

(2024) 03 NCLT CK 0055

National Company Law Tribunal, New Delhi Court III

Case No: Company Petition No. (CAA) - 17(ND) Of 2022 Connected With Company Application
No. (CAA) - 99(ND) Of 2021

M/s Kiyansh Creations Private
Limited Vs

Vs

APPELLANT

RESPONDENT

Date of Decision: March 21, 2024

Acts Referred:

- Companies Act, 2013 - Section 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 232
- Companies Act, 1956 - Section 235, 236, 227, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 433, 434

Hon'ble Judges: Bachu Venkat Balaram Das, Member (J); Atul Chaturvedi, Member (T)

Bench: Division Bench

Advocate: Mukesh Sukhija, Pooja Bhatia, Puneet Rai, Nikhil Jain, Hemlata Rawat, Shankari Mishra, Niharika Tanwar

Final Decision: Disposed Of

Judgement

Atul Chaturvedi, Member (Technical)

1. The present Second Motion Petition has been filed jointly by the M/s. Kiyansh Creations Private Limited, (Petitioner Company No. 1/ Transferor Company) and M/s. Sonansh Creations Private Limited (Petitioner Company No. 2/ Transferee Company) under Sections 230-232 of the Companies Act, 2013 (Act) read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Rules) for the Sanction of the proposed Scheme of Amalgamation between the Transferor Company and Transferee Company and their respective shareholders and creditors (Scheme).

2. The Registered Office of the Transferor Company and the Transferee Company is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.

3. The Transferor Company No. 1 namely M/s. Kiyansh Creations Private Limited, bearing CIN: U51909DL2016PTC305125 was incorporated on 30/08/2016 under the provisions of the Companies Act, 2013 as a Private Company Limited by Shares with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Transferor Company is situated at B-222, Okhla Industrial Area, Phase-I, New delhi-110020. The Authorised Share Capital of the Transferor Company is Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) divided into 25,00,000 (Twenty Five Lakh) Equity Shares of Rs. 10/- (Rupees Ten) each. The Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 1,64,06,500/- (Rupees One Crore Sixty Four Lakh and Six Thousand Five Hundred Only) divided into 16,40,650 (Sixteen Lac Forty Thousand Six Hundred Fifty) Equity Shares of Rs. 10/- (Rupees Ten) each.

4. The Transferee Company namely M/s. Sonansh Creations Private Limited, bearing CIN: U17100DL2008PTC177878 was originally incorporated with the name "Sonali Realtech Private Limited" on 09/05/2008 under the provisions of the Companies Act, 1956 as a Private Company Limited by Shares with Registrar of Companies, NCT of Delhi. Subsequently, the Company has changed its name to "Sonansh Creations Private Limited" vide Certificate of Incorporation issued on 13.09.2019. The registered office address of the Transferee Company is situated at B-222, Okhla Industrial Area, Phase-I, New delhi-110020.

The Authorised Share Capital of the Transferee Company is Rs. 6,02,00,000/- (Rupees Six Crore Two Lakh Only) divided into 60,20,000 (Sixty Lakh Twenty Thousand) Equity Shares of Rs. 10/- (Rupees Ten) each. The Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 6,01,77,330/- (Rupees Six Crore One Lakh Seventy Seven Thousand Three Hundred Thirty Only) divided into 60,17,733 (Sixty Lakh Seventeen Thousand Seven Hundred Thirty Three) Equity Shares of Rs. 10/- (Rupees Ten) each.

5. It is stated that the Transferee Company viz., M/s. Sonansh Creations Private Limited has moved the necessary second motion Petition being CP(CAA)- 17(ND)/2022 on 07.02.2023, connected with the first motion Application being CA(CAA)-99(ND)/2021, before the National Company Law Tribunal, New Delhi.

6. The Board of Directors of the Transferor Companies and of the Transferee Company in their respective Board Meetings dated 20.02.2021 considered and unanimously approved the proposed Scheme of Amalgamation.

7. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:

(a) "The Transferor Company and the Transferee Company are closely held companies controlled by the Same promoters and under the same management. That both the Companies are engaged in the business of wholesale trade in fabrics. The proposed Scheme of Amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base.

(b) The proposed amalgamation would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity.

(c) The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

(d) The said Scheme of Amalgamation will contribute in fulfilling and furthering the objects of the Transferor and the Transferee Companies. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.

(e) The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.

(f) The said Scheme of Amalgamation will have beneficial impact on all the Transferor and the Transferee Companies, their shareholders, employees and other stake holders and all concerned."

8. Upon the coming into effect of the Scheme and in consideration for the transfer of and vesting of the properties, assets, properties, undertaking, debts and liabilities of the Transferor Companies to the Transferee Company in terms of this Scheme, the Transferee Company shall without any further application, act, instrument or deed, issue and allot Equity Share(s) of the face value of Rs. 10/- each in the Transferee Company, credited as fully paid up, to the Members of the respective Transferor Companies whose names appear in the Register of Members as on a particular date (Record Date) to be fixed by the Board of Directors of the Transferee Company, in the following ratio:

“3 (Three) equity shares of Sonansh Creations Private Limited of face value of Rs.10/-(Rupees Ten) each, fully paid for every 10 (Ten) equity shares of Kiyansh Creations Private Limited of Rs. 10/-(Rupees Ten) each fully paid up.”

The aforesaid exchange ratio has been arrived at on the basis of valuation done by Swati Chaturvedi, Registered Valuer.

9. This Adjudicating Authority by its order dated 31.01.2022 dispensed with the requirement of holding the meeting of equity shareholders and unsecured creditors of the Transferor Companies and convened the meeting of secured creditors of the Transferee Company/Applicant Company No. 2. In pursuance thereof the meeting was held and the secured creditors in the said meeting have approved the scheme.

10. The Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices. This Tribunal vide order dated 31.01.2022 directed to issue notice to all the Statutory Authorities, namely, the Regional Director (Central Government) - Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana - Ministry of Corporate Affairs, Official Liquidator and Income Tax Department.

11. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 21.04.2022 by confirming that the aforesaid Notices of the present Company Petition were published on 26.02.2022 in Business Standard (English Edition) and in Business Standard (Hindi Edition) on 26.02.2022 Delhi edition. It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities as per the direction given by this Tribunal dated 31.01.2022.

12. This Tribunal vide Order dated 05.02.2024 recorded the submissions of Ld. Counsel for the Income Tax Department which are reproduced below:

“Ld. Counsel for the Income Tax Department submitted that the report has been filed. However, Tax demand is merely Rs. 2,080/- The Applicant has filed an undertaking with respect to the Income Tax Department.”

13. The Transferee Company in its Additional Affidavit dated 04.01.2023 undertakes to pay the income tax dues of the Transferor Company, if any, subject to its rights conferred under law.

14. The Regional Director along with the Registrar of Companies vide its report dated 21.12.2022 has not objected to the proposed scheme of the amalgamation but has made certain observations. The petitioner companies have filed Rejoinder Affidavit to the reply filed by the Ld. Regional Director dated 21.12.2022 in response to the observations made by the Regional Director and Registrar of Companies, wherein the

Petitioner Companies have given an undertaking to appropriately comply with the observations made by the Regional Director and Registrar of Companies.

15. The Official Liquidator vide its report dated 04.05.2022 submitted to this Tribunal stating therein that they have no objection with respect to the present scheme of amalgamation.

16. The Petitioner Companies submit that the provisions relating to the accounting treatment for the proposed amalgamation, as contained in the Scheme of Amalgamation, are in conformity with the applicable provisions of the Companies Act, 2013, Accounting Standards as prescribed under the Companies (Accounting Standards) Rules, 2006, IND AS as prescribed under the Companies (Indian Accounting Standards) Rules, 2015, and Generally Accepted Accounting Principles in India (Indian GAAP), as the case may be. The Statutory Auditors of the Petitioner Transferor Company and the Petitioner Transferee Company have confirmed the same vide Certificate dated 23.08.2021 filed by M/s. Arora & Choudhary, Chartered Accountants.

17. No investigation proceedings have been instituted and are pending in relation to either of the Petitioner Companies under Sections 235 to 251 of the Act or under Sections 206 to 229 (Chapter XIV) of the Act. To the knowledge of each of the Petitioner Companies, no winding-up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/or insolvency proceedings have been filed/instituted and are pending against either of the Petitioner Companies. None of the directors of the Petitioner Companies have any material interest in the Scheme except to the extent of their directorships and shareholding in the Petitioner Companies.

18. It is submitted by the Petitioner Companies that this Second Motion Petition is made bona fide and in the interest of justice and no one will be prejudiced if orders are made/or directions are given as prayed for.

19. Analysis and Finding

i. After considering the reports, we are of the considered view that the Scheme is not prejudicial to the interest of the equity shareholders and creditors of the Transferor Companies and the Transferee Company and the Scheme will be beneficial to the Transferor Companies, Transferee Company and their respective shareholders and creditors.

ii. The shareholders of the Petitioner Companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate

decisions of companies approved by shareholders and creditors.

iii. It has also been affirmed in the petition that the Scheme is in the interest of both the Transferor Companies, Transferee Company, their respective shareholders, creditors, employees and all concerned.

iv. Upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

20. Consequently, the sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

i. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.

ii. Notwithstanding the above, if there is any deficiency found or, the violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.

iii. While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

iv. In compliance with the requirement of Section 230 (1) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation filed stated in Form CAA 8 along with the required fee as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

v. The appointment date as proposed in IA (Com.A.)-344/2022 i.e., 01.04.2022 by the Petitioner Companies is confirmed by this Tribunal.

21. This Tribunal does further order: -

i. That the Transferor Company shall stand dissolved without following the process of winding-up; and

ii. That all properties, rights 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 230-232 of the Companies Act, 2013 be transferred to and vested in the Transferee Company for all intents, purposes and interest of the Transferor

Companies subject nevertheless to all changes now affecting the same; and

iii. That all the liabilities, (if any) and powers, engagements, obligations and duties of the Transferor Companies shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company; and

iv. That all proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company; and

v. That 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 condition not less favorable than those subsisting in the concerned Transferor Companies on the said date; and

vi. That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause a certified copy of this Order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Companies shall be deemed to be transferred; and

vii. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

22. Accordingly, the Scheme of Amalgamation stands sanctioned and CP(CAA)/17 (ND)/2022 stands disposed of in the above terms.

Let copy of the order be served to the parties.