

(202) 08 NCLT CK 0004

National Company Law Tribunal, Kolkata Bench I

Case No: CP (CAA) No. 198/KB/2021 Connected with CA (CAA) No. 115/KB/2021

Broadway Oils & Chemicals
Privatelimited Vs

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 2, 0202

Acts Referred:

- Companies Act, 2013 - Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(1), 230(5), 232, 232(3)(i), 232(4)

Hon'ble Judges: Rohit Kapoor, Member (J); Balraj Joshi, Member (T)

Bench: Division Bench

Advocate: Kovid Mukherjee, Harihar Sahoo

Final Decision: Disposed Of

Judgement

,,,,

Balraj Joshi, Member (Technical)",,,,,

1. The instant petition has been filed under Sections 230 read with section 232 of the Companies Act, 2013 (â€œActâ€) for sanction of the Scheme of",,,,,

Amalgamation of Zenith Mercantiles Private Limited, being the Petitioner No.2 above named (Transferor Company or â€œPetitioner No.2â€)",,,,,

with Broadway Oils & Chemicals Private Limited being the Petitioner No.1 above named (Transferee Company or â€œPetitioner No.1â€).,,,,,

whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, fixed",,,,,

as 01st April 2020 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (â€œSchemeâ€).,,,,,

2. The Petition has now come up for a final hearing. Ld. Authorised Representative for the Petitioners submits as follows: -,,,,

(a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Nos. 1 and 2 at their meetings held on 13th March 2021.,,,,

(b) The circumstances which justify the amalgamation of the Transferor Companies with the Transferee Company and/or have and/or have necessitated the Scheme.,,,,

and the benefits of the same are, inter alia, as follows: -" ,,,,

i. The Transferor Company and the Transferee Company belong to a common group and common management. There are common shareholders and common.,,,,

directors in the Transferor Company and the Transferee Company. In order to integrate the fields of activities of the companies and for improving overall business.,,,,

efficiency, streamline the administration of the Companies and in the overall interest of future growth and diversification of the business of the Companies, the" ,,,,

present Scheme is proposed to amalgamate the Transferor Company with the Transferee Company. The scheme will be complimentary to the companies for their.,,,,

mutual benefit and interest.,,,,

ii. The proposed Scheme will result in economies of scale, reduction in overheads and other expenses, reduction in administrative and procedural work, elimination of" ,,,,

duplication of work, better and more productive and effective utilization of the combined resources of all the companies and will enable the amalgamated company to" ,,,,

effect internal economies and optimize productivity.,,,,

iii. The said Scheme will result in optimum growth and development of the business of the companies concerned and exploitation of the potential thereof. The said.,,,,

Scheme will enable the undertaking and business of all the companies to obtain greater facilities for raising capital, securing and conducting trade on favorable terms," ,,,,

and other benefits.,,,,

iv. The said Scheme will enable the companies concerned to rationalize and streamline their management, business, and finances and will pave way for better, more" ,,,,

productive, and economical control of the running of the operations." ,,,,

v. The businesses of all the Companies will be carried on more economically and profitably under the Scheme.,,,,

vi. The said Scheme will contribute to furthering and fulfilling the objectives of the companies concerned and, in the growth, expansion, and development of their" ,,,, business.,,,,

vii. The said Scheme will have beneficial results for the companies concerned, their shareholders, employees, and all concerned." ,,,,

(c) The Statutory Auditors of the Petitioner Companies have by their certificates dated 17.03.2021 annexed and marked as Annexure-M confirmed that the accounting ,,,,

treatment in the Scheme is in conforms with the accounting standards prescribed under Section 133 of the Companies Act, 2013." ,,,,

(d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners." ,,,,

(e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and based on the Valuation Report thereon ,,,,

prepared by a firm of Chartered Accountants annexed and marked as Annexure-L ,,,,

3. By an order dated 22nd September 2021 in Company Application No. C.A. (CAA) No. 115/KB/2021, this Tribunal made the following directions" ,,,,

with regard to the meetings of Shareholders and Creditors under section 230 (1) [read with Section 232(1) of the Act]: - ,,,,

a) Meeting Dispensed: ,,,,

Meeting of Equity Shareholders of both the Petitioner Companies, for considering the Scheme are dispensed with in view of the fact that all the" ,,,,

shareholders of both the Petitioner Companies have respectively given their consent to the Scheme by way of affidavits. ,,,,

Meeting of the Unsecured Creditors of Petitioner No. 1, for considering the Scheme are dispensed with in view of the fact that Unsecured Creditors" ,,,,

representing 97.39 % in value of the Unsecured Creditors of Petitioner No. 1 have respectively given their consent to the Scheme by way of ,,,,

affidavits. ,,,,

Meeting of the Unsecured Creditors of Petitioner No. 2, for considering the Scheme are dispensed with in view of the fact that Unsecured Creditors" ,,,,

representing 99.99 % in value of the Unsecured Creditors of Petitioner No. 2 have respectively given their consent to the Scheme by way of,,,,

affidavits.,,,,

b) No meetings required:,,,,

The Petitioner Companies have NIL Secured Creditors. The NIL Secured Creditors of both the Petitioner Companies have been verified by the,,,,

Auditorsâ€™ Certificate.,,,,

(f) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 14th December 2021, the instant",,,,

petition was admitted by this Tribunal and fixed for hearing on 14th February 2022 upon issuance of notices to the Statutory / Sectoral Authorities and,,,,

advertisement of the date of hearing. In compliance with the said order dated 14th December 2021, the Petitioners have duly served such notices on",,,,

the Regulatory Authorities viz through The Regional Director, (Eastern Region); Registrar of Companies, Ministry of Corporate Affairs; Official",,,,

Liquidator, High Court Judicature at Calcutta; Income-Tax Department having jurisdiction over the respective companies by hand and by Speed Post",,,,

at their respective addresses on 05/01/2022, 06/01/2022 and 07/01/2022 respectively and obtained the acknowledgment receipts for the same. The",,,,

Petitioners have also published such advertisements once each in English Newspaper i.e., â€œBusiness Standardâ€, Kolkata edition dated 18th",,,,

January 2022, and in the Bengali Newspaper., â€œAajkalâ€, Kolkata edition in its issue dated 18th January 2022. An affidavit of Compliance duly",,,,

affirmed has also been filed, annexed, and marked as Annexure-K.",,,,

(g) All statutory formalities requisite for obtaining the sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been,,,,

made bona fide and is in the interest of all concerned.,,,,

(4) Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (â€œRDâ€), Official Liquidator,",,,,

High Court, Calcutta (â€œOLâ€) have filed their representations before this Tribunal.",,,,

(5) The Official Liquidator has filed his report dated 09.02.2022 and concluded as under: -,,,,

At Para 10,,,,

That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that 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 the public interest as per the provisions of the Companies Act, 1956/" ,,,,

The Companies Act, 2013 whichever is applicable." ,,,,

6. The Regional Director has filed his reply- affidavit dated 11th February 2022 (â€œRD affidavitâ€) which has been dealt with by the Petitioners by,,,,

their Rejoinder affidavit dated 12th February 2022 (â€œRejoinderâ€) and 2nd Rejoinder affidavit dated 11th April 2022. The observations of the RD,,,,

and responses of the Petitioners are summarized as under: - ,,,,

Paragraph No 2(b) of the RD Affidavit:,,,,

Petitioner Company should undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate" ,,,,

affirmation. ,,,,

Paragraph No. 3 of Rejoinder ,,,,

S.N., "Item in Statement of

Profit and Loss", "As reported for F.Y.

2020-21", "As reported for F.Y.

2019-20", Difference

1, Other Income, "64,15,167.91", "59,40,333.56", "4,74,834.35

2, "Cost of Material

Consumed", "7,43,39,878.16", "6,87,60,722.50", "(55,79,155.66)

3, "Change in

inventory", "8,70,985.00", "65,59,591.00", "56,88,606.00*

4, Other Expense, "1,02,42,592.04", "96,58,306.69", "-5,84,285.35

The above statement was certified by the auditor along with the certificate. It is further stated by the Ld. Authorized Representative that the previous,,,,

yearâ€™s figures were regrouped and rearranged in the balance sheet to make it comparable with the current yearâ€™s figures. ,,,,

It is stated in the SCHEDULE III of the Companies Act, 2013 that in the financial statement the corresponding amounts (Comparatives) for the",,,,,

immediately preceding reporting period for all items shown in the financial statements including notes shall also be given. In the Guidance note on Non-,,,,

Ind AS Schedule III of the Companies Act, 2013 issued by the Institute of Chartered Accountants of India (ICAI) it is further clarified that in point",,,,,

no. 6.5 of general instructions for preparation and presentation of Financial Statement that the comparatives for the previous years should be prepared,,,,

on the same lines of guidance as provided for the preparation of current schedules.,,,,,

7. Heard submissions made by the Ld. Authorized Representative appearing for the Petitioner and that of the Joint Director appearing on behalf of the,,,,

Regional Director (ER). Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition",,,,,

and make the following orders: -,,,,

a. The Scheme of Amalgamation mentioned in paragraph 1 the petition being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal with the",,,,,

appointed date fixed on 1st April 2020 to be binding on Zenith Mercantiles Private Limited, being the Petitioner No.1 abovenamed ("Transferor Company" or",,,,,

"Petitioner No.2") with Broadway Oils & Chemicals Private Limited being the Petitioner No.1 abovenamed ("Transferee Company" or "Petitioner No.1"),",,,,,

and their shareholders and all concerned;,,,,

b. All the properties, interests, rights, and powers of the Transferor Company, including those described in the Schedule of Assets and liabilities herein, be",,,,,

transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the",,,,,

Companies Act, 2013 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, as provided in the Scheme;,,,,

c. All the debts, liabilities, duties, and obligations of the Transferor Company, from the, said Appointed Date, without further act or deed to the Transferee Company",,,,,

and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties, and obligations of",,,,,

the Transferee Company;,,,,

d. All legal proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as",,,,,
provided in the Scheme;,,,,

e. Further, the approval of the scheme by the Honâ€™ble Tribunal shall not deter authorities to deal with any of the issues, including any non-compliances as per the",,,,,

Companies act -2013, arising after giving such effect to the Scheme as is their jurisdiction. The decision of such authorities shall be binding on the petitioner",,,,,

Company(s) concerned.

f. Leave is granted to the Petitioners to file the Schedule of Assets and liabilities of the Transferor Company in the form as prescribed in the Schedule to Form No.

CAA7 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;" ,,,,

g. The Transferor Company and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be",,,,,

delivered to the Registrar of Companies, West Bengal for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved",,,,,

without winding up with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of",,,,,

Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him about the Transferee Company and the files",,,,,

relating to the said companies shall be consolidated accordingly.

8. The Petitioners shall supply a legible copy of the scheme; schedule of assets and liabilities in an acceptable form to the registry and the registry will",,,,,

append the copy, upon verification to the certified copy of the order." ,,,,

9. Company Petition No. CP (CAA) No. 198/KB/2021 is disposed of accordingly.

10. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities." ,,,,