISES LIMITED (SEL) and SUPER BUSINESS LIMITED(SBL) (hereinafter collectively referred to as "Transferor Companies" and SULTANIA TRADE PRIVATE LIMITED(hereinafter referred to as the "Transferee Company") and their Shareholders and all concerned;

(ii) all the properties, rights and interest of the Transferor Companies be transferred to and vested in without further act or deed in Transferee Company and accordingly the same shall pursuant to Section 230-232 of the Companies

Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges, now affecting the same as provided in the Scheme;

(iii) all the liabilities and duties of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 230-232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties ofthe Transferee Company.

(iv) all the employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme

(v) all the proceedings and/or suit appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company as provided in the Scheme;

(vi) the Transferee Company do issue and allot Shares to the Shareholders of the Transferor Companies as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the Authorized Share Capital;

(vii) leave be granted to the Petitioner to file the Schedule of Assets of the Transferor Company in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of the order to be made herein;

(viii) all the Transferor Companies shall stand dissolved without winding up upon the scheme coming into effect.

(ix) the Transferee Company and Transferor Companies do each within thirty days of the date of the receipt of this order, cause a certified copy to be delivered to the Registrar of Companies for registration.

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

9. Company Petition (CAA) No. 48/KB/2022 connected with CA(CAA) No 134/ KB/2021 is disposed of accordingly.

10. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.