(2023) 03 NCLT CK 0071

In the National Company Law Tribunal

Case No : CA(CAA) 277/MB/2022

Victoria Mills Limited Vs

Date of Decision : 31-03-2023

Acts Referred:

Companies Act, 2013 — Section 180, 230, 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 03 NCLT CK 0071

Hon'ble Judges : Kishore Vemulapalli, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ashish O Lalpuria

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member Technical

1. The Court convened by videoconference.

2. Learned Authorised Representative for the Transferor Company and Transferee Company (Applicant Companies) states that the present Scheme is an Application for an arrangement embodied in the Scheme of Amalgamation of VICTORIA LAND PRIVATE LIMITED, the Transferor Company with THE VICTORIA MILLS LIMITED, the Transferee Company and their respective Shareholders.

3. The Learned Authorised Representative for the Applicants states that the respective Board of Directors of Transferor Company and the Transferee Company at its respective Board Meeting held on 08th February, 2022 approved the Scheme.

4. The Learned Authorised Representative for the Applicants states that appointed date of Scheme of Amalgamation is 1st April, 2022.

5. The Learned Authorised Representative for the Applicants submit that the Transferor Company is a wholly owned Subsidiary of the Transferee Company.

6. The Learned Authorised Representative for the Applicants submits that the

Transferor Company and the Transferee Company are in the business of real estate development.

7. The Learned Authorised Representative for the Applicants submit that the paid up share capital of the Transferor Company is Rs. 1,00,000/- divided into 1,000 Equity Shares of Rs. 100/-each. The paid-up share capital of the Transferee Company is Rs. 98,56,000/- divided into 98,560 Equity Shares of Rs. 100/- each.

8. The Learned Authorised Representative for the Applicants submit that since the present Application is for Scheme of Amalgamation of wholly owned Subsidiary (Transferor Company) with its holding Company (Transferee Company), no shares are being issued as the shares held by the Transferee Company in Transferor Company would be cancelled and extinguished upon Amalgamation.

9. The Learned Authorised Representative for the Applicants submit that the rationale for the Scheme is as under:

(i) The Transferor Company is wholly owned subsidiary of the Transferee Company and both the companies form part of the same group, hence it is desired to consolidate the business of the Transferor Company with the Transferee Company by way of merger of Transferor Company with the Transferee Company.

(ii) The merger of the Transferor Company with the Transferee Company would inter alia have the following benefits:

a) Reduction in number of entities leading to simplification of group structure;

b) Pooling of resources including Immovable properties;

c) Enable cost saving and reduction in administrative inefficiencies;

d) Combining / consolidating business and Reduction in administrative and other overheads;

e) Reduction of intra-group transactions and compliance requirements under various laws;

f) Reduction of operating and compliance costs; and

g) Enhancing shareholder’s value;

10. The Applicant Company 1 / Transferor Company has 2 (Two) equity shareholders. All of them have given their consent to the Scheme by way of Affidavits. These are placed at p. 349-354 of the Application. In view of this, the meeting of the equity shareholders of the Transferor Company is dispensed with.

11. That Learned Authorised Representative submits that there are no Secured Creditors in the Transferor Company as well as the Transferee Company.

12. That Learned Authorised Representative submits that there are no Unsecured

Creditors in the Transferor Company.

13. The Learned Authorised Representative submits that there are Six (6) Unsecured Creditors in the Transferee Company with a total outstanding of Rs. 22,85,84,929/- (Rupees Twenty-Two Crore Eight Five Lacs Eight Four Thousand Nine Hundred Twenty Nine Only) as on 31.07.2022. He further submits that Unsecured Creditors constituting 96.03% in value have given their consent to the Scheme by way of Affidavits. These are placed at p. 336-348 of the Application. In view of this, the meeting of the unsecured creditors of the Transferee Company is dispensed with.

14. The Applicant Companies submit that:

a) Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of members of the Transferee Company are not adversely affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also, the present Scheme will not result in any dilution in shareholding of the shareholders of the Transferee Company.

b) The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and the assets of the Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company is and will continue to remain highly positive post-merger;

c) The existence of the Transferee Company will remain as before without any change in its shareholding pattern pursuant to the Scheme.

d) No undertaking of the Transferor Company is being parted away or being disposed-off and hence provisions of section 180 of the Companies Act, 2013 are also not applicable

15. The Learned Authorised Representative for the Applicants further submits that in view of above, no reconstruction or arrangement happens with its shareholders or creditors, and thus, it does not require to hold either shareholders' meeting or creditors' meeting of the Applicant Company 2/ the Transferee Company for approval of the proposed Scheme in view of ratio laid down by this Tribunal in CA(CAA) No 243 of 2017 in the matter of Housing Development Finance Corporation Limited; in CA(CAA) No. 915 of 2017 in the matter of Godrej Consumer Products Limited; in CA(CAA) No. 899 of 2017 in case of Mahindra CIE Automotive Limited; in CA(CAA) No. 1019 of 2017 in case of Godrej Properties Limited; in CA(CAA) No. 1615 of 2018 in case of Dolvi Minerals and Metals Private Limited; in CA(CAA) No. 396 of 2019 in JSW Logistic Infrastructure Private Limited; in CA(CAA) No. 1611 of 2019 in CEAT Specialty Tyres Limited; in CA(CAA) No. 3123 of 2019 in JAI Corp Limited and in CA(CAA) No. 4149 of 2019 in Godrej Properties Limited and in various other matter

including the judgement of the National Company Law Appellate Tribunal (NCLAT) in Company Appeal (AT) No. 19 of 2021 in the matter of Ambuja Cements Limited. The Transferee Company submits that the facts in the present case are similar to the facts of above cases therefore no meeting of shareholders and/or creditors of the Transferee Company are required to be convened. Since the Transferor Company is a wholly-owned subsidiary of the Transferee Company, the meeting of the Equity Shareholders of the Transferee Company is dispensed with.

16. The Learned Authorised Representative further submits that the Transferee Company is not required to obtain "Observation Letter" from Stock Exchange pursuant to regulation 37(6) of Securities And Exchange Board of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 as the Scheme involves merger of Wholly Owned Subsidiary with holding Company.

17. The Applicant Companies to serve the notice of the present Application complete with enclosures upon –

(a) the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai,

(b) Registrar of Companies, Mumbai

(c) Concerned GST Authorities

(d) Securities and Exchange Board of India,

(e) BSE Ltd, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notices it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Applicant Companies to serve the notice of the present Application complete with enclosures on the following Income Tax Authorities within whose jurisdiction the respective applicant companies are assessed to tax clearing indicating PAN of the concerned Company, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:

Name of

Company

PAN

Income Tax

Jurisdiction

Transferor Company

AADCV1237A

WARD 8(3)(1),

Aayakar Bhawan, Mumbai

Transferee Company

AAACT0050E

CIRCLE 8(3)(1),

Aayakar Bhawan, Mumbai

If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. The Transferor Company to serve notice upon the Official Liquidator, Mumbai pursuant to Section 230(5) of the Companies Act, 2013. If no response is received by the concerned Tribunal from Official Liquidator within 30 days, it may be presumed that Official Liquidator, Mumbai has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The Applicant Companies to file affidavit of service within 15 (fifteen) days from the last of the compliances as stated in above paragraphs are made and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.