

(2022) 10 NCLT CK 0004

National Company Law Tribunal, Chandigarh Bench

Case No: CP (CAA) No.13/Chd/Pb/2021 (2nd Motion)

Melinex investment and
Finance Private Limited

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision: Oct. 6, 2022

Acts Referred:

Companies Act, 2013 " Section 133, 66, 184, 185, 189, 230, 232#Companies Act, 1956 " Section 295, 297, 299, 301

Citation: (2022) 10 NCLT CK 0004

Hon'ble Judges: Harnam Singh Thakur, Member, (J); Subrata Kumar Dash, Member (T)

Bench: Division Bench

Advocate: Munisha Gandhi, Vaibhav Sharma, Yogesh Putney

Final Decision: Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint second motion application filed by Petitioner Companies namely; Melinex Investment and Finance Private Limited (Transferor

Company No.1/ Petitioner Company No.1), R N Gupta Construction Equipment Private Limited (Transferee Company No.1/Transferor Company

No.2/ Petitioner Company No.2), and R N Gupta and Company Limited (Transferee Company No. 2/Petitioner Company No.3) in relation to the

Scheme of Amalgamation between the petitioner companies under Section 230-232 and Section 66 of Companies Act, 2013 (the Act) and other

applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules).

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is

attached as Annexure A-1 of the petition and Revised Scheme of Amalgamation is attached as Annexure A-3 of Diary No.00991 dated 18.08.2021.

3. The Petitioner Companies have filed the first motion application bearing CA (CAA) No.33/Chd/Pb/2020 before this Tribunal for seeking directions

for dispensing/convening with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies. The first motion

application was disposed of by order dated 22.12.2020, with directions to dispensed with the meetings of Equity Shareholders of the Applicant

Companies and Secured and Unsecured Creditors of the Applicant Company No.1 and 2 and directions to convene the meetings of Secured and

Unsecured Creditors of Applicant Company No.3 for the reasons mentioned in the aforesaid orders.

4. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme had been discussed in detail in the

order dated 22.12.2020.

5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 06.08.2021 and 12.01.2022 and the same were

compiled jointly by filing an affidavit by diary No.00391/3 dated 09.02.2022. The notice of hearing was published in "Financial Express" (English)

and "Tribune Punjabi" (Punjabi) both Punjab Edition on 07.02.2022. The original copies of the newspapers are attached as Annexure-A of the

aforesaid affidavit. It has also stated in the affidavit that copies of notices were served upon the (a) Central Government through Regional Director

(Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, Punjab and Haryana at Chandigarh; (c) the Official Liquidator

(attached to Punjab and Haryana High Court); (d) Competition Commission of India (CCI); (e) Reserve Bank of India; and (f) the jurisdictional

Income Tax Department, by way of speed post. Original postal receipts along with the tracking report are attached as Annexure-B to G of the

aforesaid affidavit.

6. It is deposed by counsel of the Petitioner Company that till date, other than the reports filed by various authorities, no objection to the scheme has

been received by the petitioner companies or the counsel on behalf of the petitioner companies from public, pursuant to the notices published by the

petitioner companies on 07.02.2022. The aforesaid affidavit has been filed by Diary No. 00391/8 dated 09.09.2022.

7. In response to the abovementioned notices, the statutory authorities have furnished their replies.

7.1 Registrar of Companies (RoC)/Regional Director (RD)

The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director (RD), by Diary No. 00391/4 dated 24.03.2022. as

per para 10 of the report of Regional Director (RD), it is stated that

“10. That as per Para 32 of the report of RoC, Delhi dated 24.02.2022, the following observations have been made:

No affidavit regarding compliance of provisions of Section 295, 297, 299 & 301 (Section 184, 185 and 189) of the Companies Act, 1956/2013 has been furnished

by petitioner companies.

7.2 In response to the aforesaid observations made by the RoC, the Petitioner Companies have filed a response by Diary No. 0391/6 dated 29.03.2022

wherein they have submitted that all the applicant companies have duly complied with the provisions of Section 295, 297, 299 & 301 of the Companies

Act, 1956 and Section 184, 185 and 189 of the Companies Act, 2013. It is averred that aforesaid compliance is not a mandatory requirement under

Section 230-232 of the Companies Act, 2013. Still, the petitioner companies have undertaken to confirm compliance with the provisions of Section 295,

297, 299 & 301 of the Companies Act, 1956 and Section 184, 185 and 189 of the Companies Act, 2013.

On a perusal of this response, we feel that the observations raised by the RD/RoC have been adequately addressed and no adverse observation

against the petitioner companies is called for.

7.3 Official Liquidator

The Official Liquidator has filed his report vide Diary No.00391/5 dated 15.03.2022. The Official Liquidator in its report has reproduced the

information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has

also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements.

On a perusal of the report, it is seen that the Official Liquidator has made no adverse observation against the petitioner companies.

7.4 Income Tax Department

The Income Tax Department filed its report by Diary No.1210 dated 15.03.2022 post and through Mr. Yogesh Putney, Senior Standing Counsel for

the Income Tax Department by Diary No.00391/7 dated 29.07.2022, wherein it is stated that despite pending demands, the Income Tax Department

has no objection to the proposed scheme.

On perusal of the record, it is seen that the Income Tax Department has made no adverse observation against the petitioner companies.

7.5 Competition Commission of India

The Competition Commission of India has filed its report vide Diary No.1183 dated 03.03.2022. The Competition Commission of India in its report has

as stated that the aforesaid matter has not been filed with the Commission under the provisions of the Act and the Tribunal may seek an undertaking

from the companies involved that approval of the Commission is not required for the said matter.

The authorised signatories of the petitioner companies have deposed by way of affidavit that the provisions of the Competition Act are not applicable

as the companies involved do not exceed the assets/turnover thresholds specified in the Competition Act, 2002. The aforesaid affidavit has been filed

by Diary No. 00391/01 dated 03.01.2022.

On a perusal of the report, it is seen that the Competition Commission of India has made no adverse observations against the petitioner companies.

8. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment

proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules

thereunder and other Generally Accepted Accounting Principles was filed as Annexures A-17 of the petitioner companies.

9. It is submitted by the Petitioner Companies that the Accounting Treating provided in the Scheme (i.e. purchase method of accounting in Part III and

Part IV of the Scheme) for Transferee Company No. 1 & 2 has been amended. The pooling of interest method has been considered since the

Scheme involves group companies and the said amendment will not have any effect on members, creditors or to the public interest as it does not have

any impact on cash/financial position of the Transferee Company. The aforesaid modification in Clause 3.6 & 4.6 of the Scheme has been approved

by the Petitioner Companies in their respective Board Meetings dated 05.08.2021 (Annexure A-1) of the application. The Certificates from the

statutory auditors confirming that the Scheme is in compliance with generally accepted accounting principles are attached as Annexure A-2. The

amended Scheme of Amalgamation is attached as Annexure A-3

10. The order was reserved on 04.08.2022 and thereafter, it was relisted on 07.09.2022 as it was found that the petitioner companies have not

furnished any affidavit with regard to the objections received from public. The petitioner companies have filed an affidavit deposing that no objection

to the scheme has been received by the petitioner companies or the counsel on behalf of the petitioner companies from public, pursuant to the notices

published by the petitioner companies on 07.02.2022 by Dairy No. 00391/8 dated 09.09.2022.

11. We have heard the learned counsel for petitioner companies and learned Senior Standing Counsel for the Income Tax Department and perused

the record carefully.

12. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with

all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the objections from the Statutory Authorities have been

duly addressed by the Petitioner Companies and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the Scheme of

Amalgamation appended as Annexure A-3 of Diary No.00991 dated 18.08.2021.

13. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, violation

committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal 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.

14. 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 is due or required 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:

i. That all the properties, rights and powers of the Transferor Company No.1 be transferred, without further act or deed, to the Transferee Company No.1 and

accordingly, the same shall pursuant to Sections 230 to 232 and Section 66 of the Companies Act, 2013, be transferred to and vested in the Transferee Company No.1

for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the Transferor Company No.1 be transferred, without further act or deed, to the Transferee Company No.1 and accordingly the

same shall pursuant to Sections 230 to 232 and Section 66 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee

Company No.1;

iii. That all the properties, rights and powers of the Transferor Company No.2 be transferred, without further act or deed, to the Transferee Company No. 2 and

accordingly, the same shall pursuant to Sections 230 to 232 and Section 66 of the Companies Act, 2013, be transferred to and vested in the Transferee Company No. 2

for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same;

iv. That all the liabilities and duties of the Transferor Company No.2 be transferred, without further act or deed, to the Transferee Company No.2 and accordingly the

same shall pursuant to Sections 230 to 232 and Section 66 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee

Company No. 2;

v. That the Appointed Date for the scheme shall be 01.04.2020 as specified in the scheme;

vi. That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Companies;

vii. That the employees of the Transferor Companies shall be transferred to the Transferee Companies in terms of the 'Scheme';

viii. That the fee, if any, paid by the Transferor Companies on its authorized capital shall be set off against any fees payable by the Transferee Companies on its

authorized capital subsequent to the sanction of the 'Scheme';

ix. That the Transferee Companies shall file the revised memorandum and articles of association with the Registrar of Companies, NCT Delhi and Haryana and further

make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Companies after setting off the fees paid by the

Transferor Companies;

x. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Concerned

Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be dissolved without undergoing the process

of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the

said Transferee Company, and the files relating to the Transferor Companies and Transferee Companies shall be consolidated accordingly, as the case may be.

15. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

16. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this

Bench.

17. The Company Petition CP (CAA) No.13/Chd/Pb/2021 is allowed and disposed of accordingly.