(2020) 12 NCLT CK 0143

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 2781/MB Of 2019

Suncity Financial Consultants Private Limited And Anr. Vs

Date of Decision : 04-12-2020

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 230, 230(5), 231, 232
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2020) 12 NCLT CK 0143

Hon'ble Judges : H.P. Chaturvedi, J;Ravikumar Duraisamy, Member (Technical)

Bench : Division Bench

Advocate : Ramesh Chandra Mishra

Final Decision : Disposed Of

Judgement

UPON the application of the Applicant Company above named by a Company Notice of Admission AND UPON HEARING Mr. Ramesh Mishra,

Practicing Company Secretary for the Applicant Company, AND UPON READING the Application along with the Notice of Admission dated 29th

July 2019 of Mr. Manish Agarwal (DIN 02459102) Director of the Applicant Company in support of Notice of admission along with Application and

the Exhibits therein referred to, IT IS ORDERED THAT:

1. The object of this application is to ultimately obtain sanction of this Tribunal for the scheme of amalgamation under section 230-232 of the

Companies Act, 2013 whereby Roserise Vinimay Limited, Transferor Company will be merged/amalgamated with Suncity Consultants Private

Limited, the Transferee Company/ Applicant Company, with the Appointed Transfer Date or Appointed Date being 1st April, 2018 (within the

Jurisdiction of the National Company Law Tribunal, Mumbai Bench) and their respective shareholders and creditors(if any) whereby and where under it is proposed to amalgamate and the transferor company with the transferee company by transferring the assets and liabilities of the Transferor

Company, as defined in the Scheme of Amalgamation to the Transferee Company.

2. It is stated in the Application that the Transferor Company and the Transferee Company are under the same management with Common Directors.

The Transferor Company is the Holding Company of the Transferee Company.

3. The terms and conditions of the amalgamation are fully stated in the Scheme of Amalgamation.

4. A copy of the Scheme of Amalgamation is annexed with the Application and marked as â??Annexures A-5â? at page no. 156 to 178 of the

application. The Application is for merger/amalgamation of holding company with its Subsidiary Company.

5. It has been stated in the application that the Scheme of Amalgamation has been proposed for specific group structure and provide for overall

business efficiency to combine their managerial and marketing strength, to streamline administration, to build a wider capital and financial base and to

secure the overall interest, growth and economics of all the companies concerned.

a. The Scheme of amalgamation will enable the establishment of a larger company with larger resources and a larger capital base facilitating further

expansion and development of the business of all Companies and reduce the multiplicity of expenses.

b. The amalgamation will enable the Transferee Company to consolidate the Business of Finance and trading activities by virtue of consolidation of

finance and management of both the Transferor and Transferee Companies.

c. The Scheme of amalgamation will enable the undertakings and business of the said Company to obtain greater facilities and enjoyed by one larger

company as compared with a number of smaller companies, for raising capital, securing and conducting trade, on favorable terms and other benefits.

d. It has been also stated in the application that the Scheme of amalgamation have beneficial results for all the Applicant Company concerned, their

shareholders, Creditors (both secured & Un-secured), employees and concerned and result in significant reduction in the multiplicity of legal and

regulatory compliances presently required.

6. The Board of Directors of the Applicant Company on 31st May 2019 & the Transferor Company has at their respective Board meetings by

resolution passed unanimously approved the Scheme of amalgamation.

7. The copy of the Board resolutions dated 31-05-2019 of the Applicant No.1 the Transferee Company is annexed with the application and marked as

Annexure A-7 at page nos. 195 to 196.

8. The copy of the Board resolutions of the transferor company is annexed with the application and marked as Annexure A-8 at page nos. 197 to 198.

9. It is stated in the Application that the Assets of the Applicant Company & the Transferor Company are sufficient to meet all their liabilities and the

Scheme of amalgamation will not adversely affect the rights of any of the Creditors of Applicant Company or the Transferor Company in any manner

whatsoever.

10. There are no proceedings pending under section 235 to 251 of the Companies Act, 1956, Section 210 to 226 of the Companies Act, 2013 against

the Applicant Company.

11. The Copy of the list of shareholders of the Applicant Company is annexed with the application and marked as Annexure â??A-11â? at Page No

211.

And the consent of the shareholders in the form of Affidavit of the Applicant Company is annexed with the Application and marked at Annexure

â??A-12â? at page Nos. 203 to 204 and 207 to 208. And certificate regarding list of shareholders from a practicing Chartered Accountant is enclosed

with the Application and marked as Annexure â??A-13â?? at page No. 207.

12. As on 31st May 2019, the Transferee company has only one un- creditor trade creditor for Rs.180,000/-. The Assets of the company are adequate

to meet with any payment of trade creditors. However, as on date the company has already paid the Creditor.

13. The List of Shareholders & creditors of the Applicant Company is annexed herewith the Application by way of an affidavit by the Director of the

Applicant Company and marked as Annexure â??A - 14â? at page no. 209 to 210 and a certificate from a practicing Chartered Accountant is

enclosed with the Application and marked as Annexure A-13 at page Nos. 208.

14. It is stated in the Application that the Transferee Company shall, without any further application, act or deed, re-organize its paid up capital which

is based on valuation and issue and allotment of equity shares to the shareholders of the Transferor company (Holding Company) and the

shares/Investments held by the Transferor company in the transferee Company will be cancelled due to this merger and in lieu of the same shares will

be issued to the Ultimate shareholders of the Holding Company.

15. A certificate and calculation regarding share exchange ratio from a Practicing Chartered Accountants is enclosed with the Application and

marked as Annexure â??A-6â?? at page No. 179 to 194.

16. Further from the record that the Chartered Accountant issued a certificate to the effect that the accounting treatment of the applicant companies

in the proposed scheme of amalgamation is in conformity with the Accounting Standards prescribed under section 133 of the Companies Act, 2013

copy of which is annexed with the application and marked as Annexure â??A-15â?? at page No. 213 to 215.

17. Heard the learned Authorised Reprentative for the Applicant, perused the records, documents annexed to the application and Affidavits filed in the

Instant proceedings and after hearing the submissions made on behalf of the applicant, the following orders are passed:-

1. In view of the fact that the equity shareholders of the Applicant Company duly consented in writing by way of affidavit, to the proposed Scheme of

Amalgamation, duly certified by the Chartered Accountants, the requirement of convening and holding of separate meetings of the shareholders of the

Applicant Company to ascertain the wishes of the equity shareholders of the Applicant Company for the Scheme of Amalgamation, is dispensed with

as prayed for;

2. In view of the fact that there were no secured creditor and a un-secured trade creditor as on 31st May 2019 having value of Rs.180,000/- which

presently already repaid, the requirements of convening and holding of separate meetings of the Secured & Unsecured Creditors of the Applicant

Company to ascertain the wishes of the Secured and Un-secured Creditors of the Applicant Company for the Scheme of Amalgamation, is dispensed

with;

3. Let the notice be served by the Applicant Company, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along

with the company Application and all other documents including the Scheme of Amalgamation and the Statement disclosing necessary details on the :

a. Central Government, through the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Everest Building, Marine

Lines, Mumbai 400002, Maharashtra

b. Registrar of Companies, Mumbai, Everest Building, Marine Lines, Mumbai 400002

c. Competition Commission of India,

d. Official Liquidator,

e. The concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income â?" Tax with PAN number of the

Applicant Company either through e-mail or by Speed post or by Registered Post or hand delivery, having jurisdiction over the Applicant Company,

and such other relevant sectorial regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by

hand delivery or e-mail or by Speed post or Registered Post, within seven days from the date of this order for filing representation, if any, on the

Application within 30-days from the date of receipt of notice;

4. Objections, if any, to the Scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing

which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities,

subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder;

5. The Applicants shall file affidavit within 10 days of serving the notice regarding the service of notice;

6. The Company Application bearing CA (CAA) /2781/MB/2019 is accordingly, disposed of.

7. Certified copy of this Order may be issued, if applied for upon compliance

