(2023) 02 NCLT CK 0006

In the National Company Law Tribunal

Case No : CA (CAA)/241/MB-IV/2022

Takecare Logistics Park (India) Private Limited Vs

Date of Decision : 01-02-2023

Acts Referred:

Companies Act, 2013 — Section 230, 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 02 NCLT CK 0006

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. This Bench is convened via Video Conferencing.

2. Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Petition is filed seeking approval of Scheme of Amalgamation of Takecare Logistics Park (India) Private Limited (First Applicant Company / Transferor Company) with Hind Terminals Private Limited (Second Applicant Company / Transferee Company) and their respective shareholders and creditors under sections 232 read with Section 230 of the Companies Act, 2013 ('Scheme').

3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company in the meeting(s), conducted on 2nd June, 2022 for the Transferor Company and the Transferee Company respectively, have approved the Scheme. The Appointed Date fixed under the Scheme is May 4, 2022.

4. The Applicant Company No.1 undertake the business of operation of Container Fright and Inland Container Terminals as an extended facility to the Ports in India and that the Applicant Company No.2 has been carrying on the business of Operation, Controlling, running and Management of Container Terminals at

various Locations in the country and abroad, to Develop, Manage, Control, Operate container Freight Stations, Container yard in and around country at various locations and also out of country.

5. The rationale for the proposed Scheme is stated as under:

(a) Garnering the benefits arising out of lower operating costs.

(b) Pooling of the management, and administration to result in savings of costs.

(c) Combined capital resources will result into increasing the leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes.

(d) Eliminating duplication of work in areas like Accounts, Company Law and Tax Assessments, common administrative services and resulting in cost savings.

(e) Facilitating consolidation of operations and optimum utilization of assets.

(f) Reflecting the consolidated net worth of the companies in one balance sheet.

(g) Greater size, scale, integration, financial strength and flexibility would enhance the Transferee Company's ability to leverage on its asset base, diverse range of products and services and vast pool of intellectual capital which would result in maximizing overall shareholder value.

(h) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, and the elimination of duplication of work in various support functions as well as compliances with various statutory acts, Rules and Regulations.

6. The Authorised Share Capital of the Applicant Company No.1, as on the 31st day of March, 2022 is as under:

Particulars

Amount in

(Rs.)

Authorised Capital

1,00,000 Equity Shares of Rs.10/- each.

10,00,000

Total

10,00,000

Issued, Subscribed and Paid-up

10,000 Equity Shares of Rs. 10/- each fully

paid-up

1,00,000

Total

1,00,000

As on date there is no change in the capital structure of the Applicant Company No.1.

7. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Takecare Logistics Park (India) Private Limited (First Applicant Company / Transferor Company) with Hind Terminals Private Limited (Second Applicant Company/ Transferee Company) is dispensed with in view of the Consent Affidavits given by the two Equity Shareholders of the Applicant Company No.1.

8. The Financial details / summary of the Applicant Company No. 1 as on 31.03.2022 :-

(INR in Lacs)

Year

Net worth

Revenue from

Operations

Profit / (Loss)

2020-21

2,791.08

3,141.55

647.37

2021-22

4,165.43

2,988.34

859.39

9. The Share Capital of the Applicant Company No.2 as on the 31st day of March, 2022 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

25,16,00,000 Equity Shares of Rs.10/- each.

2,51,60,00,000

Total

2,51,60,00,000

Issued, Subscribed and Paid-up

20,01,00,000 Equity Shares of Rs. 10/- each fully paid-up.

2,00,10,00,000

Total

2,00,10,00,000

As on date there is no change in the capital structure of the Applicant Company No. 2.

10. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No. 2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Takecare Logistics Park (India) Private Limited (First Applicant Company / Transferor Company) with Hind Terminals Private Limited (Second Applicant Company / Transferee Company) is dispensed with in view of the Consent Affidavits given by the two Equity Shareholders of the Applicant Company No.2, which are annexed to the Company Scheme Application.

11. The Financial details / summary of the Applicant Company No. 2 as per provisional and unaudited stand-alone Financial Statement for the year ended on 31.03.2022:-

(INR in Lacs)

Year

Net worth

Revenue from

operations

Profit / (Loss)

2020-21

74,325

1,01,403

5,942

2021-22

81,549

1,27,629

7,166

12. As stated at Para 22 of the Petition, there are no Secured Creditors in the Applicant Company No. 1.

13. The Applicant Company No. 2 has 3 (Three) Secured Creditor having value of Rs.1,68,01,35,658/- (Rupees One Hundred Sixty-Eight Crores One Lakhs Thirty Five Thousand Six Hundred and Fifty Eight only) and these secured creditors have given consent to the proposed scheme. In view of this, the convening and holding the meeting of the Secured Creditors of the Applicant Company No. 2 for considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Takecare Logistics Park (India) Private Limited (First Applicant Company / Transferor Company) with Hind Terminals Private Limited (Second Applicant Company / Transferee Company) is dispensed with.

14. The Applicant Company No. 1 has 2 (Two) Unsecured Creditor having value of Rs.5,15,615/- (Rupees Five Lacs Fifteen Thousand Six Hundred and Fifteen only). The Counsel for the Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant Company No. 1 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 1 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.1 is meeting the amounts payable to its Creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 1 shall continue with its existence and shall accordingly continue to meet the liabilities of its Unsecured Creditors as they arise in the normal course. In view of this, this Bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1. The Notice shall state that “If no representation / response is received by the Tribunal from Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016”.

15. The Applicant Company No. 2 has 1020 (One Thousand and Twenty) Unsecured Creditor having value of Rs.1,19,01,03,898/- (Rupees One Hundred Nineteen Crore One Lakh Three Thousand Eight Hundred and Ninety Eight only).

The Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.2 is meeting the amounts payable to its Creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 2 shall continue with its existence and shall accordingly continue to meet the liabilities of its Unsecured Creditors as they arise in the normal course. In view of this, this Bench hereby directs the Applicant Company No.2 to issue notice to its all Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2. The Notice shall state that "If no representation/ response is received by the Tribunal from Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016".

16. Consideration:

Transferor Company is wholly owned subsidiary of Transferee Company and its entire share capital is held by the Transferee Company and its nominees. Accordingly, upon the Scheme becoming effective, the entire share capital of Transferor Company shall stand cancelled without any further application, acts or deeds and there would be no issue of shares of Transferee Company to the shareholders of Transferor Company pursuant to the amalgamation of Transferor Company with Transferee Company.

17. The Applicant Companies will submit –

a. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.

b. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.

c. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

18. The Applicant Companies are directed to serve Notices by Registered Post-AD or Speed Post or Hand Delivery and email along with copy of scheme upon the, (i) the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai; (ii) Registrar of Companies, Maharashtra, Mumbai, (iii) the concerned GST Authorities (iv) the Reserve Bank of India (v) Ministry of Corporate Affairs, under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8

of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, (vi) Any Sectoral/ Regulatory Authorities. The Notice shall state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme".

19. The Applicant Companies are directed to serve Notices by Registered Post-AD or Speed Post or Hand Delivery and email along with copy of scheme upon the concerned Income Tax Authority within whose jurisdiction, the Applicant Company's assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Applicant Company No. 1 PAN: AAECT5364R having his address at The Income Tax Officer, Range Code 81, Circle-Panvel, Panvel, Maharashtra. The Applicant Company No. 2 PAN: AABCH4778A having his address at The Income Tax Officer, Circle 2(1)(1), Aayakar Bhawan, Mumbai. The Notice shall state that "If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016".

20. The Transferor Company is also directed to serve the Copy of Scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Mr. S. P. Sakhala & Company, Chartered Accountant having address at 34, Chandragupta, Moginis Lane, New Link Road, Andheri (West), Mumbai - 400 053, Contact No. 9821222291/ 022-26736623/ 022-26303408, E-mail casakhala@gmail.com to assist the Official Liquidator to scrutinize the books of accounts of the Transferor Company for the last 5 years and submit its representation/ report to the Tribunal. The Transferor Company shall pay fees of INR 2,00,000/- to the Chartered Accountant for this purpose. The Notice shall state that "If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016".

21. The Applicant Companies shall host notices along with the copy of the Scheme on their respective websites, if any.

22. The Applicant Companies shall file an affidavit of service and Compliance within 10 working days after serving to notice to all the regulatory authorities as stated above and report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

