
(2024) 03 NCLT CK 0050

National Company Law Tribunal, Mumbai Bench Court III

Case No: C.P.(CAA)/291/MB /2023 Connected With C.A. (CAA) No. 142/MB/C-III/2023

Ashwa Agri Properties Private
Limited Vs

APPELLANT

Vs

RESPONDENT

Date of Decision: March 21, 2024

Acts Referred:

- Companies Act, 2013 - Section 133, 230, 230(1), 230(6), 230(7), 232, 232(3)(i), 232(6)
- Income Tax Act, 1961 - Section 21(B)

Hon'ble Judges: Lakshmi Gurung, Member (J); Charanjeet Singh Gulati, Member (T)

Bench: Division Bench

Advocate: Harsh C Ruparelia, Bhagwati Prasad,

Final Decision: Disposed Of

Judgement

“

Lakshmi Gurung, Member (Judicial)",,,

1. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and the Rules framed",,,

thereunder for sanction of the Scheme of amalgamation of Ashwa Agri Properties Private Limited (â€™Transferor Company 1 or â€™First Petitioner,,

Companyâ€™™) and Aries Agri Properties Private Limited (â€™Transferor Company 2â€™™ or â€™Second Petitioner Companyâ€™™) and Rockwill Land,,

Developers Private Limited (â€™Transferor Company 3â€™™ or â€™Third Petitioner Companyâ€™™) and Navnetra Trading Private Limited,,

(â€™Transferor Company 4â€™™ or â€™Fourth Petitioner Companyâ€™™) and Nandi Agri Realtors Private Limited (â€™Transferor Company 5â€™™ or,,

â€˜Fifth Petitioner Companyâ€™™) and Pet Fibers Private Limited (â€˜Transferor Company 6â€™™ or â€˜Sixth Petitioner Companyâ€™™) with Mega,,

Pipes Private Limited (â€˜Transferee Companyâ€™™ or â€˜Seventh Petitioner Companyâ€™™) and their respective shareholders (â€˜Schemeâ€™™),,

2. The Boards of the Petitioner Companies approved the Scheme of Amalgamation by passing their respective Resolutions on 11.05.2023 which are,,

annexed to the Joint Company Scheme Petition (â€œPetitionâ€),,,

3. The Appointed Date is 31.01.2023.,,

4. The registered offices of the Petitioner Companies are situated in Mumbai, Maharashtra and hence the subject matter of the Petition is within the",,,

jurisdiction of this Bench.,,

5. Learned Counsel submits that the Company Scheme Petition No. C.P.(CAA)/291/MB /2023 has been filed in consonance with the Order of the,,

Tribunal dated 18.10.2023 passed in the Company Scheme Application No C.A.(CAA)/142/MB /2023.,,

6. It is submitted that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal.,,

7. The nature of business of the Petitioner Companies as under: -,,

7.1 First Petitioner Company,,

The First Petitioner Company is incorporated with the main object to carry on the business of investment in real estate properties.,,

7.2 Second Petitioner Company,,

The Second Petitioner Company is incorporated with the main object to carry on the business of investment in real estate properties.,,

7.3 Third Petitioner Company,,

The Third Petitioner Company is incorporated with the main object to carry on the business of investment in shares and securities.,,

7.4 Fourth Petitioner Company,,

The Fourth Petitioner Company is incorporated with the main object to carry on the business of investment in shares and securities.,,

7.5 Fifth Petitioner Company,,

The Fifth Petitioner Company is incorporated with the main object to carry on the business of investment in real estate properties and securities.,,

7.6 Sixth Petitioner Company,,

The Sixth Petitioner Company is incorporated with the main object to carry on the business of investing activities.,,

7.7 Seventh Petitioner Company,,

The Seventh Petitioner Company is principally engaged in the business of manufacture, supply and export of steel pipes and tubes.",,

8. The Learned Counsel submitted the Rationale for the Scheme as under:,,

“The objective of this Scheme is to ensure consolidation of businesses, simplification of group structure by elimination of multiple”,,

entities and to achieve greater administrative efficiency, elimination of multiple record keeping, thus resulting in reduced expenditure and”,,

significant reduction in the multiplicity of regulatory compliances. The Scheme would also result in improved organizational capability and leadership.”,,

9. Consideration:,,

“Upon this Scheme becoming effective and in consideration for amalgamation of the Transferor Companies with the Transferee Company, the Transferee”,,

Company shall without any further application or deed, issue and allot to the shareholders of the Transferor Companies, holding fully paid up shares in the”,,

Transferor Companies and whose names appears in the Register of Members of the Transferor Companies as on the Record Date or his/her/its heirs, executors”,,

administrators or the successors in title, as may be recognised by the Board of Directors of the Transferee Company, fully paid up equity shares in the following”,,

fair share swap ratio:,,

To the equity shareholders of Ashwa:,,

“19 (Nineteen only) Equity Shares having face value of Rs. 10/-(Rupees Ten only) each, fully paid up of Mega Pipes for every 100 (One hundred only) equity”,,

shares of Ashwa.”,,

To the equity shareholders of Aries:,,

“19 (Nineteen only) Equity Shares having face value of Rs. 10/-(Rupees Ten only) each, fully paid up of Mega Pipes for every 100 (One hundred only) equity”,,

shares of Aries.â€,,

To the equity shareholders of Rockwill:,,

â€œ19 (Nineteen only) Equity Shares having face value of Rs. 10/-(Rupees Ten only) each, fully paid up of Mega Pipes for every 100 (One hundred only) equity",,,

shares of Rockwill.â€,,

To the equity shareholders of Navnetra:,,

â€œ296 (Two hundred and ninety six only) Equity Shares having face value of Rs. 10/- (Rupees Ten only) each, fully paid up of Mega Pipes for every 1 (One only)",,,

equity shares of Navnetra.â€,,

To the equity shareholders of Nandi:,,

â€œ19 (Nineteen only) Equity Shares having face value of Rs. 10/-(Rupees Ten only) each, fully paid up of Mega Pipes for every 100 (One hundred only) equity",,,

shares of Nandi.â€,,

To the equity shareholders of Pet Fibers:,,

â€œ63 (Sixty three only) Equity Shares having face value of Rs. 10/-(Rupees Ten only) each, fully paid up of Mega Pipes for every 1 (One only) equity shares of",,,

Pet Fibers.â€,,

10. The Tribunal vide Order dated 18.10.2023 admitted the Company Scheme Application bearing no. CA(CAA)/142/MB/2023 and inter-alia, gave",,,

the following order/directions:,,

a) Dispensation of convening the meetings of equity shareholders of all the Petitioner Companies in view of consent affidavits obtained from all equity shareholders,,

of all the Petitioner Companies;,,

b) Transferor Companies have no secured creditors, therefore, the question of convening meetings of secured creditors of Transferor Companies did not arise.",,,

c) Dispensation of convening the meetings of secured creditors of the Transferee Company subject to the condition that the Consent Affidavits of the Secured,,

Creditors of the Transferee Company be submitted at the time of filing the Second Motion Petition;,,

d) Dispensation of convening the meetings of Unsecured creditors of all the Petitioner Companies, in view of consent affidavits obtained from all unsecured

creditors",,

of the Transferor Companies, and consent affidavits obtained from 9 (amounting to 96.70% in value) out of 192 unsecured creditors of the Transferee Company.",,

11. In compliance to this Tribunal's order dated 18.10.2023 in CA(CAA)/142/MB/2023, consent affidavits have been obtained from all the",,

secured creditors of the Transferee Company. The consent affidavits are annexed to the Petition. Further, individual notices have also been issued to",,

all the unsecured creditors of the Transferee Company by email and speed post.,,

Para

No. 2", Observations as per the Report, Response of the Petitioner Companies

a), "In compliance of AS-14 (IND AS-103),

the Transferor companies 1, 2, 3, 4, 5, 6

and Transferee company shall pass such

accounting entries which are necessary in

connection with the scheme to comply

with other applicable Accounting

Standards such as AS-5 (IND AS-8) etc.", "As far as the observation of the Regional

Director, as stated in paragraph 2(a) of the

report is concerned, the Petitioner

Companies submit that it shall give effect

to the accounting treatment in its books of

accounts in accordance with the method

as prescribed under applicable Indian

Accounting Standards read with Section

133 of the Companies Act, 2013,

Companies (Indian Accounting Standards)

Rules, 2015 and Companies (Indian

Accounting Standards) Amendment Rules,

2016.

(b),"As per Definition of the Scheme,
"Appointed Date" means 31st
January 2023, or such other date as may
be fixed
or approved by the National Company
Law Tribunal at Mumbai, or such other
date as may be determined by the Board
of Directors of the Transferor Companies
and the Transferee Company with
approval of NCLT or such other date as
the NCLT may direct.

Effective Date" means the date on
which the certified or authenticated
copies of
the order sanctioning this Scheme,
passed by the National Company Law
Tribunal at Mumbai are filed with the
Registrar of
Companies.

In this regard, it is submitted that Section
232 (6) of the Companies Act, 2013
states that the scheme under this section
shall
clearly indicate an appointed date from
which it shall be effective and the scheme
shall be deemed to be effective from such
date and not at a date subsequent to the
appointed date. However, this aspect

may be decided by the Hon'ble Tribunal taking into account its inherent powers. The Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs." "As far as the observation of the Regional Director, as stated in paragraph 2(b) of the report is concerned, the Petitioner Companies submit that the Appointed Date i.e. 31st January, 2023 has been clearly indicated in the Scheme in accordance with provisions of section 232(6) of the Companies Act, 2013 and the Scheme shall be effective from the Appointed Date. Hence, the Petitioner Companies undertake that it is in compliance with the applicable requirements of the Circular no. F. No. 7/12/2019/CL-1 dated 21- 08-2019 issued by the Ministry of Corporate Affairs.

(c), "The Transferor companies 1, 2, 3, 4, 5, 6 and Transferee company have to undertake to comply with section 232(3) (i) of Companies Act, 2013, where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty

payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.","As far as the observation of the Regional Director, as stated in 2(c) of the report is concerned, the Petitioner Companies undertakes that it would comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Transferor Companies on its authorized share capital shall be set off against any fees payable by the Transferee Company on its authorized share capital subsequent to the amalgamation, if applicable. Also, the Transferee Company shall pay the balance / difference amount of the fees, as applicable, at the time of increasing the authorised share capital.

(d),"The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of

Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.","As far as the observation of the Regional Director, as stated in 2(d) of the report and reproduced hereinabove is concerned, the Petitioner Companies undertakes that the meeting of the Equity Shareholders of the respective Petitioner Companies was dispensed, in view of the consent affidavits provided by its respective shareholders of the Petitioner Companies.

There were no Preference Shareholders in the any of the Petitioner Companies and hence, the question of convening the meeting did not arise. There were no Secured Creditors in the Transferor Companies and hence, the question of convening the meeting did not arise. The Secured Creditors of the Seventh Petitioner Company had submitted consent letters from the Secured Creditors along with C.A. (CAA) / 142 (MB) / 2023 and further provided consent affidavits to the Scheme, which are annexed to the Company Scheme Petition for which the Seventh Petitioner Company had given an undertaking to obtain the consent

affidavits

from all the Secured Creditors and hence,
the question of convening the meeting did
not

arise. The Unsecured Creditors of the
Â Transferor Companies had provided
consent affidavits to the Scheme and
hence, the question of convening the
meeting did not arise. Further, the meeting
of the Unsecured Creditors of the Seventh
Petitioner Company was also dispensed,
and notices were sent to the Unsecured
Creditors of the Seventh Petitioner
Company as per the directions passed by
this Honâ€™ble Tribunal in its order dated
18th October, 2023.

(e),"The Directorate has received letter dated
14.11.2023 (copy is enclosed as
Annexure- A-1) and same is placed on
record to protect the interest of Income
Tax
department in the matter.

The Transferee Company shall be in
compliance with the provisions of
Section
2(1B) of the Income Tax Act, 1961. In this
regard, the Transferor companies 1, 2, 3,
4, 5, 6 and Transferee company shall

ensure compliance of all the provisions of Income Tax Act and Rules thereunder.","As far as the observation of the Regional Director, as stated in 2(e) of the report and reproduced hereinabove is concerned, the Seventh Petitioner Company has filed an Affidavit in response to the Income Tax letter with the Honâ€™ble Tribunal on 20th December 2023. The copy of the aforesaid affidavit is annexed and marked hereto as Annexure A. The Seventh Petitioner Company was acquired under liquidation in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (â€™IBCâ€™). Honâ€™ble Tribunal vide its order dated 9th March 2021 passed in the Interlocutory Application No. 2264 of 2020 in C.P. (IB) No.1239/MB/2018 (â€™NCLT Orderâ€™) confirmed that as on the date of the NCLT Order, all the liabilities of the Corporate Debtor shall stand extinguished and the Seventh Petitioner Company (in its new avatar) shall not be held responsible /liable for any past liabilities of the Corporate Debtor in inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration or other judicial, regulatory or

administrator proceedings against or in relation to, or in connection with the Corporate Debtor as on the date of the NCLT Order. Further the Transferee Company and Transferor Companies shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.

(f),"The Transferor companies 1, 2, 3 & 5 are engaged in the business of real estate therefore the Hon'ble NCLT may kindly direct the Petitioner companies to comply with the guidelines of the RERA.","As far as the observation of the Regional Director, as stated in 2(f) of the report is concerned, the Petitioner Company 1, 2, 3 & 5 undertakes to comply with the directions of the concerned regulatory authorities.

Further the Petitioner Company 1, 2, 3 & 5 submits that (i) there are no ongoing real estate projects (ii) no real estate projects have been developed so far (iii) no registration is required with RERA. Hence, no approval /directions / observations are required to be obtained from RERA.

(g),"That on examination of the report of the Registrar of Companies, Mumbai dated 24.11.2023 (Annexed as Annexure A-2)) that all the Transferor companies 1, 2,

3, 4, 5, 6 and Transferee company fall within the jurisdiction of ROC, Mumbai.

It is submitted that no complaint and /or representation regarding the proposed scheme of Amalgamation has been received against the Transferor companies 1, 2, 3, 4, 5, 6 and Transferee company. Further, the Transferor companies 1, 2, 3, 4, 5, 6 and Transferee company have filed

Financial Statements up to 31.03.2023

further observations in ROC report are as under:-

i. Necessary Stamp Duty on transfer of property/Assets is to be paid to the respective Authorities before implementation of the Scheme.

ii. It is submitted that as per the provisions of Section 232(3)(1) of the Companies

Act, 2013, where the transferor company is

dissolved, the fee, if any, paid by the transferor company 011 its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent to the amalgamation. Therefore, the remaining

fee, if any after setting off the fees already paid by the transferor company on its authorized capital, has to be paid by the transferee Company on the increased authorized capital subsequent to the amalgamation.

iii. Interest of the creditors should be protected.

iv. May be decided on its merits."Our Reply 2(g)(i): As far as the observation of the Regional Director, as stated in 2(g)(i) of the report and reproduced hereinabove is concerned the Petitioner Companies undertake that it would pay necessary stamp duty on transfer of property/assets with relevant authorities once the scheme is sanctioned by the Hon^{ble} Tribunal and it is made effective with the Jurisdictional Registrar of Companies.

Our Reply 2(g)(ii): As far as the observation of the Regional Director, as stated in 2(g)(ii) of the report and reproduced hereinabove is concerned, the Petitioner Companies undertake that it would comply with the provisions set out in Section 232(3)(i) of the Companies Act,

2013 and that the fee, if any, paid by the Transferor Companies on its authorized share capital shall be set off against any fees payable by the Transferee Company on its authorized share capital subsequent to the amalgamation, if applicable. Also, the Transferee Company shall pay the balance / difference amount of the fees, as applicable, at the time of increasing the authorised share capital.

Our Reply 2(g)(iii): As far as the observation of the Regional Director, as stated in paragraph 2(g)(iii) of the report and reproduced hereinabove is concerned, the Petitioner Companies undertakes that the interest of all the creditors of the Petitioner Companies shall be protected.

Our Reply 2(g)(iv): As far as the observation of the Regional Director, as stated in paragraph 2(g)(iv) of the report and reproduced hereinabove is concerned, the contents being statements of fact does not require any comments.

18. This Tribunal has received representation dated 20.11.2023 from the Office of the Deputy Commissioner of Income Tax (Central) " 2, Raipur",,

stating that the present outstanding demand against the Transferee Company is Rs. 572,42,90,184. It is further stated that all tax demands, dues,",,

obligations, claims and liabilities irrespective of their finality and contingency, and all ongoing disputes and legal proceedings involving the Transferee",,,

Company shall remain unaffected after the implementation of the Scheme of Amalgamation. It is to be noted that only the Transferee Company is,,

under the jurisdiction of the above-stated Income Tax office. The Transferee Company filed an additional affidavit dated 19.12.2023 on 21.12.2023,,

objecting the contentions of the Income Tax Department. It is submitted that the alleged claims pertain to period preceding the date of NCLT order,,

dated 09.03.2021 passed in IA No. 2264/2020 in CP(IB)/1239/2018 and the said claims are also a subject matter in Writ Petitions No. 1420/2022 and,,

2864/2022 wherein the Honâ€™ble Bombay High Court passed interim order in favour of the Transferee Company.,,,

19. No further objections have been received by the Tribunal opposing the Company Scheme Petition and nor has any party controverted any,,

averments made in the Company Scheme Petition.,,,

20. It has been submitted that no investigation proceedings are pending against the Petitioner Companies under the Companies Act.,,,

21. The Statutory Auditors of the Transferee Company have examined the Scheme in terms of provisions of Sections 230-232 and certified that the,,

accounting treatment contained in the Scheme is in compliance with the applicable accounting standards notified by the Central Government under the,,

Companies Act, 2013.",,

22. The shareholders and Creditors of the Petitioner Companies are the best judges of their interest. Their decision should not be ordinarily,,

interferedÂ withÂ byÂ theÂ TribunalÂ asÂ perÂ theÂ decisionÂ ofÂ Honâ€™ble Supreme Court in Miheer H. Mafatlal vs. Mafatlal,,

Industries Ltd [JT 1996 (8) 205] wherein it was held as follows:,,

â€œIt is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting,,

it by the usefulness and propriety of the scheme by supporting it by the requisite majority vote.â€™,,

23. From the material on record, the Scheme to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions",,,

of law and is not contrary to public policy.,,,

24. 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, the rejoinder and undertakings of the Petitioner Companies and the report of the Official",,,

Liquidator, there appears to be no impediment in sanctioning the present Scheme.",,,

25. Consequently, sanction is hereby granted to the Scheme under Sections 230 to 232 of the Companies Act, 2013 with the following directions:",,,

a) All the Transferor Companies shall be dissolved without winding up.,,,

b) While approving the Scheme, we clarify that this Order should not, in any way, be construed as an Order granting exemption from payment of stamp duty, taxes or",,,

other charges, if any, and payment in accordance with law or in respect of any permission or compliance with other requirements which may be specifically required",,,

under any law.,,,

c) All the employees of the Transferor Companies in service, on the date immediately preceding the date on which the Scheme takes effect i.e. the Effective Date, 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 concerned Transferor Companies on the said date.,,,

d) Any proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.,,,

e) All the properties, rights, liabilities, duties 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 Companies Act, 2013, be transferred to and vest in the Transferee Company.",,,

f) The Income Tax Department will be at liberty to examine the aspect of any tax payable because of this scheme and it shall be open to the income tax authorities to,,

take necessary action as permissible under the Income Tax Law.,,

g) The Registrar of Companies is entitled to proceed against the Transferee Company for violation/offences committed by Transferor Companies, if any.",,

h) The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies",,

electronically, along with E-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the Certified copy of the Order from the Registry, in",,

accordance with the provisions of the Companies Act, 2013 and applicable Rules.",,

i) Certified copy of this Order be also submitted to all statutory authorities.,,

j) The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law",,

Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of",,

receipt of the Certified copy of the Order from the Registry.,,

k) All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company",,

Law Tribunal, Mumbai.",,

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

m) Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.,,

26. Accordingly, Company Scheme Petition No. CP(CAA)/291/MB/2023 connected with CA(CAA)/142/MB/2023 is allowed and disposed of.",,