(2020) 05 NCLT CK 0043

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

Case No : Company Petition No. CA(CAA)-86 (PB) Of 2019

Suryavanshi Mercantile Private Limited APPELLANT

Vs

S.P. Flavours Private Limited RESPONDENT

Date of Decision : 11-05-2020

Acts Referred:

Income-Tax Act, 1961 — Section 143(1), 154
Companies Act, 2013 — Section 230, 231, 232, 232(3)(i), 232(3)(1)

Citation : (2020) 05 NCLT CK 0043

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Vishal Ganda, Zoheb Flussain, Parth Senwal, Tania Sharma

Final Decision : Allowed

Judgement

Narender Kumar Bhola, Member (T)

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 Amalgamation of the Transferor No. 1 Company, Transferor No. 2 Company, Transferor No. 3 Company, Transferor No. 4 Company and Transferor No. 5 Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme") has been placed on record.

2. A perusal of the petition discloses that initially the First Motion application seeking dispensation from convening the meetings of Shareholders and Creditors of the petitioner companies was filed before this Bench and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of equity shareholders, Secured Creditors and Unsecured Creditors of both the Petitioner Companies were dispensed with, vide order dated 21.05.

2019 passed by this Bench.

3. Subsequently, on 14.06.2019 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Veer Arjun' Hindi Delhi edition. In addition to the public notice, 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.

4. It is seen from the records that vide an affidavit dated 18.07.2019 it has been affirmed that in compliance of the order passed by the Tribunal dated 14.06.2019 the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 27.06.2019 as well as in 'Veer Arjun' Hindi edition again on 27.06.2019 in relation to the date of hearing of the petition.

5. In addition to that vide a separate affidavit dated 18.07.2019, it has also been affirmed that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, Official Liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have been placed on record.

6. The Regional Director has filed its representation dated 06.11.2019 in which no objection against the Scheme has been raised by the Regional Director/ Registrar of Companies. It is observed that the Transferor Company No. 1 filed its Annual Returns and Balance Sheets only up to 31.03.2018, whereas the other Transferor Companies No. 2 to 5 as well as the Transferee Company have filed their Annual Returns and Balance Sheet(s) up to 31.03.2019. Further, it stated that no prosecution has been filed & no inspection or investigation has been conducted in respect of the petitioner companies. It is further submitted by the Regional Director that in reference to Clause 12.1 of the Scheme the transferee company should comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013.

7. In response to the aforesaid observation the transferee company has filed an undertaking vide affidavit dated 08.11.2019 affirming that the transferee company will comply with the provisions of Section 232 (3) (1) of the Companies Act, 2013 and an additional affidavit dated 04.12.2019 along with a copy of the filed Annual Return and Balance Sheet for the year ended 31.03.2019. In view of the affidavits, the observation raised by the Regional Director stands satisfied.

8. The Official Liquidator has filed its report on 27.8.2019 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the Official Liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

9. The Department of Income Tax has also filed its report in respect of Transferee Company on 13.11.2019 wherein it is submitted that there is an outstanding demand of Rs. 4,64,730 under Section 154 of the Income Tax Act, 1961 for the Assessment Year 2008-09 and of Rs. 96,680 under Section 143(1) of the Income Tax Act, 1961 for the Assessment Year 2009-10. The Department of Income Tax prayed to safeguard the interests of the revenue against pending demands, and/ or demands likely to arise in the future.

10. In response to the aforesaid observation the Transferee Company has filed an undertaking vide affidavit dated 04.12.2019 affirming that the Transferee Company has paid all the outstanding demands of the Income Tax Department along with the documents evidencing such payments, Additionally, the Transferee Company undertook to clear all additional demands, if any of the Income Tax Department that is crystallized and appropriately ascertained. In view of the affidavit by the Transferee Company, the observation raised by the Income Tax Department stands satisfied. It is also directed that the Income Tax Department is entitled to take out proceedings for recovery of any dues from the Transferor or Transferee Company or any other person who is liable for payment of such tax.

11. 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 affidavits filed by the Regional Director, Northern region, Ministry of Corporate Affairs, Official liquidator and submissions made by the Standing Counsel for the Income Tax Department, whereby no objections have been raised to the proposed Scheme or if raised has been met by filing undertaking, there appears no impediment to grant sanction to the Scheme. However, the Companies shall remain bound by the undertaking filed by them. Consequently, sanction is hereby granted under Sections 230-232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

12. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation.

13. 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 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.

14. While approving the Scheme as above, it is clarified 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 payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

That in terms of the Scheme:

A. All the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same;

B. 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 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company;

C. All proceedings now pending by or against the Transferor Company be continued by or against the Transferee company;

D. All the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service;

E. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of copy of the Order from the Registry;

F. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

G. Accordingly, the Scheme stands sanctioned and the petition is allowed.

