

Anand Fasteners Pvt. Ltd. Vs Anand Zippers Private Limited

Court: National Company Law Tribunal New Delhi Bench

Date of Decision: Feb. 3, 2020

Acts Referred: Income-Tax Act, 1961 " Section 154
Companies Act, 2013 " Section 230, 231, 232

Hon'ble Judges: Ch. Mohd. Sharief Tariq, J; Saroj Rajware, Member (Technical)

Bench: Division Bench

Advocate: Sanjeev Kataria, Deepak Garg, Akshay Joshi, Amish Tandon, Shubham Pandey

Final Decision: Disposed Of

Judgement

Ch. Mohd. Sharief Tariq, J

1. Under consideration is the Company Petition No. CAA-144/ND/2018 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The present petition has been filed by the Petitioner Companies named

above for the purpose of the approval of the Scheme of ' Arrangement, as contemplated between the Companies and its Shareholders by way of

Amalgamation of Transferor Company with the Transferee Company.

2. As per the Scheme of Amalgamation (in short, 'Scheme'), Transferor Company "" Anand Fasteners Private Limited"" is proposed to get merged with

Anand Zippers Private Limited"" (hereinafter referred to as 'Transferee Company') as a going concern.

3. The Transferee Company is falling within the jurisdiction of this bench.

The other necessary requirements have also been fulfilled as per the Order dated 09.04.2018 passed by New Delhi Bench in CA (CAA) 107

(ND)/2018.

4. The Counsel appearing for the Transferee Company has submitted that the Transferor Company and Transferee Company's business activities are

similar and complement to each other, and to achieve inter-alia economies' of scale and efficiency, the merger of the Transferor Company is being

undertaken. The amalgamation of the Transferor company with the Transferee Company would inter alia have the following benefits-

a. Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximising overall shareholder

value, and will improve the competitive position of the combined entity.

b. Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which

can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.

c. Improved organizational capability and leadership.

d. Greater access by the amalgamated company to different market segments in the conduct of its business.

e. Cost savings are expected to flow from more focused operational efforts, rationalization of administrative expenses.

f. Achieving economies of scale.

5. The Regional Director (RD), Northern Region, MCA to whom notice was issued has filed the Report on 11.04.2019 and observed that under clause

9(a) of the scheme, it has been inter-alia stated that the ""the shareholders of the Transferor Company shall be allotted shares by the transferee

company as per the valuation report of Gupta Nanda & Co. Chartered Accountants."" Clause 11 (a) of the Scheme of the Petitioner Companies

provides for the protection of the interest of the employees of the Transferor. Company. The Petitioner Companies have filed their latest annual return

and balance sheet, no prosecution has been filed against the Petitioner Companies and no technical scrutiny and inspection is pending against the

petitioner companies.

6. The report of Income Tax department had been filed on 24.7.2019, the authority stated that the assessment order under section 154 of ' the Income

Tax has been passed on 29.5.2019, which has resulted into Nil demand.

7. The report of the Official Liquidator (OL) had been filed on 4.4.2019 in which it is stated that on the basis of information submitted by the Petitioner

Companies the affairs of the transferor company 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 the companies Act, 2013 whichever is applicable.

8. Paragraph 3 of the Scheme provides that the amalgamation in the nature of merger as defined in the Accounting Standard (AS) 14 as prescribed

under the Companies Rules, 2006 and shall be accounted for under the ""Pooling of Interest"" method in accordance with the said AS-14. Accordingly,

all the assets and liabilities recorded in the books of the transferor Company shall be transferred to and vested in the Transferee company pursuant to

the scheme and shall be recorded by the Transferee Company at' the respective book values as reflected in the books of the transferor Company as

on the appointed date.

9. In paragraph 11 of the Scheme, it was mentioned that upon the coming into effect of this Scheme, all employees of the Transferor Company shall

become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and conditions not less

favourable than those subsisting in the transferor company on the said date.

10. Paragraph 5 of the Scheme envisages the transfer of said assets and liabilities of the transferor company to the Transferee Company and the

continuance of all contracts or legal proceedings by or against the Transferee Company shall not affect any contracts or proceedings relating to the

said assets or the liabilities already conducted by the Transferor Company on or after the appointed date.

11. On the Scheme becoming effective, the Transferor Company shall be dissolved without any further act, deed or instrument, without going through

the process of winding up and shall be succeeded by the Transferee Company.

12. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to

public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies

Act, 2013.

13. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of Amalgamation annexed with the Petitions is hereby

sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Companies involved in this Scheme. The

Appointed date of the Scheme is 31st December, 2017.

14. While approving the Scheme as above, it is further clarified that. this Order will not be construed as an order granting exemption from payment of

stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be

obtained or, even compliances that may have to be made as per the mandate of law.

15. The Companies to the said Scheme or other person interested shall be at liberty to apply to this ""Bench for any direction that may be necessary

with regard to the working of the said Scheme.

16. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of this Order.

17. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned

Registrar of Companies.

18. Upon receiving the certified copy of this Order, the ROC concerned is directed to place all documents relating to the Transferor Company with

that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee

Company.

19. 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.

20. Accordingly, the Scheme stands sanctioned and CAA-08/ND/2019 stands disposed of.