(2022) 03 NCLT CK 0038

In the National Company Law Tribunal

Case No : CA (CAA) No.03/ALD/2022

?A One Agrifoods And Beverages Privatelimited Vs

Date of Decision : 16-03-2022

Acts Referred:

Companies Act, 2013, — Section 103, 105, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2), 10

Citation : (2022) 03 NCLT CK 0038

Hon'ble Judges : Rajasekhar V.K, Member J;Virendra Kumar Gupta Member, T

Bench : Division Bench

Advocate : Anang Kr. Shandilya, Anurup Dutta

Final Decision : Disposed Of

Judgement

Rajasekhar V.K., Member (Judicial)

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 ("Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation of A-one Agrifoods and Beverages Private Limited ("Transferor Company No. 1" or "Applicant Company No. 1"), Broadway Beverages Private Limited ("Transferor Company No. 2" or "Applicant Company No. 2"), Chronicle Foods Private Limited ("Transferor Company No. 3" or "Applicant Company No. 3"), Crispy Edibles and Beverages Private Limited ("Transferor Company No. 4" or "Applicant Company No. 4"), Cure Cultivators Private Limited ("Transferor Company No. 5" or "Applicant Company No. 5"), Marshmallow Products Private Limited ("Transferor Company No. 6" or "Applicant Company No. 6"), Sandstone Manufacturers Private Limited("Transferor Company No. 7" or "Applicant Company No. 7"), Scrabble Wheat & Flours Private Limited ("Transferor Company No. 8" or "Applicant Company No. 8"), Teakwood India Sales Private Limited ("Transferor Company No. 9" or "Applicant Company No. 9"), Truesolutions Multiservices Private Limited ("Transferor Company No. 10" or "Applicant Company No. 10"), Tulsi Agrifoods

Private Limited ("Transferor Company No. 11" or "Applicant Company No. 11"), Vogue Global Merchants Private Limited ("Transferor Company No. 12" or "Applicant Company No. 12") with Superlative Wines Private Limited ("the Transferee Company" or " Applicant Company No.13") and their respective shareholders. The Scheme provides for Amalgamation of the Applicant Companies from the Appointed Date, viz April 1st 2021 in the manner and on the terms and conditions stated in Scheme of Amalgamation ("Scheme") enclosed as Annexure No. 1 to the Company Application.

2. It is submitted by Ld. Counsels appearing for the applicants, that the applicants have the following classes of shareholders and creditors:-

a. Applicant No. 1: 2 Equity Shareholders as on 31.07.2021 and 1 Unsecured Creditor as on 20.12.2021

b. Applicant No. 2: 7 Equity Shareholders as on 31.07.2021 and 2 Unsecured Creditors as on 20.12.2021

c. Applicant No. 3: 5 Equity Shareholders as on 31.07.2021

d. Applicant No. 4: 2 Equity Shareholders as on 31.07.2021

e. Applicant No. 5: 2 Equity Shareholders as on 31.07.2021

f. and 1 Unsecured Creditor as on 20.12.2021

g. Applicant No. 6: 2 Equity Shareholders as on 31.07.2021

h. Applicant No. 7: 2 Equity Shareholders as on 31.07.2021 and 2 Unsecured Creditors as on 20.12.2021

i. Applicant No. 8: 2 Equity Shareholders as on 31.07.2021 and 2 Unsecured Creditors as on 20.12.2021

j. Applicant No. 9: 2 Equity Shareholders as on 31.07.2021 and 1 Unsecured Creditor as on 20.12.2021

k. Applicant No. 10: 3 Equity Shareholders as on 31.07.2021

l. Applicant No. 11: 3 Equity Shareholders as on 31.07.2021

m. Applicant No. 12: 2 Equity Shareholders as on 31.07.2021 and 1 Unsecured Creditor as on 20.12.2021

n. Applicant No. 13: 4 Equity Shareholders as on 31.07.2021 and2 Unsecured Creditor as on 20.12.2021.

3. It is hereby submitted that the applicant companies made the following contentions with respect to the dispensations of the requirement of convening meetings of the following person:

a. All the equity shareholders of Transferor Companies No. 1 to 12 have given their written consents by way of affidavits which are annexed to the application.

The affidavits of consent of the Equity Shareholders of the Transferor Companies No.1 to 12 are enclosed as Annexure No.10 to the Company Application;

b. All the equity shareholders of Transferee Company have given their written consent by way of affidavits. The affidavits of consent of the Equity Shareholders of the Transferee Company are enclosed as Annexure No.15 to the Company Application;

c. There is no secured creditor in the Transferor Companies No.1 to 12 and transferee Company;

d. There is no unsecured creditor in the Transferor Companies no.3, 4, 6, 10 & 11;

e. The Unsecured Creditors of Transferor Companies no. 1, 2, 5, 7, 8, 9 & 12 have given their written consent by way of affidavits. The affidavits of consent of the Unsecured Creditors of the Transferor Companies No.1, 2, 5, 7, 8, 9 & 12 are enclosed as Annexure No. 12 to the Company Application.

4. Directions are sought accordingly for:

(a) convening, holding and conducting of virtual meeting of the Unsecured Creditors of Applicant No.13 to consider the Scheme under Section 230(1) read with section 232(1) of the Act.;

(b) dispensing with convening, holding and conducting of meeting of the Equity Shareholders of the Applicant No.1 to 13, who have already given their consent to the Scheme;

(c) dispensing with the convening, holding and conducting of meeting of the Secured Creditors of Applicant No.1 to 13 since there is no such creditor in the Applicant No.1 to 13;

(d) dispensing with the convening, holding and conducting meeting of Unsecured Creditors of the Applicant No.1, 2, 5, 7, 8, 9 & 12, who have already given their consent to the Scheme and of the Applicant No.3, 4, 6, 10 & 11 since no such Unsecured Creditors in the Applicant No.3, 4, 6, 10 & 11.

5. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders: -

(a) Meeting to be held (Dates and Times): The following meeting shall be convened and held on Wednesday, April 27, 2022 for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification: - Meeting of Unsecured Creditors of Applicant No.13 at 1:00 PM at the venue - Conference Room First Floor, Hotel Radisson Blu, Sector 18, Noida-201301.

(b) Meetings dispensed: Meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant No.1 to 12 and meetings of the Equity Shareholders and Secured Creditors of the Applicant No.13 are dispensed with under section 230(1) read with Section 232(1) of the Act.

(c) Advertisement: At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in the Financial Express, Delhi and Lucknow Edition in English; and Jansatta, Delhi and Lucknow Edition in Hindi as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(d) Individual Notices: At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details, shall be sent to Unsecured Creditors of the Applicant No. 13 as per the list appended as Annexures 17 of the Company Application as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016by post or courier at their respective last known addresses or by email where email addresses are available. The respective notice along with accompanying documents shall also be posted on the websites of the Applicant No.13, if any. The Chairperson appointed for the said meetings to issue and send the notice of the aforesaid meeting. Postal notices may be sent only to the unsecured creditors if email addresses are not available.

(e) Chairperson: Mr. Anil Kumar Mittal (Mobile No. 9619773811) is appointed as the Chairperson of the meetings to be held, as aforesaid. Each of these persons shall be paid a consolidated sum of ☐ 1,00,000/- for conducting the aforesaid meeting. The Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meeting, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meeting, including an amendment to the Scheme, if any proposed by any persons.

(f) Scrutiniser: Ms. Anurag Nirbhaya, Practicing Charted Accountant (Mobile No. 9810382513) is appointed as the Scrutiniser of the meetings to be held, as aforesaid. He shall be paid a consolidated sum of ☐ 75,000/- for the meetings.

(g) Quorum and Attendance: The quorum for the meeting of the Unsecured Creditors shall be determined in accordance with Section 103 of the Companies Act, 2013. As the Applicant No. 13 has only two Unsecured Creditors, the quorum for the meeting of Unsecured Creditors shall be two to proceed with the meeting. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting or alternatively it may be provided that the creditor present shall be deemed to constitute quorum.

(h) Mode of Voting: Facility of voting through poll or show off hands.

(i) Voting procedure: Subject to the directions and matters dealt with herein, the procedure for voting in so far is the same as prescribed by the Companies (Management & Administration) Rules, 2014 ("the said Rules").

(j) Proxies & Board Resolutions: That voting by proxy/authorized representative be permitted, provided that a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicant Company No. 13 at its registered office, not later than 48 hours before the aforesaid meeting vide Rule 10 of the Companies (CAA) Rules, 2016 read with section 105 of the Act. A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or through authorised representatives, provided the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorising its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the concerned Applicant Company not later than 48 (forty-eight) hours before the time for holding such meeting. If a Body Corporate chooses to vote by remote e-voting a scanned copy of such board resolution shall be sent by email to the Scrutiniser.

(k) Scrutiniser's Report: The votes cast shall be scrutinized by the Scrutiniser. Votes cast in all the modes shall be consolidated. The Scrutiniser shall prepare and submit the respective reports on the meeting along with all papers relating to the voting to the Chairperson of the meeting within three days in the case of meeting of the Unsecured Creditors of the Applicant No.13 after the conclusion of the respective meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutiniser.

(l) Declaration of Results: The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if approved by a majority in number representing three-fourths in value of the respective Unsecured Creditors of Applicant No. 13 shall be deemed to have been duly passed on the date of such meeting under section 230(1) read with section 232(1) of the Companies Act, 2013. The declaration of results by the Chairperson shall be displayed on the Notice Board of the Applicant No. 13 at its registered office, and shall also be posted on the websites of the Applicant No. 13, if any. In addition to the aforesaid, all other requirements with regard to publication and communication of Scrutiniser's report and Chairperson's declaration of results, should also be complied with in case of Applicant No. 13.

(m) The Chairperson to report to this Tribunal the results of the said meeting within two weeks from the date of the conclusion of the said meeting. Such report shall be in Form No.CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

6. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and

statement under the provisions of the Companies Act, 2013 shall also be served on the (i) Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs; (ii) Registrar of Companies, Kanpur within whose jurisdiction the Applicant No. 1 to 12 and Applicant No. 13 are registered; (iii)Income- Tax Authorities within whose jurisdiction the Applicants are assessedby sending the same by hand delivery or by registered / speed post or by email forthwith after the notices are sent to the creditors, as aforesaid. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Advocates of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

7. The Applicants to file an affidavit proving service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the meeting to be held.

8. The application being CA (CAA) No.3/ALD/2022 is disposed of accordingly.