(2020) 05 NCLT CK 0019

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition CAA No. 127(PB) Of 2019, Company Application No. CA (CAA) No. 77/PB Of 2019

Voice Impex Private Limited APPELLANT

Vs

Rahul Fashions Private Limited RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:
Companies Act, 2013 — Section 232

Citation : (2020) 05 NCLT CK 0019

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Easha Kadian, N.K. Sharma, Tania

Final Decision : Allowed

Judgement

Narender Kumar Bhola, Member (T)

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of amalgamation, as contemplated between the companies and its shareholders and creditors by way of amalgamation of the Transferor/Petitioner Company No. 1 with the Transferee/ Petitioner Company Number 2. (Petitioner/Transferor Company No. 1) Voice Impex Private Limited would be transferred to and vested in Rahul Fashions Private Limited (for brevity Transferee Company") as going concern on occurrence of the effective date with effect from the appointed date.

2. From the records, it is seen that the First Motion Application filed before this bench, the same was allowed and accordingly was disposed off vide its order dated 26, August, 2019 whereby all the meetings were dispensed with the requirement of convening the meetings of the shareholders and creditors of the Transferor and Transferee Company.

3. Under the circumstances, the Petitioner Companies filed their joint petition for sanction of the Scheme of Amalgamation before this Tribunal, subsequent to the order of dispensation of the meeting in relation to both the Transferor Company and Transferee Company. On 20th September 2019 this Tribunal ordered Notice in the Second Motion petition moved by the Petitioner Companies in connection with the scheme of amalgamation, to the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the Income Tax Department, along with full details of assessing officer and PAN Card numbers of the companies; (d) Official Liquidator and to other sectoral regulators and to such other Objector(s), if any.

4. It is seen from the records that the petitioners, have filed an affidavit of service on 11.11.2019 in relation to the compliance of the order passed by the Tribunal as noted above and a perusal of the same discloses that the petitioners have carried out the paper publication as directed by the Tribunal in one issue of the English Daily 'Business Standard' and the Hindi Daily 'Business Standard' (Delhi Edition) on 21.10.2019.

5. Further, in compliance with the directions issued by this Tribunal, a notice of the petition has also been served on the following authorities/sectoral regulators:

i. The Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs;

ii. Office of the Registrar of Companies, Ministry of Corporate Affairs, NCT of Delhi & Haryana;

iii. Income Tax Department, New Delhi in the respective circle/wards, through DCIT (High Court Cell), Lawyer's Chamber, Block No. 1, Room No. 428 & 429, Delhi High Court, New Delhi,

iv. Office of the Official Liquidator, Ministry of Corporate Affairs;

6. That in response to the notices issued in the petition, Regional Director, Northern region, Ministry of Corporate Affairs has filed its report dated 17th March 2020 stating that the Regional Director has no objection to the proposed ' scheme of amalgamation.

7. That the report of the Official Liquidator issued has also been placed on record which states that the Official Liquidator has not received any complaint against the proposed scheme of Amalgamation from any person/party interested in the scheme. The Official Liquidator is of the view that the affairs of the aforesaid 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 Companies Act, 1956 or 2013, whichever is applicable. Hence, no objection has been raised in the report submitted by the Official Liquidator.

8. That the report of the Income Tax Department has filed its report for all the

petitioner companies and been placed on record which states that no objection has been raised against the scheme.

9. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme and the affidavits filed by the Regional Director, Northern region, Ministry of Corporate Affairs, Official liquidator and submissions made by the Standing Counsel for the Income Tax Department, whereby no objections have been raised to the proposed Scheme or if raised has been met by filing undertaking, there appears no impediment to grant sanction to the Scheme. However, the charges, if any payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

That in terms of the Scheme:

A. All the property, rights and powers of 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 Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same;

B. All the liabilities and duties of 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 Act, be transferred to and become the liabilities and duties of the Transferee company;

C. All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee company;

D. All the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service;

E. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of copy of the Order from the Registry;

F. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

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

H. Accordingly, the Scheme stands sanctioned and CAA 127(PB)/2019 is allowed.

