
Super Cassettes Industries Pvt. Ltd. Vs Vijarshan Ventures Pvt. Ltd.

Company Petition CP (CAA) No. 135(PB) Of 2018, Company Application (CAA) No. 110(PB) Of 2018

Court: National Company Law Tribunal New Delhi Bench

Date of Decision: June 18, 2020

Acts Referred:

Companies Act, 2013 "Section 133, 230, 230(4), 230(5), 231, 232

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

Bench: Division Bench

Advocate: Rajeev Goel, Sonam Sharma, Dhruv Gupta

Final Decision: Allowed

Judgement

B.S.V. Prakash Kumar, J

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of arrangement, as contemplated

amongst the companies and its shareholders and creditors by way of demerger of the Demerged/Petitioner Company-I namely Super Cassettes

Industries Pvt. Ltd. (for brevity "Demerged Company") into the Resulting/Petitioner Company-II namely, Vijarshan Ventures Pvt. Ltd. (for brevity

Resulting Company") under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'the Act') read with

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') in relation to the Scheme of Arrangement

(hereinafter referred to as the 'SCHEME') proposed amongst the petitioners.

2. From the records, it is seen that the First Motion Application seeking directions with the meetings of the Shareholders, Secured Creditors and

Unsecured Creditors was filed before the Hon'ble Tribunal, to obtain appropriate orders to convene meetings of Shareholders, Secured Creditors, and

Unsecured Creditors vide CA (CAA) No. 110(PB)/2018. This Hon'ble Tribunal vide its order dated 4th July, 2018 (date of pronouncement), was

pleased to direct for convening of separate meetings of Shareholders, Secured Creditors and Unsecured Creditors of the Demerged Company; and

meeting of Shareholders of the Resulting Company under its supervision for the purpose of considering and, if thought fit, approving, with or without

modification(s), the proposed Scheme of Arrangement. The Resulting Company did not have any Secured Creditor or Un-Secured Creditor.

3. A perusal of the present Petition discloses that in pursuance of the directions contained in Order dated 4th July, 2018 (date of pronouncement),

passed by this Tribunal in Company Application No. 110 (PB) of 2018, separate meetings of Shareholders, Secured Creditors and Un-secured

Creditors of the Demerged Company; and meeting of Shareholders of the Resulting Company were convened and held on Saturday, 25th August,

2018, at Studio B, Laxmi Video Studio, Plot No. 5, Sector- 16A, Film City, Noida-201 301, Uttar Pradesh.

4. This Hon'ble Tribunal vide its order dated 25th September, 2018 directed to issue notice of hearing in respect of present Company Petition to the

Statutory Authorities and also to make paper publication in this respect in English Newspaper ""Financial Express"", Delhi Edition and Hindi Newspaper

Jansatta"", Delhi Edition.

5. In compliance thereof, the Petitioner Companies have filed Affidavit of service and publication, confirming that notices have been duly published in

English Newspaper ""Financial Express"", Delhi Edition and Hindi Newspaper ""Jansatta"", Delhi Edition. The Petitioner Companies have also served

notice of the Company Petition to following authorities/sectoral regulators:

(a) The Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi;

(b) The Registrar of Companies, Delhi and Haryana, New Delhi; and

(c) The Income Tax Department. Learned Counsel of the Petitioner Companies clarified that since none of the Demerged Company and the Resulting

Company is subject matter of dissolution, notice of the Petition was not required/directed to be served on the Official Liquidator.

6. In response to the above stated notice, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi submitted his report

through a representation/affidavit, wherein it is pointed out that the Resulting Company is required to increase its Authorized Share Capital to enable it

to issue shares in terms of the Scheme of Arrangement.

7. In this regard the learned Counsel of the Petitioner Companies submitted that the Resulting Company has already increased its Authorized Share

Capital by paying the requisite fee to the ROC. The Petitioners have also filed Affidavits confirming the same on 4th June, 2019. No other objection

has been raised by the RD and ROC to the proposed Scheme of Arrangement.

8. Learned Counsel for the petitioner submitted that since none of the Demerged Company and the Resulting Company is subject matter of dissolution,

notice of the Petition was not required/directed to be served on the Official Liquidator.

9. The Petitioners have stated that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the accounting standards

prescribed under Section 133 of the Companies Act, 2013. (Certificates from the respective Statutory Auditors of the Petitioner Companies are

annexed and collectively marked as Annexure P-5 to the Company Petition No. 135 (PB) of 2018)

10. An Objection Application [being CA (CAA) 1277 (PB) of 2018] was filed by Mr. Gopal Krishan against the Scheme of Arrangement. The

Petitioners have filed their joint Reply to the Objection Application. Rejoinder was filed by the Objector. Brief background relating to the Objection

Application may be summarized in the following manner:

a. A Scheme of Amalgamation of Tony Electronics Ltd and Mandakini Aqua Minerals Pvt Ltd with Super Cassettes Industries Pvt Ltd [the Petitioner

Demerged Company in the present Scheme] was sanctioned by the Hon'ble Delhi High Court vide order dated 20th September, 1999, passed in

Company Petition No. 167 of 1999.

b. On 22nd July, 2002, the Objector-Mr Gopal Krishan filed an Application No. 730 of 2002 in Company Petition No. 167 of 1999, before the Hon'ble

Delhi High Court, seeking recall of order dated 20th September, 1999, sanctioning the aforesaid Scheme of Amalgamation. The Objector alleged that

he was a shareholder of Tony Electronics Ltd and merger order was passed without notice to the Objector.

c. The aforesaid Application No. 730 of 2002 was rejected by the Hon'ble Delhi High Court vide a detailed Judgement dated 17th December, 2012,

rejecting the allegations made by the Objector.

d. The Objector-Mr. Gopal Krishan thereafter filed a Company Appeal No. 15 of 2013 before the Division Bench of the Hon'ble Delhi High Court

impugning the Judgement dated 17th December, 2012. The said Appeal was pending at the time of filing of the Objection Application before this

Hon'ble Tribunal.

e. Present Objection Application was filed before this Tribunal primarily on the ground that an Appeal is pending before the Hon'ble Delhi High Court

challenging the merger of Tony Electronics Ltd with Super Cassettes Industries Ltd. Sanction of the present Scheme of Arrangement before the

disposal of the aforesaid Appeal would prejudice the right of the Objector.

f. However, after the filing of the Objection Application before this Tribunal, the Division Bench of the Hon'ble Delhi High Court has dismissed the

aforesaid Company Appeal No. 15 of 2013 vide judgment dated 10th May, 2019 on the ground of non-maintainability.

g. Subsequently, the Objector has filed a Petition for Special Leave to Appeal No. 21383 of 2019 before the Hon'ble Supreme Court of India against

the aforesaid order dated 10th May, 2019, passed by the Division Bench of the Hon'ble Delhi High Court. The said SLP was also dismissed by the

Hon'ble Supreme Court of India vide Order dated 18th October, 2019.

h. Learned Counsel for the Petitioners in their reply submitted that the Objector is a habitual litigant. In addition to the aforesaid civil litigation, the

Objector had also filed a Criminal Complaint (First Information Report No. 290 of 2002, Police Station Okhla Industrial Area, New Delhi) against Mr.

Bhushan Kumar, Mr. Darshan Kumar and Mr. Krishan Kumar alleging forgery of documents and cheating, etc., on which a charge sheet was filed by

the Investigating Officer. The Hon'ble Metropolitan Magistrate, Saket Court, New Delhi, vide order dated 2nd May, 2015, dismissed the said Criminal

Complaint and discharged all the accused. Subsequently, the Objector filed a Criminal Revision Petition in the Court of District and Sessions Judge,

Saket Courts, New Delhi against the order passed by the Hon'ble Metropolitan Magistrate. The aforesaid Criminal Revision Petition was also

dismissed by the Court of District and Sessions Judge vide order dated 20th July, 2019 (date of pronouncement). The Objector has now approached

the Hon'ble Delhi High Court against the order of the Hon'ble District and Sessions Judge.

i. Learned Counsel for the Petitioners clarified that the Hon'ble Delhi High Court has not granted any stay in favour of the Objector and there is no

legal impediment in sanction of the present Scheme by this Tribunal.

j. It is an admitted fact that as on date, there is no challenge to either the Order dated 20th September, 1999, passed by the Hon'ble Delhi High Court

in Company Petition No. 167 of 1999, sanctioning the Scheme of Amalgamation of Tony Electronics Ltd and Mandakini Aqua Minerals Pvt Ltd with

Super Cassettes Industries Pvt Ltd; or the Order dated 17th December, 2012, passed by the Hon'ble Delhi High Court in Application No. 730 of 2002,

rejecting the objections made by Mr. Gopal Krishan against the sanction of the aforesaid Scheme of Amalgamation. Both the aforesaid Orders

attained finality.

k. The Petitioners in their reply submitted that Section 230(4) proviso of the Companies Act, 2013, clearly provides that any objection to the

compromise or arrangement shall be made only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not

less than 5% of the total outstanding debt as per the latest audited financial statement of the Company. It is pointed out the the Objector-Mr Gopal

Krishan is not holding even a single share in the Demerged Company or in the Resulting Company. Similarly, the Objector does not have any

outstanding debt either in the Demerged Company or in the Resulting Company. Thus, the present Application is not maintainable and is liable to be

rejected.

1. The entire Objection Application was based on the allegation made in the Application No. 730 of 2002, filed in Company Petition No. 167 of 1999,

before the Hon'ble Delhi High Court. The aforesaid Application has already been rejected by the Hon'ble Delhi High Court as mentioned above.

Appeal was also dismissed by the Division Bench of the Delhi High Court. The Hon'ble Supreme Court of India has also dismissed the Petition for

Special Leave to Appeal filed by the Objector.

m. It is the undisputed fact that the Objector is neither a Shareholder nor a Creditor of any of the Petitioner Demerged Company and the Resulting

Company. Hence, the Objector does not have any locus standi in the present Company Petition and the proposed Scheme of Arrangement.

11. Learned Counsel for the Petitioners also pointed out that subsequent to the Amalgamation of Tony Electronics Ltd and Mandakini Aqua Minerals

Pvt Ltd with Super Cassette Industries Pvt Ltd; another Scheme of Amalgamation was approved by the Hon'ble Delhi High Court vide order dated

22nd May, 2002 wherein Laxmi Video Studio Pvt Ltd, Sudeep Studio Pvt Ltd and Golden Chariot Estates Pvt Ltd were amalgamated into Super

Cassette Industries Pvt Ltd. Copy of the Delhi High Court Order was placed on record along with the reply filed by the Petitioners to the Objection

Application.

12. The objector in its rejoinder reiterated the fact that the objector in his capacity as a shareholder of Tony Electronics Ltd. Was holding 52% shares

in the said company and is entitled to intervene in the present matter and present his objection. Since, a fraud has been played against the applicant

and as fraud vitiates every act done by the fraudsters, it is not mandatory that only a person who is holding 10% shareholding in the company should be

entitled to file the objections. Under such circumstances, the proviso to sub section 4 of section 230 will not be applicable to the applicant and

alternatively should be held to be directory and mandatory. Hence, the application filed by the objector is maintainable.

13. The Hon'ble tribunal vide order dated 13.05.2020 stated as to the objections raised, it appears that the objector is not having any shareholding in

this company i.e., Super Cassettes Industries Pvt. Ltd. Further, since this objector has failed to produce any kind of documents in support of his being

shareholder or any way associated with said the company, i.e., Super Cassette Industries Ltd. as creditor, the objections raised by the Applicant are

hereby rejected.

14. Despite several opportunities, the Income Tax Department did not file any comments with respect to any of the Petitioner Companies. However, it

may be pointed out that in terms of the provisions of section 230(5) of the Companies Act, 2013, on the expiry of 30 days from the date of the notice,

it may be presumed that the Income Tax Department does not have any comments on the proposed Scheme of Arrangement. Moreover, none of the

Petitioner Companies is a subject matter of dissolution and will remain in existence even after the sanction of the Scheme of Arrangement. Hence,

interests of the Income Tax Department are not adversely affected by sanctioning of the Scheme.

15. 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. The objection which was raised by Regional

Director whereby, the resulting Company is required to increase its Authorized Share Capital to enable it to issue shares in terms of the Scheme of

Arrangement. Learned Counsel of the Petitioner Companies confirmed that the Resulting Company has already increased its Authorized Share

Capital by paying the requisite fee to the ROC. The Petitioners have also filed Affidavits confirming the same on 4th June, 2019. Hence, there

appears no impediment to grant sanction to the Scheme. However, the Companies shall remain bound by the undertaking filed by either of them.

Consequently, sanction is hereby granted under Sections 230-232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply

with the statutory requirements in accordance with law.

16. The objection to the said scheme of Arrangement raised by the objector Mr. Gopal Krishan (being CA (CAA) 1277 (PB) of 2018, where the

objector is neither the creditor nor a shareholder of the applicant companies and as pointed out that earlier also objections had been raised which were

rejected right even up to the Hon'ble Supreme court. In view of absence of any other objections having been placed on record before this Tribunal and

since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Arrangement annexed as (Annexure-1) with

the Company Petition as well as the prayer made therein.

17. 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 will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and

officials of the petitioners.

18. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from

payment of stamp duty, taxes or any other 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.

19. Accordingly, the present Company Petition is allowed on the above terms.