(2020) 10 NCLT CK 0016

In the National Company Law Appellate Tribunal

Case No : CAA No. 15/ND Of 2019 In Company Application (CAA) No. 163(ND) Of 2019

V.N Properties Pvt Ltd — APPELLANT

Vs

M.M. Vacations & Tour Private Limited — RESPONDENT

Date of Decision : 28-10-2020

Acts Referred:

Companies Act, 2013 — Section 90, 133, 230, 231, 232
Companies (Significant Beneficial Owners) Rules, 2018 — Rule 4

Citation : (2020) 10 NCLT CK 0016

Hon'ble Judges : Dr. Deepti Mukesh, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Sanjeev Chaudhary, Shlok Chandra, Chandratanay Chube

Final Decision : Disposed Of

Judgement

,

Sumita Purkayastha, Member (T)",

1. This petition has been filed by the Petitioner Companies under Sections 230 and 232 of the Companies Act, 2013 read with the Companies",

(Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval",

of the Scheme of Amalgamation of Transferor Companies into Transferee Company.,

2. From the records, it is seen that the First Motion application was filed before this Tribunal vide CA (CAA)- 163(ND)2019 under Sections 230-232",

of the Companies Act, 2013 and vide order dated 04.12.2019 of this Tribunal, the meetings of the Equity Shareholders of all the Petitioner Companies,",

Unsecured Creditors of the Petitioner Companies no. 1,3 and 4 were dispensed with. In view of the absence of any Secured Creditors of all the",

Petitioner Companies and in view of absence of Unsecured Creditors of the petitioner company no. 2 and petitioner company no. 5, the necessity of",

convening their respective meetings did not arise.,

3. Thereafter 2nd motion petition was filed vide CAA -15 (ND)/2020 within prescribed time limit and vide order dated 06.02.2020 the Petitioners were,

directed to carry out publication in the newspaper â??Business standardâ?? (English, Delhi Edition) and â??Jansattaâ?? (Hindi, Delhi Edition) and in",

addition, notices were directed to be served on to the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies,",

NCT of Delhi and Haryana, the Income Tax Department, Official Liquidator and to the other relevant sectoral regulators.",

4. It is seen from the records that all the Petitioners have filed an affidavit on 09.09.2020 affirming compliance of the order passed by the tribunal,

dated 06.02.2020. A perusal of the affidavit disclose that the Petitioners have affected the newspaper publication as directed in one issue of the,

â??Business Standardâ?? (English Edition) and â??Jansattaâ?? (Hindi Edition) both on 17.03.2020 in relation to the date of hearing of the petition.,

Further, the Petitioners have also affirmed that the copy of petition have been duly served upon the Registrar of Companies, Regional Director,",

Northern Region and Income Tax Department, Official Liquidator, in compliance of the order and in proof of the same acknowledgment from the",

respective offices have also been placed on record.,

5. The Regional Director filed its representation dated 27.02.2020 and submitted that as per the report of the Registrar of Companies the filling,

position of all the petitioner companies areupto date and no prosecution has been filed against the petitioner companies and no investigation is pending.,

The Regional Director has made the following observation:,

i. Para 31 of the report of Registrar of Companies it is stated that:"" It has been observed frome-records on MCA-21 that none of these companies",

have filed Form BEN-2 regarding declaration required to be filed by these companies under Section 90 of the Companies Act, 2013 read",

with Rule 4 of the Companies (Significant Beneficial Owners) Rules, 2018.""",

The Petitioner vide its Affidavit filed on 15.06.2020 states that â??Company have complied with the filing of respective form as applicable vide, Challan number R40145948 (DHARAMPUTRA BUILDERS PRIVATE LIMITED), R40169708 (M.M. VACATIONS & TOUR PRIVATE",

LIMITED), R40172801 (V.N. PROPERTIES PRIVATE LIMITED), R40151219 (YADU OVERSEAS LIMITED), R40158289 (SOUND",

INFRATECH PRIVATE LIMITED) dated 01-06-2020 annexed with this affidavit.â??,

6. The Income Tax Department has filed its report dated 05.06.2020 wherein no specific objections have been raised against the approval of the,

scheme however, on verification of the case records from ITBA system, there is an outstanding demand of Rs. 1,52,975/-. The Petitioner has filed an",

undertaking (on behalf of Petitioner Company 1 to 4) vide an affidavit dated 29.07.2020, stating that whenever the Income Tax demand becomes",

crystallized and order will be pronounced by the Income Tax Authority of any outstanding demand of the Income Tax against the Petitioner (1 to 4) to,

the Income Tax Authorities, the Petition No. 5 (transferee company) shall pay off the same to the Income Tax Authority without any delay.",

7. The Official Liquidator has filed its report on 12.03.2020 wherein no specific objections have been raised against the approval of the scheme. The,

report states that the Official Liquidator has not received any complaint against the proposed scheme and the affairs of the Transferor Company do,

not appear to have been conducted in manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies,

Act, 1956/ Companies Act, 2013.",

8. In the petition it has been affirmed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or",

under the provisions of the Companies Act, 1956 are pending against the Petitioner Companies.",

9. Certificates of respective statutory auditors of all the petitioner companies have been placed on record to the effect that accounting treatment,

proposed in the Scheme of Amalgamation is in conformity with the accounting standard notified by the Central Government as specified under the,

provisions of Section 133 of the Companies Act, 2013.",

10. In view of the foregoing, upon considering the approval accorded by the members and creditors of the petitioner companies to the proposed",

scheme, as well as the no objections filed by the regional director, northern region, the official liquidator, and the income tax department and if any,", have been satisfied vide an undertaking filed by the Petitioner Company, there appears to be no impediment in sanctioning the present scheme.",

Consequently, sanction is hereby granted to the scheme under section 230 & 232 of the companies act, 2013. The petitioners however remain bound",

to comply with the statutory requirements in accordance with law.,

11. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction",

granted by this court to the scheme, will not come in the way of action being taken, albeit, in accordance with law, against any of the concerned",

person, director and officials of the petitioners.",

12. While approving the scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from",

payment of stamp duty, taxes, GST, or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance",

with any other requirement which may be specifically required under any law.,

13. THIS TRIBUNAL ORDERS AS UNDER:,

a) That the transferor companies shall stand dissolved without following the process of winding up; and,

b) That all the properties, rights and powers of all the transferor companies, be transferred without further act or deed, to the transferee company and",

accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vets in the transferee company.",

No. of Equity shares to be issued,Issued to

797 Equity shares of Rs. 10/- each fully paid up,"Shareholders of Transferor Company No.1 for every

100 equity share of Rs. 10/- each, held by the said

shareholder

422 Equity Shares of Rs. 10/- each fully paid-up,"Shareholder of Transferor Company No.2 for every

100 equity share of Rs. 10/- each, held by the said

shareholder

2479 Equity Shares of Rs. 10/- each fully paid-up,"Shareholder of Transferor Company No.3 for every

100 equity share of Rs. 10/- each, held by the said

shareholder

2686 Equity Shares of Rs. 10/- each fully paid-up,"Shareholder of Transferor Company No.4 for every

100 equity share of Rs. 10/- each, held by the said

shareholder.

