(2023) 05 NCLT CK 0032

In the National Company Law Tribunal

Case No : Company Petition (CAA) No. 176/ KB /2022 Connected with Company Application (CAA) No. 109/KB/2022

Udit Properties Private Limited & Ors Vs

Date of Decision : 08-05-2023

Acts Referred:

Companies Act, 2013 — Section 129(3), 133, 137(1), 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(1), 230(6), 232(1), 232(3), 232(3)(i), 232(4)

Citation : (2023) 05 NCLT CK 0032

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

Bench : Division Bench

Advocate : Neha Somani, Harihara Sahoo

Final Decision : Disposed Of

Judgement

Balraj Joshi Member (Technical)

1. This Court is congregated through hybrid mode.

2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") sanctioning the SCHEME OF AMALGAMATION of Anupurna Tie-Up Private Limited, being the Petitioner No.1 abovenamed ("Transferor Company 1" or "Petitioner No.1" or "ATPL") , Coastal Trans Logistic Private Limited, being the Petitioner No.2 abovenamed ("Transferor Company 2" or "Petitioner No.2" or "CTLPL"), CRL Supply Chain Solution Private Limited, being the Petitioner No. 3 abovenamed ("Transferor Company 3" or "Petitioner No. 3" or "CSCSPL"), Satabadi Agency Private Limited., being the Petitioner No. 4 abovenamed ("Transferor Company 4" or "Petitioner No. 4" or "SAPL"), Satyam Merchandise Private Limited, being the Petitioner No. 5 abovenamed ("Transferor Company 5" or "Petitioner No. 5" or "SMPL"), SKU Logistic Private Limited, being the Petitioner No. 6 abovenamed ("Transferor Company 6" or "Petitioner No. 6" or "SLPL"), Snuk Properties Private Limited, being the Petitioner No. 7 abovenamed ("Transferor Company 7" or "Petitioner No. 7" or "SPPL"), Syscon Logistic Services Private Limited, being the Petitioner

No. 8 abovenamed ("Transferor Company 8" or "Petitioner No. 8" or "SLSPL") with Udit Properties Private Limited, being the Petitioner No. 9 abovenamed ("Transferee Company" or "Petitioner No. 9" or "UPPL") whereby and whereunder the Transferor Companies is proposed to be amalgamated with the Transferee Company from the Appointed Date, that is 1st April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

Details of the Petitioner companies as follows:

SN

NAME OF THE COMPANY

COMPANY AS PER THE SCHEME

PARTY TYPE

RELEVANT ANNEXURE, PAGE NO. AND VOLUME OF THE COMPANY

PETITION

Appointed Date: 01st April, 2022

I.

ANUPURNA TIE-UP PRIVATE LIMITED

Transferor

Company No. 1

Petitioner

No. 1

Scheme of Amalgamation is annexed to the Company Petition being Annexure No. – A in Volume I at Page No. 59 - 106

II.

COASTAL TRANS

LOGISTIC PRIVATE LIMITED

Transferor Company No. 2

Petitioner No. 2

III.

CRL SUPPLY

CHAIN SOLUTION PRIVATE LIMITED

Transferor Company No. 3

Petitioner No. 3

IV.

SATABADI

AGENCY PRIVATE LIMITED.

Transferor Company No. 4

Petitioner No. 4

V.

SATYAM

MERCHANDISE PRIVATE LIMITED

Transferor Company No. 5

Petitioner No. 5

VI.

SKU LOGISTIC PRIVATE LIMITED

Transferor

Company No. 6

Petitioner

No. 6

VII.

SNUK PROPERTIES PRIVATE LIMITED

Transferor

Company No. 7

Petitioner

No. 7

VIII.

SYSCON LOGISTIC SERVICES

PRIVATE LIMITED

Transferor Company No. 8

Petitioner No. 8

IX.

UDIT PROPERTIES PRIVATE LIMITED

Transferee

Company

Petitioner

No. 9

3. The Petition has now come up for final hearing. The Ld. Authorized Representative for the Petitioners submits as follows: -

(a) The Scheme was approved by the respective Board of Directors of all the Petitioner Companies at their meetings held on 30th May, 2022 respectively.

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

i. The Transferor Companies and the Transferee Company are carrying on business activities under the same management group. Therefore, it would be beneficial for the Transferor Companies to merge with the Transferee Company.

ii. The amalgamation of the Companies will lead to better administrative control and will be convenient for the management to operate as well.

iii. The amalgamation will result in prevention of cost duplication and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure and facilitate resource mobilization and achieve better cash flows. The synergies created by the amalgamation would increase the operational efficiency and integrate business functions.

iv. Such consolidation of business into one economic entity shall enable the Transferee Company to effectively manage the funds and also result in several benefits by way of reduction of number of legal entities, reducing the multiplicity of legal and regulatory compliances, rationalizing costs, it is intended that the Transferor Companies be amalgamated with Transferee Company.

v. The amalgamation will provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capabilities, experience and infrastructure of the companies. The amalgamation will also reduce the managerial overlaps involved in operating different entities, ease and increase operational and management efficiency, integrate business functions.

vi. Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value.

(c) The Statutory Auditor of the Petitioner No.9 i.e., Transferee Company has by their certificate dated 17th June 2022 confirmed 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 Petitioners.

(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 Mr. Manish Gadia, Registered Valuer.

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

(g) By an order dated 07TH September, 2022 in Company Application (CAA) No. 109/KB/ 2022, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act: -

(a) Meetings dispensed: Meetings of the Equity Shareholders and meetings of the Unsecured Creditors of all the Petitioner Companies are dispensed with under Section 230 (1) read with Section 232 (1) of the Act.

(h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 30.12.2022 the instant petition was admitted by this Tribunal and fixed for hearing on 31.01.2023 upon issuance of notices to the Statutory Authorities and advertisement of date of hearing. In compliance with the said order dated 30.12.2022 the Petitioners have duly served such notices by on the Central Government through Regional Director, Eastern Region; Registrar of Companies, West Bengal; on Official Liquidator; and Income Tax Department by hand delivery 2nd January 2023 and 3rd January 2023. The notices along with documents were also sent through email to the Authorities on 3rd January 2023 and have also published such advertisements once each in the "Business Standard" and "Aajkaal" in their issue dated 31.12.2022. An affidavit of compliance in this regard has also been filed by them on 06.01.2023.

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REGULATORY AUTHORITIES

DATE OF SERVICE

RELEVANT ANNEXURE OF THE AFFIDAVIT OF SERVICE

RELEVANT PAGE NO. OF THE AFFIDAVIT OF SERVICE

BY HAND DELIVERY (THROUGH SPECIAL MESSENGER)

1.

Regional Director (ER)

MCA Kolkata

02.01.2023

A

1

2.

Registrar of Companies

02.01.2023

A

3

3.

Income Tax Authorities

02.01.2023 &

03.01.2023

A

7, 9, 11, 13,

16, 18, 20

4.

Official Liquidator

02.01.2023

A

5

THROUGH E-MAIL

1.

Regional Director (ER)

MCA Kolkata

03.01.2023

A

2

2.

Registrar of Companies

03.01.2023

A

4

3.

Income Tax Authorities

03.01.2023

A

8, 10, 12,

14-15, 17,

19, 21

4.

Official Liquidator

03.01.2023

A

6

NEWSPAPER PUBLICATION

1.

Business Standard

31.12.2022

B

22-23

2.

Aajkaal

31.12.2022

B

22-23

(i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners Companies. The Scheme has been made bona fide and is in the interest of all concerned.

4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD"), have filed their representations before this Tribunal.

5. The Official Liquidator has filed his report dated 25th January, 2023 and

concluded as under: -

“9. That the Official Liquidator on the basis of information submitted by the Transferor 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 erstwhile Companies Act, 1956/the Companies Act, 2013, whichever is applicable.

That in view of the submission made above, the Hon'ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case.”

6. The Regional Director has filed his reply affidavit dated 28.03.2023 (“RD affidavit”) which has been dealt with by the Petitioners by their Rejoinder affidavit dated 29.03.2022 (“Rejoinder”). The observations of the RD and responses of the Petitioners are summarized as under: -

Paragraph 2(a) of RD Affidavit:

That it is submitted that as per available record, it appears that no complaint and/ or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies have filed Financial Statements and Annual Returns for the financial year ended 31/03/2022.

Para 3(a) of Rejoinder:

With reference to paragraph 2(a) of the said affidavit, it is submitted that the same is a matter of record and may be considered as such by the Hon’ble Tribunal. The Petitioner Companies have already filed complete set of Financial Statement and Annual Return for the year ended 31st March, 2022.

Para 2(b) of RD Affidavit:

As per Financial Statements, the Transferor Company, Satabadi Agency Private Limited held more than 20% shares of Anupurna Tie-Up Private Limited as on 31/03/2022, 31/03/2021 and 31/03/2020. Hence, Anupurna Tie-Up Private Limited is an Associate Company of Satabadi Agency Private Limited. But no Consolidated Financial Statement for 2021-22, 2020-21 and 2019-20 has been filed by the said Transferor Company, Satabadi Agency Private Limited, contrary to the provisions of section 137(1) read with section 129(3) of the Companies Act 2013, rendering the financial statement filed as incomplete The company should first file the correct and complete sets of financial statements including Consolidated Financial Statements for the said years with Registrar of Companies in prescribed manner before the merger, since once merged the transferor company shall become non-active on MCA portal and the company's filing status shall be extinguished and it shall become free from filing the pending statutory document.

Para 2(c) of RD Affidavit:

As per Financial Statements, the Transferor Company, Satyam Merchandise Private Limited held more than 20% shares of Anupurna Tie-Up Private Limited as on 31/03/2022, 31/03/2021 and 31/03/2020. Hence Anupurna Tie-Up Private Limited is an Associate Company of Satyam Merchandise Private Limited. But no Consolidated Financial Statement for 2021-22, 2020-21 and 2019-20 has been filed by the said Transferor Company, Satyam Merchandise Private Limited contrary to the provisions of section 137(1) read with section 129(3) of the Companies Act 2013, rendering the financial statement filed as incomplete The company should first file the correct and complete sets of financial statements including Consolidated Financial Statements for the said years with Registrar of Companies in prescribed manner before the merger, since once merged the transferor company shall become non-active on MCA portal and the company's filing status shall be extinguished and it shall become free from filing the pending statutory document.

Para 2(d) of RD Affidavit:

Further, as per Financial Statements, the Transferor Company, SNUK Properties Private Limited held more than 20% shares in CRL Supply Chain Solutions Private Limited, SKU Logistics Private Limited and Syscon Logistic Services Private Limited as on 31/03/2022, 31/03/2021 and 31/03/2020. But no Consolidated Financial Statement for 2021-22, 2020-21 and 2019-20 has been filed by the said Transferor Company, SNUK Properties Private Limited contrary to the provisions of section 137(1) read with section 129(3) of the Companies Act 2013, rendering the financial statement filed as incomplete. The company should first file the correct and complete sets of financial statements including Consolidated Financial Statements for the said years with Registrar of Companies in prescribed manner before the merger, since once merged the transferor company shall become non-active on MCA portal and the company's filing status shall be extinguished and it shall become free from filing the pending statutory document.

Para 3(b) of Rejoinder:

With reference to paragraph 2 (b), (c) and (d) of the said affidavit, it is stated that the Transferor Companies viz., Satabadi Agency Private Limited, Satyam Merchandise Private Limited and SNUK Properties Private Limited are all small companies and held investments in other Transferor companies, whereby making such investee companies their associate companies. In terms of Accounting Standard 23 Investments in Associates have to be accounted under the Equity method and no line-by-line consolidation as is envisaged in Accounting Standard 21 for Consolidation of companies. Thus, though the said companies did not specifically refer to their financial statements as consolidated financial statements, they actually would not differ with the consolidated financial statements in any manner. Further, under Section 129 only the directors are liable for the non-compliance thereof and the company is not liable. Moreover, the proposed non-compliance will not have any impact on the merger as any irregularity or liability of the Transferor Company, as per the scheme would make the Transferee Company liable for the same.

Para 2(e) of RD Affidavit:

The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

Para 3(c) of Rejoinder:

With reference to paragraph 2(e) of the said affidavit, it is submitted that the Schedule of Assets shall be provided by the Company after the pronouncement of the order by the Hon’ble National Company Law Tribunal.

Para 2(f) of RD Affidavit:

That the Petitioner Company should undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate affirmations.

Para 3(d) of Rejoinder:

With reference to paragraph 2(f) of the said affidavit, I undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.

Para 2(g) of RD Affidavit:

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.

Para 3(e) of Rejoinder:

With reference to paragraph 2(g) of the said affidavit, it is stated that the Transferee Company shall pay the applicable stamp duty, if applicable, on the transfer of immovable properties from the Transferor Companies to it.

Para 2(h) of RD Affidavit:

The Hon’ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Para 3(f) of Rejoinder:

With reference to Paragraph 2(h) of the said affidavit, it is stated that the Scheme of Amalgamation filed with the Company Application (CAA) No. 109/ KB/ 2022 and the Scheme of Amalgamation filed with the Company Petition No. 176/ KB/ 2022 is one and same and there is no discrepancy.

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

a) The SCHEME OF AMALGAMATION being Annexure "A", is hereby sanctioned by this Tribunal from the Appointed Date being 1st April 2022 of Anupurna Tie-Up Private Limited, being the Petitioner No.1 abovenamed ("Transferor Company 1" or "Petitioner No.1" or "ATPL") , Coastal Trans Logistic Private Limited, being the Petitioner No.2 abovenamed ("Transferor Company 2" or "Petitioner No.2" or "CTLPL"), CRL Supply Chain Solution Private Limited, being the Petitioner No. 3 abovenamed ("Transferor Company 3" or "Petitioner No. 3" or "CSCSPL"), Satabadi Agency Private Limited., being the Petitioner No. 4 abovenamed ("Transferor Company 4" or "Petitioner No. 4" or "SAPL"), Satyam Merchandise Private Limited, being the Petitioner No. 5 abovenamed ("Transferor Company 5" or "Petitioner No. 5" or "SMPL"), SKU Logistic Private Limited, being the Petitioner No. 6 abovenamed ("Transferor Company 6" or "Petitioner No. 6" or "SLPL"), Snuk Properties Private Limited, being the Petitioner No. 7 abovenamed ("Transferor Company 7" or "Petitioner No. 7" or "SPPL"), Syscon Logistic Services Private Limited, being the Petitioner No. 8 abovenamed ("Transferor Company 8" or "Petitioner No. 8" or "SLSPL") with Udit Properties Private Limited, being the Petitioner No. 9 abovenamed ("Transferee Company" or "Petitioner No. 9" or "UPPL") and shall be binding on all the Equity Shareholders of the Petitioner Companies and all concerned;

TRANSFEROR COMPANIES

TRANSFEREE COMPANY

Appointed Date: 1st April 2022

ANUPURNA TIE-UP PRIVATE LIMITED

UDIT PROPERTIES PRIVATE LIMITED

COASTAL TRANS LOGISTIC PRIVATE

LIMITED

CRL SUPPLY CHAIN SOLUTION

PRIVATE LIMITED

SATABADI AGENCY PRIVATE LIMITED.

SATYAM MERCHANDISE PRIVATE

LIMITED

SKU LOGISTIC PRIVATE LIMITED

SNUK PROPERTIES PRIVATE LIMITED

SYSCON LOGISTIC SERVICES PRIVATE

LIMITED

b) All the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without any further act or deed, to the Transferee Company, and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 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, as provided in the Scheme;

c) All the debts, liabilities and duties and obligations of the Transferor Companies to be transferred from the said Appointed Date, without further act or deed, to Transferee Company and shall, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

d) All the workmen and employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme. All the obligations/ liabilities of the Transferor Companies with regard to their workmen and employees shall be the responsibilities of the Transferee Company;

e) Any non-compliance of the Companies act by the constituent transferor companies, shall be rectified by the transferee company including providing of the consolidated financial information as pointed out in the RD affidavit, along with necessary fines as levied by the RD(ER), if any.

f) All proceedings and/or suit and/ appeals now pending by or against the Transferor Companies shall be continued by or against Transferee Company, as provided in the Scheme; and the sanctioning of the scheme by this tribunal shall not come in the way of any proceedings pending/ contemplated against any of the petitioner companies, for which the relevant records shall be preserved by the Transferee company who is any way responsible for attending to any such proceedings on behalf of the constituent companies.

g) With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/appeals of whatsoever nature by or against the Transferor Companies pending and/or arising on or after the Appointed Date shall be continued and/or enforced by or against the Transferee Company. Any compounding/penalties/liabilities/taxes required to be done on behalf of the Transferor Companies for any violation of the Companies' Act shall be the responsibility of the Transferee Company. The Transferee Company shall also preserve the necessary records in respect of any such pending proceedings, at least till the culmination of such proceedings.

h) The Transferee Company shall issue and allot shares to the shareholders of the Transferor Companies, the shares in the Transferee Company in accordance with the Scheme;

i) Upon the Scheme being effective, the Transferor Companies shall stand dissolved without winding up;

j) Leave is granted to the petitioners to file the Schedule of Assets of the

Transferor Companies in the form as prescribed in the Schedule to Form No. CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date the order;

k) The Petitioners 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.

l) After dissolution of the Transferor Companies, the fee paid by the Transferor Companies on their Authorized Share Capital to be set off against the fee payable by the Transferee Company on its authorized share capital subsequent to the amalgamation;

8. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.

9. In case of any default, including in provisions of income tax in respect of transferred companies, the Income Tax Department, the ROC West Bengal, and all others statutory departments/authorities shall be at liberty to initiate appropriate proceedings against the transferee company which after the sanction of the scheme by this tribunal is in any case shall be responsible for the liabilities/ non-compliances of the transferee companies as well. The transferee company shall preserve the relevant records of the transferor companies in this regard.

10. Hence, the Company Petition (CAA) No. 176/KB/2022 connected with Company Application (CAA) No. 109/KB/2022 is disposed of accordingly.

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