

(2022) 02 NCLT CK 0013

In the National Company Law Tribunal

Case No : CA (CAA) No. 19/Chd/Pb/2021(First Motion)

Trichit Limited

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(2)(b), 230(2)(c), 231, 232, 232(3)

Citation : (2022) 02 NCLT CK 0013

Hon'ble Judges : Harnam Singh Thakur, Member J; Subrata Kumar Dash, Member, T

Bench : Division Bench

Advocate : Nahush Jain, Shubham Gupta,

Final Decision : Allowed

Judgement

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Subrata Kumar Dash, Member (Technical)"////////

1. This is a Joint First Motion Application filed by Applicant Companies namely; Trichit Limited (Applicant Company No. 1/Transferor Company) and,////////

Mayadevi Polycot Limited (Applicant Company No. 2/Transferee Company) under Section 230-232 of Companies Act, 2013 (the Act) and other"////////

applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the"////////

Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure A-3 to the Application.////////

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Shareholders of Applicant,////////

Companies. It is further prayed for the dispensing with the meetings of Secured

and Unsecured Creditors of Applicant Companies.,,,,,,,,,

3. The Applicant Company No. 1/Transferor Company is presently engaged in the business of finance of to purchase or otherwise acquire and take.,,,,,,,,,

over the whole or any part of the business, property and liabilities of any person or persons, firm, body corporate, or corporation, carrying on or",,,,,,,,,

proposing to carry on any business which the Company is authorized to carry on or possessed of any property or rights suitable for the purposes of this.,,,,,,,,,

Company, etc.",,,,,,,,,

4. The Applicant Company No. 2/Transferee Company is presently engaged in the business of manufacturing, fabricating, processing, converting,",,,,,,,,

reconverting, refining, combing, carding, spinning, bleaching, dyeing, weaving, twisting, winding, designing, finishing, importing, exporting, buying, selling",,,,,,,,,

and otherwise dealing in wholesale designing, finishing, importing, exporting, buying, selling and otherwise dealing in wholesale or in retail in all kinds of",,,,,,,,,

yarns and fibres whether synthetic, acrylic, artificial or natural, man-made fibres, cotton, wool, worsted, shoddy, silk, jute ramie, hemp, linen, viscose,",,,,,,,,

rayon, artificial silk, nylon, polyster, polypropylene, polynosic or any other synthetic fibre or yarn or fibrous materials, textile substances, allied products,",,,,,,,,

by products, waste products and substitutes for all or any of them and to treat and utilise any waste arising from any such manufacture, production,",,,,,,,,

process and further to carry on the business of ginning, pressing, bailing or otherwise pack mg of cotton, kapes, yarn waste or all kinds of raw",,,,,,,,,

material, whether synthetic, artificial or natural, yarn waste, hemp, jute or other fibrous materials and the cultivation of such raw materials and process",,,,,,,,,

all such fibre including fibre glass into materials and finished articles for household, domestic, commercial and industrial use, etc.",,,,,,,,,

5. It is submitted that the registered office of the Transferor Company is at 93, Industrial Area-A, Ludhiana, Punjab-141003 and Transferee Company",,,,,,,,,

is at 85, Industrial Area A, Ludhiana, Punjab-141003, therefore, the territorial jurisdiction of both Applicant Companies fall with this Bench.",,,,,,,,,

6. The rationale of the Scheme is given below:-,,,,,,,,

i. It will enable optimal utilization of existing resources and provide an opportunity to fully utilize capabilities and experience of both the companies;,,,,,,,,

ii. It will ease and increase operational and management efficiency; integrate business functions;,,,,,,,,

iii. Simplification of Group Structure; and,,,,,,,,

iv. Avoiding duplication of / reducing cost of administration, overheads etc.",,,,,,,,

7. It is stated that the Board of Directors of the Applicant Companies in their meeting held on 18.06.2021 have considered and unanimously approved,,,,,,,,

the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the Board Resolution of the Transferor Company and,,,,,,,,

Transferee Company are at Annexure A-7 & A-16, respectively of the application. The Applicant Company No. 1 has authorized Mr. Ramandeep",,,,,,,,

Singh, Mr. Rakesh Sharma and Mr. Kulpreet Singh Gahir, Directors of the company to do all acts and deeds and things in relations to the Scheme.",,,,,,,,

The Applicant Company No. 2 has authorized Mr. Varinder Gupta, Mr. Vikas Gupta and Mrs. Dimple Gupta, Directors of the company to do all acts",,,,,,,,

and deeds and things in relations to the Scheme. The affidavit of Mr. Ramandeep Singh on behalf of the Transferor Company and Mr. Varinder,,,,,,,,

Gupta on behalf of the Transferee Company have been filed in support of contents of the application for seeking appropriate orders/directions.,,,,,,,,,

8. The appointed date of the Scheme is 01.04.2021 as mentioned in the Para 3(b) of Scheme of Amalgamation attached as Annexure A-3 of the,,,,,,,, application.,,,,,,,,,

9. It is stated that the Transferor Company and Transferee Company have filed the audited financial statements as on 31.03.2021 at Annexure 6,,,,,,,,

(Colly) and A-15 (Colly), respectively of the application. The Applicant Companies have also filed provisional financial statements as on 30.09.2021",,,,,,,,

and the same are part of Annexure A-2 and A-3 respectively of compliance affidavit filed vide Diary No. 00824/3 dated 24.11.2021.,,,,,,,,,

10. It is submitted that there are no investigation or proceedings pending against the Applicant Companies under the Companies Act, 2013 or under the",,,,,,,,

Companies Act, 1956. It is also submitted that as per Section 230(2)(b) of the Act, the proposed Scheme being filed herein does not include reduction",,,,,,,,

of share capital of the Applicant Companies and that as per Section 230(2)(c) of the Act, the proposed Scheme is not a corporate debt restructuring",,,,,,,,

Scheme.,,,,,,,,,

11. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section

232 (3) of the Act, the Applicant Companies have filed two certificates, " ,,,,,,,
both dated 18.06.2021 issued by Statutory Auditors of Applicant Companies
certifying that the Scheme is in compliance with the Accounting ,,,,,,,

Standards under Section 133 of the Act and the same are attached as Annexure
A-24 of the application. ,,,,,,,

12. It is further submitted by the counsel for applicant companies that the
valuation report has been submitted by Mr. Bhupesh Gupta, Registered" ,,,,,,,

Valuer having IBBI Registration No. IBBI/RV/03/2020/13539 which is attached as
Annexure A-4 of the application. As per valuation report, dated" ,,,,,,,

17.06.2021, the fair value of equity shares of Trichit Limited amounts to Rs.
1941.50 Per Share and Mayadevi Polycot Limited amounts to Rs." ,,,,,,,

1695.06 Per Share. ,,,,,,,

13. It is submitted by the learned counsel that the Scheme (Annexure-A-3 of the
application) also takes care of the interests of the staff/workers and ,,,,,,,

employees of the Transferor Companies. By virtue of Clause 9, it is stated that all
the staff, workmen, employees or other labour of the Transferor" ,,,,,,,

Company who are in employment as on the Effective Date shall become the staff,
workmen, employees or other labour of the Transferee Company" ,,,,,,,

with effect from the Effective Date without any break or interruption in service
and on terms and conditions as to employment and remuneration not ,,,,,,,

less favourable than those on which they are engaged or employed by the
Transferor Company. ,,,,,,,

14. It is deposed by the authorized representative of Applicant Companies that
the Applicant Companies are not governed by any specific Regulator ,,,,,,,

whose approval may be required for the sanction of present Scheme of
Amalgamation except the Statutory Authorities, as applicable. The
aforesaid" ,,,,,,,

affidavits have been attached as Annexure A-25 of the application. ,,,,,,,

15. The applicant companies have furnished the following documents:- ,,,,,,,

Â Name of

the Applicant

Companies", Shareholders along with their consent, ,,, Creditors along with their
consents, ,,,

, "Equity

Shareholder", "Consent

submitted on

affidavit", "Preference

Shareholders", "Consent

submitted

on affidavit", "Secured

Creditors", "Consent

submitted on

affidavit", "Unsecured

Creditors", "Consent

submitted on

affidavit

Applicant

Company

No.1", 64 (Sixty Four), 100%, NIL, NA, NIL, NA, "12

(Twelve)", 100%

Applicant

Company

No.2", 8 (Eight), 100%, 2 (Two), 100%, NIL, NA, NIL, N.A.

Private Limited & Ors. dated 23.12.2021; CA No.189/2021 & CA (CAA) No.41/Chd/Pb/2021 G.N.A Transmissions Pvt. Ltd. & Ors. dated,,,,,,,,

23.12.2021; and CA (CAA) No.35/Chd/Hry/2021 NAM Estates Private Limited dated 23. 12.202. 1In the aforementioned orders, after",,,,,,,,,

discussing the differing views of coordinate Benches, this Bench has followed the decisions of the Honâ??ble NCLAT in DLF Phase-IV",,,,,,,,,

Commercial Developers Limited and Others with DLF Limited, (Company Appeal (AT) No.180 of 2019) dated 19.08.2019 and Alovera",,,,,,,,,

Tradelink Pvt. Limited and Others Vs. Ostwal Physchem (India) Limited in Company Appeal (AT) No.178/2019 decided on 06.08.2019 on this,,,,,,,,

issue and has held that â??depending on the facts and circumstances of each case, the NCLT has the powers to dispense with the meetings of",,,,,,,,,

shareholders and others by using judicial discretionâ??.,,,,,,,,

22. Accordingly, the directions of this Bench in the present case are as under:-",,,,,,,,,

I.In relation to the Applicant Company No. 1/Transferor Company:,,,,,,,,

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the",,,,,,,,,

fact that the consent of all the Equity Shareholders have been received by way of affidavit.,,,,,,,,,

b. Since, there are Nil Secured Creditors in the Applicant Company No.1/ Transferor Company. Therefore, there is no scope for any meeting.",,,,,,,,,

II. In relation to the Applicant Company No. 2/Transferee Company:,,,,,,,,

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the",,,,,,,,,

fact that the consent of all the Equity Shareholders have been received by way of affidavit.,,,,,,,,,

b. The meetings of the Preference Shareholders are dispensed with as the consent of all the Preference Shareholders have been received by way of,,,,,,,,

affidavit.,,,,,,,,,

c. Since, there are Nil Secured Creditors and NIL Unsecured Creditors in the Applicant Company No.2/Transferee Company. Therefore, there is no",,,,,,,,,

scope for any meeting.,,,,,,,,,

23. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with",,,,,,,,,

a direction that the Applicant Companies shall make specific prayer for sending notices to the Central Government, Registrar of Companies, Official",,,,,,,,,

Liquidator and Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.,,,,,,,,,

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