(2024) 03 NCLT CK 0010

In the National Company Law Tribunal

Case No : C.P. (CAA)/309/MB/2023 In C.A. (CAA)/220/MB/2023

V Link Automotive Services Privatelimited Vs

Date of Decision : 07-03-2024

Acts Referred:
Companies Act, 2013 — Section 230, 230(1), 230(3), 230(5), 230(7), 230(9), 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2024) 03 NCLT CK 0010

Hon'ble Judges : Reeta Kohli, Member (J);Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Altap Shaikh

Final Decision : Disposed Of

Judgement

1. Heard Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Merger by Absorption between V-Link Automotive Services Private Limited (?First Petitioner Company? or ?First Transferor Company? or ?VASPL?) and V-Link Fleet Solutions Private Limited (?Second Petitioner Company? or ?Second Transferor Company? or ?VFSPL?) and MLL Mobility Private Limited (formerly known as Meru Mobility Tech Private Limited (?Third Petitioner Company? or ?Transferee Company? or ?MMPL?) and their respective Shareholders (?the Scheme? or ?this Scheme?).

3. The Scheme involves the Merger by Absorption of the First Transferor Company and the Second Transferor Company with the Transferee Company.

4. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have approved the Scheme by passing the Board Resolutions at their

respective board meetings held on 24th April, 2023. The Appointed Date fixed for the Scheme is 1st April, 2023.

5. The Learned Counsel for the Petitioner Companies submits that the rationale for the Scheme is as under:

? Since the Transferor Companies and Transferee Company are engaged in similar line of business, the merger of the Transferor Companies with the Transferee Company will result in operational synergies resulting in cost optimization;

? It will also achieve rationalization of costs by simplification of management structure leading to better administration and cost savings;

? The proposed merger would also simplify the financial reporting to all stakeholders and help evaluate financial results more meaningfully;

? It is the intention of the management to rationalize the group holding structure by way of reduction in the number of entities and streamline the group structure which would result in cost savings and better administration;

? In addition, the proposed Scheme will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies;

? It will be beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors, and other stakeholders of the Transferor Companies and the Transferee Company.

6. The Learned Counsel for the Petitioner Companies further submits the business activities of the Petitioner Companies is as follows:

The First Transferor Company / The First Petitioner Company

The First Petitioner Company is engaged in the business of owning, operating, and maintaining vehicle fleet for transportation of passengers in the form of taxis, providing taxi aggregator services. Further, the First Transferor Company is also engaged in the business of employee transportation and operating a fleet of vehicles which are aggregated from third parties.

The Second Transferor Company / The Second Petitioner Company

The Second Petitioner Company is engaged in the business of employee transportation and operates a fleet of vehicles which are aggregated from third parties.

The Transferee Company / The Third Petitioner Company

The Third Petitioner Company is engaged in the business of owning, operating, and maintaining vehicle fleets for transportation of passengers in the form of taxis, providing taxi aggregator services. Further, the Transferee Company is also engaged in the business of employee transportation and operating a fleet of vehicles which are aggregated from third parties.

7. The Learned Counsel for the Petitioner Companies submits that as consideration for the Scheme, shares will be issued by the Third Petitioner Company to the shareholders of the First Petitioner Company and Second Petitioner Company, based on share entitlement ratio as determined by Valuation report dated 21st April, 2023 issued by SPA Valuation Advisors Private Limited which is as follows:

?13.50 fully paid up equity shares of Rs. 10/- each of the Transferee Company shall be issued and allotted for every 1 fully paid up equity share of Rs.10/- each held in the First Transferor Company.?

?1 fully paid up equity share of Rs. 10/- each of the Transferee Company shall be issued and allotted against the 12,050 fully paid up equity shares of Rs.10/- each held in the Second Transferor Company.?

8. The Learned Counsel for the Petitioner Companies submits that the present Company Petition is filed in consonance with Sections 230 to 232 of the Companies Act, 2013, and in terms of the order passed in C.A.(CAA)/220/ MB/2023 by this Tribunal.

9. The Hon?ble Tribunal vide its order dated 27th October 2023 in C.A.(CAA)/220/ MB/2023 had directed the following with respect to meeting of equity shareholders, secured creditors and unsecured creditors of the Petitioner Companies:

a. All the Equity Shareholders have given their consent in writing to the proposed Scheme. In view of the consents filed by all the Equity Shareholders of the Petitioner Companies, the meeting of the Equity Shareholders of the Petitioner Companies was dispensed with.

b. The First Petitioner Company and Second Petitioner Company do not have any Secured Creditors, hence, the question of convening their meetings did not arise. The meeting of the Secured Creditors of the Third Petitioner Company was dispensed with on account of the consents procured by the Third Petitioner Company from at least 90% of the total value of its Secured Creditors as on 30th June, 2023.

c. The meeting of the Unsecured Creditors of the First and Second Petitioner Companies was dispensed with on account of consents obtained from all Unsecured Creditors as on 30th June, 2023. The meeting of the Unsecured Creditors of the Third Petitioner Company was dispensed with on account of consents to be procured by the Third Petitioner Company from at least 90% of total value of its Unsecured Creditors as on 30th June, 2023, as per Section 230(9) of the Companies Act, 2013, on or before the final hearing of the Petition. The Learned Counsel for the Petitioner Companies states that in compliance to the order dated 27th October, 2023 by this Tribunal, the Third Petitioner

Company has procured consent affidavits from more than 90% of its Unsecured Creditors for the outstanding amount due to them as on 30th June, 2023, which was annexed as Annexure I to the Company Scheme Petition.

10. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of this Hon'ble Tribunal, and they have made requisite filings to demonstrate compliance with this Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.

11. The Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, has filed a Report dated 13th February 2024 stating its observations in paragraphs 2(a) to 2(g) therein. In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings vide their Affidavit which was filed with the Hon? ble Tribunal on 14th February 2024. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies is summarized in the table below: -

Para

No.

Regional Director, Western Region,

Mumbai ? observations

Response from the Petitioner

Companies

2(a)

In compliance of AS-14 (IND AS-103), the Transferor company 1, 2 and Transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc

The Petitioner Companies undertake that in addition to compliance of IND AS 103, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as IND AS 8, etc.

2(b)

As per Definition of the Scheme,

1.1 ?Appointed Date? means the 1st day of April, 2023 or such other date as may be directed or approved by the National Company Law Tribunal or any other

Appropriate Authority.

?Effective Date? means the last of the dates on which certified copy of the order of the National Company Law Tribunal is filed with the Registrar of Companies by the Transferor Companies and the Transferee Company.

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon?ble Tribunal taking into account its inherent powers.

The Petitioners may be asked to comply with the requirements as clarified vide general circular no. 09/2019 having F.No.7ll2/2019/CL -l dated 21.08.2019 issued by the Ministry of Corporate Affairs.

The Petitioner Companies submit that as per Clause 1.4 of the Scheme, the Appointed Date means 1st April 2023 or such other date as may be approved by the NCLT for the Scheme.

Further, as per Clause 1.7 of the Scheme, the Effective Date means the last of the dates which certified copy of the order of the National Company Law tribunal is filed with the Registrar of Companies by the Transferor Companies and the Transferee Company.

Any references in this Scheme to ?coming into effect of this Scheme? or ?effectiveness of the Scheme? shall mean the Effective Date.

Hence, the Scheme clearly indicates an Appointed Date from which it shall be effective and that the Scheme shall be deemed to be effective from such date. The same therefore, meets the requirements clarified vide circular no. 9/2019 having F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. Further, the Petitioner Companies undertake to comply with requirements of the Circular, if any.

2(c)

The Transferor company 1, 2 and Transferee company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.

The Transferee Company submits that, as per the provisions of Section 232(3)(i) of the Companies Act, 2013 the authorised share capital of the Transferor Companies is proposed to be aggregated with authorised share capital of the Transferee Company, as a part of the Scheme. Therefore, the fees paid by the

Transferor Companies on their authorized share capital shall be set-off against the fees payable by the Transferee Company on its authorized share capital subsequent to the amalgamation. Remaining fees, if any, shall be paid by the Transferee Company on its increased share capital subsequent to the amalgamation, if required. The Petitioner Companies hereby undertake that the Transferee Company shall pay the difference, if any, in fees and stamp duty.

2(d)

The Hon?ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

The Petitioner Companies undertake that the Scheme is approved by the requisite majority of members and creditors, in accordance with Section 230(1) of the Act. The Hon?ble Tribunal had dispensed with the requirement of meetings vide its order dated 27th October 2023 in C.A.(CAA)/220/MB/2023 as follows:

i. All the Equity Shareholders had given their consent in writing to the proposed Scheme. In view of the consents filed by all the Equity Shareholders of the Petitioner Companies, the meeting of the Equity Shareholders of the Petitioner Companies was dispensed with.

ii. The First Petitioner Company and Second Petitioner Company did not have any Secured Creditors, hence, the question of convening their meetings did not arise. The meeting of the Secured Creditors of the Third Petitioner Company was dispensed with on account of the consents procured by the Third Petitioner Company from at least 90% of the total value of its Secured Creditors as on 30th June, 2023.

iii. The meeting of the Unsecured Creditors of the First and Second Petitioner Companies was dispensed with on account of consents obtained from all Unsecured Creditors as on 30th June, 2023. The meeting of the Unsecured Creditors of the Third Petitioner Company was dispensed with on account of consents to be procured by the Third Petitioner Company from at least 90% of total value of its Unsecured Creditors as on 30th June, 2023, as per Section 230(9) of the Companies Act, 2013, on or before the final hearing of the Petition. Accordingly, in compliance to the order dated 27th October, 2023 by the Hon?ble Tribunal, the Third Petitioner Company had procured consent affidavits from more than 90% of its Unsecured Creditors for the outstanding amount due to them as on 30th June, 2023 of the Third Petitioner Company, which was annexed as Annexure I to the Company Scheme Petition.

2(e)

The Transferee Company shall be in compliance with the provisions of Section

2(1B) of the Income Tax Act, 1961. In this regard, the Transferor companies 1, 2, 3 and Transferee company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;

The Petitioner Companies submit that the Transferee Company shall be in compliance of all the applicable provisions of the Income-tax Act, 1961, including the conditions thereon, read with applicable rules thereunder, pertaining to the Scheme, including but not limited to compliance with section 2(1B) of the Income-tax Act, 1961, to the extent applicable.

2(f)

In the Balance Sheet of the Transferor Company 1, 2 and Transferee Company as on 31st, March 2023, Security Premium of Rs. 1,62,86,96,00/-, Rs. 4,10,67,000/- and Rs. 3,50,19,65,000/- is showing.

In view of the above, if agreed, Hon?ble NCLT may ask the petitioners to clarify that Income Tax Department has properly assessed the increase of share capital from time-to-time u/s. 68 of the Income Tax Act, 1961 and payment of Income Tax by existing shareholders, if they who have purchased shares at lower price than issued price from above allotees or seek the reply from Income tax department about issue of share capital at high premium.

It is further submitted that CBDT vide circular dated 17.03.2023 (Copy Enclosed) appointed following nodal officer for income tax department for the Region of Mumbai & Goa, which is as follows:-

Pr. CCIT, Mumbai Address:- 3rd Floor, Aayakar Bhawan, Maharishi Karve Road, Mumbai ? 400020.

Phone No. 022-22017654

Email:- Mumbai.pccit@incometax.gov.in

The Petitioner Companies submit that no notices have been received by the Petitioner Companies u/s 68 of the Income-tax Act, 1961. Further, the Petitioner Companies have served notices on the Jurisdictional Income Tax Officer and the Nodal officer, u/s 230(5) of the Companies Act, 2013. Further, notices were again served on the Jurisdictional Income-tax Officer and the Nodal officer intimating them of the final hearing date on 31st January 2024. Sanction of the Scheme will not deter the rights of the Income Tax Department during assessment proceedings. Acknowledgement of the notices served on the Income Tax Officers including Nodal Officer is attached as Annexure B to the RD Rejoinder Affidavit.

2(g)

That on examination of the report of the Registrar of Companies, Mumbai dated 12.10.2023 (Annexed as Annexure A-1)) that the Transferor company 1, 2 and Transferee company fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or representation regarding the proposed scheme of Amalgamation has been received against the Transferor company 1, 2 and Transferee company. Further, the Transferor company 1, 2 and Transferee company have filed Financial Statements up to 31.03.2023 further observations in ROC report are as under: -

i. One Inquiry is ordered against the MLL MOBILITY PRIVATE LIMITED (Formerly Known as Meru Mobility tech Pvt. Ltd.) vide Ministry No. 03 /307 /2015/ CI-II (WR) dated 05.09.2015 EMSRN 100020373 Source-complaint. inquiry is pending with inspecting officer of this office.

ii. Necessary Stamp Duty on transfer of property/Assets is to be paid to the respective Authorities before implementation of the Scheme.

iii. It is submitted that as per the provisions of Section 232(3)(i) of the Companies Act, 2013, where the transferor Company is dissolved, the fee, if any, paid by the transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent to the amalgamation. Remaining fee, if any after setting - off the fees already paid by the transferor company on its authorized capital, has to be paid by the transferee Company on the increased authorized capital subsequent to the amalgamation.

iv. Interest of the Creditors should be protected.

v. May be decided on its merits.

On the observations of the RoC report, the Petitioner Companies submit as follows:

i. As far as observations on inquiry being ordered against the Third Petitioner Company is concerned, the Third Petitioner Company hereby clarifies that it is a Transferee Company and will continue to survive post this scheme of Merger. Further, the Third Petitioner Company hereby undertakes to provide necessary information, documents, clarification and cooperation, as may be required, in relation to this inquiry.

ii. The Petitioner Companies undertake that necessary stamp duty on transfer of property / assets, as applicable, will be paid to the respective authorities for implementation of the Scheme.

iii. The Transferee Company hereby submits that, as per the provisions of Section 232(3)(i) of the Companies Act, 2013, the authorised share capital of the Transferor Companies is proposed to be aggregated with the authorised share capital of the Transferee Company, as a part of the Scheme. Therefore, the fees paid by the Transferor Companies on their authorized share capital shall be set-off against the fees payable by the Transferee Company on its authorized share capital subsequent to the amalgamation. Remaining fees, if any, shall be paid by the Transferee Company on its increased share capital subsequent to the amalgamation, if required.

iv. The Petitioner Companies undertake that the interest of creditors is protected. Further, as stated above, requisite consents have been obtained from both secured and unsecured creditors.

v. The RoC has observed that the Hon?ble Tribunal may decide the matter on its merits and pass necessary orders. The Petitioner Companies have no observations on the same.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal. The Authorized Representative of the Regional Director, MCA (WR), Mumbai Mr. Altap Shaikh who is present at the time of the hearing has submitted that the explanation and clarifications given by the Petitioner Companies are found satisfactory. He stated that they have no serious objections for approving the scheme by the Tribunal.

13. The Official Liquidator has filed his report dated 13th February, 2024 inter-alia, stating its observations in paragraphs (5) to (7) therein. In response to the observations made by the Official Liquidator, the Petitioner Companies have also given necessary clarifications and undertakings vide their Affidavit which was filed with Hon?ble Tribunal on 14th February 2024. The observations made by the Official Liquidator and the clarifications and undertakings given by the Petitioner Companies is summarized in the table below: -

Para

No.

Official Liquidator, observations

Response from the Petitioner

Companies

(5)

With reference to clause no 13 of the scheme, it is stated that such clauses overrides the provisions of Companies Act 2013 namely Section 232(3)(i) which inter alia provides that, ?if a company is dissolved the fees paid by such company on its Authorized Capital shall be set off against any fees paid by the transferee company on its Authorized Capital. Hon?ble tribunal may be pleased to direct Transferee Company to pay differential amount, if any, after setting off fees already paid by the Transferor Company

The Petitioner Companies undertake, in accordance with section 232(3)(i) of the Companies Act, 2013, the authorised share capital of the Transferor Companies is proposed to be aggregated with the authorised share capital of the Transferee Company, as a part of the Scheme. Therefore, the fees paid by the Transferor Companies on their authorized share capital shall be setoff against the fees payable by the Transferee Company on its authorized share capital subsequent to the amalgamation. Remaining fees, if any, shall be paid by the Transferee Company on its increased share capital subsequent to the amalgamation, if required. The Petitioner Companies hereby undertake that the Transferee Company shall pay the differential amount, if any, after setting off fees already paid by the Transferor Company.

(6)

As per the Financial Statements as at 31.03.2023 of the V-Link Fleet Solutions Private Limited (Second Transferee Company) has negative net worth. Even when the company's net worth is negative the financial statements has been prepared on going concern basis. There may be a breach of fundamental principle of accounting. Hon?ble tribunal may require the company to explain in this respect.

The Second Petitioner Company hereby states that as per IND-AS 1, ?When preparing financial statements, management shall make an assessment of an entity?s ability to continue as a going concern. An entity shall prepare financial statements on a going concern basis unless management either intends to liquidate the entity or to cease trading, or has no realistic alternative but to do so.? Further, in note 32 of the financial statements of Second Petitioner Company as on March 31, 2023, audited by the statutory auditor, it has been explicitly stated that the holding company, Mahindra Logistics Limited, has committed to provide continuing financial and / or operating support to the Company for the foreseeable future. In view of the above, the going concern assumption has been considered appropriate in preparing financial statements of the Second Petitioner Company.

(7)

It is noticed from the Financial Statements as at 31.03.2023 of the VLink Fleet Solutions Private Limited (Second Transferee Company) under heading Short Term borrowings in note 14 has shown loan of Rs. 1422.48 as at 31.03.2023 taken from MLL Mobility Private Limited. It has been further observed in earlier years i.e. Rs. 1422.48 lakhs in 31.03.2022, Rs 1445 lakhs in 31.03.2021, Rs 1688 lakhs in 31.03.2020 also, such short term borrowings has shown. In this respect, the Transferor Company may clarify to Hon?ble Tribunal whether the said amount has been carried forward from Financial Statement as at 31.03.2020 to 31.03.2023 and if so, then how it is a short term borrowing and how the Financials of the Company are reflecting True and Fair view of the affairs of the Company.

The Second Petitioner Company hereby states that in note 14 and 26 of the financial statements of Second Petitioner Company as on March 31, 2023, audited by the statutory auditor, it has been disclosed that the loan taken from fellow subsidiary is repayable on demand. Hence, the loan has been classified as short-term borrowing.

14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, Company Petition, C.P. (CAA)/309/MB/2023 is made absolute in terms of the prayer clauses of the Company Scheme Petition.

16. The Scheme is sanctioned hereby, and the Appointed Date of the Scheme is 1st April 2023.

17. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e- Form INC-28, within 30 days from the date of receipt of the order from the Registry, duly certified by the Deputy/ Assistant Registrar of this Tribunal.

18. The Petitioner Companies are directed to lodge a certified copy of this Order and the Scheme duly authenticated by the Deputy/ Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps for adjudication of stamp duty payable, if any, within 60 working days from the date of receipt of certified copy of the order from the Registry.

19. All concerned regulatory authorities act on a copy of this Order duly certified by the Designated Registrar of this Tribunal along with copy of the Scheme.

20. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.

21. Accordingly, the C.P. (CAA)/309/MB/2023 is allowed and disposed of.