(2022) 12 NCLT CK 0007

In the National Company Law Tribunal

Case No : Company Application CA (CAA) No. 148 / KB /2022

Aadesh Dealers Private Limited Vs

Date of Decision : 01-12-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8(2)

Citation : (2022) 12 NCLT CK 0007

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

Bench : Division Bench

Advocate : Manju Bhuteria, N. Gurumurthy, Madan Kumar Maroti, Aisha Amin

Final Decision : Disposed Of

Judgement

Balraj Joshi , Member (Technical)

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 Composite Scheme of Arrangement which provides for Demerger of INVESTMENT DIVISION of AADESH DEALERS PRIVATE LIMITED - being the Applicant No. 1 above named (" Demerged Company for Section A " or “Applicant No.1”) by transfer and vesting of the same in READYWEAR CASUALSPRIVATE LIMITED being the Applicant No. 2 above named (" Resulting Company for Section A " or “Applicant No.2 ”) and Amalgamation of READYWEAR CASUALSPRIVATE LIMITED being the Applicant No. 2 above named (" Transferor Company for Section B " or “Applicant No.2 ”) with MINTU TEXTILEMILLS PRIVATE LIMITED being the Applicant No.3 above named ("Transferee Company for Section B " or “Applicant No. 3 ”) from the Appointed Date, 01st April,2022 in the manner and on the terms and conditions stated in the said Composite Scheme of Arrangement (“Scheme”). A copy of the said Scheme is annexed to the Company Application marked – ANNEXURE – G in VOL II at Page No 147 to 189.

2. It is submitted by Ld. counsel appearing for the Applicant(s) that the Appointed Date as per the Scheme is 01st April,2022.

3. It is submitted by Ld. counsel appearing for the Applicant(s) that the Board of Directors of the Applicant Companies have at their respective meeting held on 30TH June,2022 have passed resolution adopting the proposed Scheme of Amalgamation . A copy of the Board Resolution is annexed to the Company Application marked – ANNEXURE – H in VOL II at Page No 190 to 192.

4. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation Report dated 28-07-2022 recommending the Swap Ratio has been prepared by CA MUKESH BANKA, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked – ANNEXURE – I in VOL II at Page No 193 to 211.

5. It is submitted by Ld. counsel appearing for the Applicant(s) that none of the Applicant Companies involved in the Scheme are NBFC Company.

6. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Applicant(s) have the following classes of shareholders and creditors:-

PARTICULARS

AS ON 30TH JUNE , 2022

EQUITY

PREFERENCE

SECURED

UNSECURED

SHARE

SHARE

CREDITORS

CREDITORS

HOLDERS

HOLDERS

DEMERGED COMPANY /

5

NIL

NIL

NIL

APPLICANT NO 1

RESULTING COMPANY CUM

5

NIL

NIL

10

TRANSFEROR COMPANY /

APPLICANT NO 2

TRANSFEREE COMPANY /

4

NIL

NIL

84

APPLICANT NO 3

7. It is submitted by Ld. counsel appearing for the Applicant(s) that the Equity Shareholders of Applicant No1 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of equity shareholders as on 30-06-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – J in VOL – II at Page No 212 to 227.

8. It is submitted by Ld. counsel appearing for the Applicant(s) that the Equity Shareholders of Applicant No 2 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of equity shareholders as on 30-06-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – K in VOL – II at Page No 228 to 243.

9. It is submitted by Ld. counsel appearing for the Applicant(s) that the Equity Shareholders of Applicant No 3 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of equity shareholders as on 30-06-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – L in VOL – II at Page No 244 to 256.

10. It is submitted by Ld. counsel appearing for the Applicant(s) that there is no requirement of meeting of Secured Creditors of Applicant Companies in view of NIL Secured Creditors as on 30-06-2022 as evidenced by the statutory auditor's certificate of the Company all of which are annexed to the Company Application

marked – ANNEXURE – M in VOL – II at Page No 257, ANNEXURE – N in VOL – II at Page No 258 and ANNEXURE – O in VOL – III at Page No 274-276.

11. It is submitted by Ld. counsel appearing for the Applicant(s) that there is no requirement of meeting of Unsecured Creditors of Applicant No 1 in view of NIL Unsecured Creditors as on 30-06-2022 as evidenced by the statutory auditor's certificate of the Company all of which are annexed to the Company Application marked – ANNEXURE – M in VOL – II at Page No 257.

12. It is submitted by Ld. counsel appearing for the Applicant(s) that 94.82% in value of Unsecured Creditors of the Applicant No.2 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of Unsecured Creditors as on 30-06-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – N in VOL – II at Page No 258 to 273.

13. It is submitted by Ld. counsel appearing for the Applicant(s) that 90.66% in value of Unsecured Creditors of the Applicant No.3 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of Unsecured Creditors as on 30-06-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – O in VOL – III at Page No 274 to 390.

14. It is submitted by Ld. counsel appearing for the Applicant(s) that the statutory auditor of the Applicant Companies have all by their certificate all dated 18TH August, 2022 confirmed that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act , 2013 and Rules made there under. Copy of the said certificate is annexed to the Company Application marked – – ANNEXURE – P in VOL – III at Page No 391 to 396.

15. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

a. Meetings dispensed:

EQUITY SHAREHOLDERS

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of shareholder representing 100% in value of shares of Applicant Companies having respectively given their consent to the Scheme by way of affidavits.

UNSECURED CREDITORS

Meeting of Unsecured Creditors of Applicant No 2 for considering the Scheme are dispensed with in view of consent by 94.82 % in value of Unsecured creditors of

Applicant No 2 having respectively given their consent to the Scheme by way of affidavits.

Meeting of Unsecured Creditors of Applicant No 3 for considering the Scheme are dispensed with in view of consent by 90.66% in value of Unsecured creditors of Applicant No 3 having respectively given their consent to the Scheme by way of affidavits.

b. No requirement of Meetings

SECURED CREDITORS

Secured Creditors of Applicant Companies - NIL Creditors verified by auditors certificate .

UNSECURED CREDITORS

Unsecured Creditors of Applicant No 1 - NIL Creditors verified by auditors certificate .

c. Meetings to be held

No meetings are required to be held

16. 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 :

a. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

b. Registrar of Companies , West Bengal ,Kolkata

c. Official Liquidator; High Court Calcutta

d. Income Tax Department having jurisdiction over the Applicant(s)

These notices shall be sent by hand delivery through special messenger or by post and also by email within two weeks from the date of receiving this order. 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 Authorized Representative of the said Applicant(s). 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. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

17. The Applicant(s) to file an affidavit proving service of notice and compliance of all directions contained herein at least a week before the meeting(s) to be

held.

18. The application being Company Application (CAA) No. 148 / KB / 2022 is disposed of accordingly.

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