(2023) 05 NCLT CK 0034

In the National Company Law Tribunal

Case No : CP(CAA) NO. 244/MB Of 2022 In CA(CAA) NO. 194/MB Of 2022

Vista Flexibles Private Limited Vs

Date of Decision : 08-05-2023

Acts Referred:
Companies Act, 2013 — Section 230, 230(5), 232, 232(3)(i)

Citation : (2023) 05 NCLT CK 0034

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Ashish O. Lalpuria, Kamal Lahoty, Rupa Sutar, Chandan Kumar

Final Decision : Disposed Of

Judgement

Anuradha Sanjay Bhatia, Member (T)

The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) for confirmation of the Scheme of Amalgamation of VISTA FLEXIBLES PRIVATE LIMITED, the First Transferor Company; VICTORY DYES AND PAPER PRIVATE LIMITED, the Second Transferor Company with VISTA PACKAGING PRIVATE LIMITED, the Transferee Company and their respective Shareholders.

1. The Scheme envisages Amalgamation of VISTA FLEXIBLES PRIVATE LIMITED, the First Transferor Company; VICTORY DYES AND PAPER PRIVATE LIMITED, the Second Transferor Company with VISTA PACKAGING PRIVATE LIMITED, the Transferee Company.

2. We have heard the Learned Authorised Representative for the Petitioner Companies and the Deputy Registrar of Companies, for Regional Director, Western Region, MCA. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

3. The Learned Authorised Representative for the Petitioners submits that the Petitioner Companies are directly or indirectly in the same line of business activities. The First Transferor Company is engaged in the business of Packaging

Materials. The Second Transferor Company is presently not engaged in any activities. The Transferee Company is engaged in the business of packaging materials.

4. The Board of Directors of Petitioner Companies have approved the scheme at their respective Board Meetings conducted on 28th June, 2022 respectively. The appointed date of the scheme is 1st April, 2022.

5. The learned Counsel for the Petitioner Companies further submitted the following rationale for the Scheme:

5.1. The entire shareholding and management of the Transferor Companies and the Transferee Company is owned by the same Promoter Group i.e. the Rangwala family. These Companies are closely held and are indirectly in the same line of business activities.

5.2. The Transferor Companies at present do not have any significant business operations. The Transferee Company on the other hand has a well-established business and can effectively utilize the resources of the Transferor Companies. Further the Immovable Property of the Transferor company 1 and the liquid funds of the Transferor Company 2 will help to strengthen asset base and the liquidity of the Transferee Company. Thus, it was felt that amalgamation of the Transferor Companies with the Transferee Company would result into integration of the separate entities under one umbrella thereby achieving the synergistic benefits of consolidation of companies.

5.3. The proposed amalgamation shall lead to a single company with rationalized structure, greater integration, financial strength and flexibility aiding in achieving economies of scale, sourcing benefits, vendor rationalization, more focused operational efforts, standardization and simplification of business processes and productivity improvements.

5.4. The Transferor Companies would be dissolved without being wound up, thereby ensuring a seamless transfer of all the assets and liabilities of the Transferor Companies into the Transferee Company.

6. The Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated 1st August, 2022 passed in CA (CAA) No. 194/ MB/2022 of this Tribunal.

7. Upon this Scheme becoming effective and in consideration of amalgamation of the Transferor Companies with Transferee Company in terms of this Scheme, the Transferee Company shall, without any application, act or deed, issue and allot equity shares, credited as fully paid up, to the extent indicated below, to the members of the Transferor Companies holding fully paid up equity shares of Transferor Companies as on the Record Date, or to such of their respective heirs, executioners, administrators or other legal representatives or other successors in title as may be recognised by the Board of Directors of the Transferee Company in the following ratio:

a) To the shareholders of First Transferor Company:

1 (One) fully paid-up Equity Shares of face value of Rs. 10/-(Rupees Ten Only) of the Transferee Company for every 2 (Two) fully paid-up Equity Share of Rs.100/- (Rupees One Hundred Only) held in the Transferor Company 1.

b) To the shareholders of Second Transferor Company:

100 (One Hundred) fully paid-up Equity Shares of face value of Rs. 10/-(Rupees Ten Only) of the Transferee Company for every 1 (One) fully paid-up Equity Share of Rs.10/- (Rupees Ten Only) held in the Transferor Company 2.

8. The Learned Authorised Representative appearing on behalf of the Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 17th January, 2023 inter alia stating therein its observations on the Scheme as stated in para 2 (a) to (i) of the Report. In response to the observations made by the Regional Director, the Petitioner Companies filed an Affidavit in Rejoinder and have given necessary clarifications and undertakings. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr.

No.

Par

a 2

RD Report / Observation Dated 17th January, 2023

Response of the Petitioner Companies

a)

That on examination of the report of the Registrar of Companies, Mumbai dated 23.11.2022 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2021;

Apropos observation made in paragraph 2 (a) of the report of Regional Director is concerned, the Petitioner Companies submit that the same is self-explanatory in nature and does not require any explanation. Further the Petitioners states that the Transferor Companies have filed their financial statements for the year ended 31.03.2022 vide SRN F24164279 on 08/09/2022 and SRN F30837785 on 18/10/2022 respectively and the Transferee Company has filed its financial statements for the year ended 31.03.2022 vide SRN

F24170326 on 08/09/2022

b)

The ROC has further submitted that in his report dated 23.11.2022 which are as under:

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1. That the ROC Mumbai in his report dated 15.12.2022 has stated that No Inquiry, Investigations, Inspections, Prosecutions, Technical Scrutiny, Complaints are pending against the Petitioner Companies.

2. 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. Therefore, 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.

3. Necessary stamp duty on transfer of property/ assets is to be paid to the respective authorities before implementation of the scheme.

4. E-form GNL-1 not filed by all the applicant company.

5. Interest of the Creditor and other stakeholders should be protected.

Hence, the Petitioner Companies shall undertake to submit detail reply against observations mentioned above

(1) Apropos observation made in paragraph 2(b)(1) of the report of Regional Director is concerned, the Petitioner Companies states the same is self-explanatory and does not require explanation.

(2) Apropos observation made in paragraph 2(b)(2), the Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees on the increased Authorised Share Capital and would pay the differential fees,

if any.

(3) Apropos observation made in paragraph 2(b)(3), the Petitioner Companies states that applicable stamp duty will be paid on transfer of property/ assets to respective authorities in accordance with the law post sanction of the scheme.

(4) In regards to the observation made in paragraph 2 (b)(4), the Petitioners states that all the Transferor Companies and Transferee Company have filed Form GNL-1 vide SRN F57809840 on 24/01/2023, SRN F57801201 on 24/01/2023 and SRN F57803157 on 24/01/2023 respectively.

(5) As far as the observation made in paragraph 2(b)(5) with respect to protection of interest of creditors and other stakeholders is concerned, the Petitioner Companies undertakes to protect the interest of creditors and other stakeholders at all times.

c)

Transferee Company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of Transfer

of companies.

Apropos observation made in paragraph 2(c) of the report of Regional Director is concerned, as stated above the Transferee Company reiterates that it would comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees, if any.

d)

In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS- 5 or IND AS-8 etc.

Apropos observation made in paragraph 2(d) of the report of Regional Director is concerned, the Petitioner Companies undertakes to comply with AS-14 or IND AS-103 and such applicable accounting standards for Amalgamation and as per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme including AS-5 or IND AS-8 as applicable.

e)

The Hon'ble Tribunal may kindly direct the Petitioner Companies 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.

Apropos observation made in paragraph 2 (e) of the Report of the Regional Director is concerned, the Petitioner Companies submits that Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.

f)

The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which

are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.

Apropos observation made in paragraph 2 (f) of the report of Regional Director is concerned, the Petitioner Companies submits that notices were served upon the

concerned regulatory authorities in accordance with the provisions of section 230(5) of the Companies Act, 2013. The Petitioners further submits that approval of the scheme by this Hon’ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities shall be binding on the Petitioner Companies subject to right of appeal, if available.

g)

As per Definition of the Scheme,

“Appointed Date” means 01st day of April, 2022 or such other date as may be fixed or approved by the National Company Law Tribunal at Mumbai or such other

competent authorities.

“Effective Date” means the date on which certified or authenticated copies of the orders sanctioning this scheme, passed by the National Company Law Tribunal at Mumbai are filed with Registrar of Companies, Mumbai, Maharashtra; References in this scheme to the date of “coming into effect of this scheme" or "upon the Scheme being effective” shall mean the

Effective Date.

Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (g) of his report concerned, the Petitioners Companies confirms that the definition "Appointed Date" means 1st April, 2022. Further, Clause 1.2 of the Scheme specifies that the appointed date shall be 1st day of

April, 2022. Further, the Petitioners confirms that the "Effective Date" means the date on which certified or authenticated copies of the Order sanctioning this Scheme, passed by the National Company Law Tribunal

at Mumbai are filed with the

Registrar of Companies, Mumbai,

Maharashtra. The Petitioner Companies further undertakes to comply with the circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner

Companies clarify that the

amalgamation as embodied in the

It is submitted that the Petitioners may be asked to Comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the

Ministry of Corporate Affairs.

Scheme shall take effect from the Appointed Date i.e. 1st April, 2022.

h)

Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.

Apropos observation made in paragraph 2 (h) of the report of Regional Director is concerned, the Petitioner Companies states that the Petitioners are not governed by any sectoral regulators. However, the Petitioners further undertakes the comply with any directions issued by any regulators, if any in accordance

with the law.

i)

Petitioner Companies shall undertake to comply with the directions of Income tax department, if any.

Apropos observation made in paragraph 2 (i) of the report of Regional Director is concerned, the Petitioner Companies undertakes the compliance of all provisions of the Income Tax Act, 1961 including any direction of the Income Tax department, if any in accordance with the law.

10. Ms. Rupa Sutar, Authorised representative of the Regional Director, MCA (WR), Mumbai who is present at the time of Final hearing has submitted that the clarifications, submissions and undertakings given by the Petitioner Companies are hereby accepted and that they have no objection for approving the scheme by the Tribunal.

11. So far as the observation in the Report of Official Liquidator is concerned, the Learned Authorised Representative for the Petitioner Companies submits that the they have filed an Affidavit-in-Rejoinder dated 1st February, 2023 to the Report of Official Liquidator and has served the copy of the same upon the Official Liquidator, Bombay High Court and have dealt about the same in details which are self-explanatory. Thus, this Bench hereby directs that the Registrar of Companies is free to take action, if any against the Transferor Companies for non-compliance of law, if any. The Petitioner/ Transferee Company undertakes that in case any other action under Companies Act, 2013 or any other law is made out against the Transferor Companies, the same shall be enforced against the Transferee Company.

12. From the material on record, the Scheme appears to be fair, reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy. The undertakings given by the Petitioner Companies are hereby accepted.

13. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No.244/MB-V/2022 is made absolute in terms of prayer clauses 35 of the Company Petition. Hence Ordered.

ORDER

The Petition is allowed subject to the following.

(i) The Scheme, with the Appointed Date fixed as 1st April, 2022 placed as Exhibit – A of the Company Petition, is hereby sanctioned. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.

(ii) The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order from the Registry

(iii) The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal with the Superintendent of Stamps concerned, within 60 working days from the date of the receipt of the Order, for the purpose of adjudication of stamp duty, if any, payable.

(iv) The Petitioner Companies shall comply with all the undertakings given by them.

(v) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

(vi) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.

(vii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.