(2022) 11 NCLT CK 0094

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 140 / KB /2022

Abhi Plastics Private Limited Vs

Date of Decision : 28-11-2022

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

Citation : (2022) 11 NCLT CK 0094

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

Bench : Division Bench

Advocate : Manju Bhuteria, N. Gurumurthy, Aisha Amin

Final Decision : Disposed Of

Judgement

Rohit Kapoor, Member (Judicial)

1. This Court is congregated through hybrid mode.

2. The instant application has been filed in the first stage of the proceedings under Sub-section 1 of the Section 230 read with Sub-section 1 of the Section 232 of the Companies Act, 2013 (hereinafter referred as "Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation of ABHI PLASTICS PRIVATE LIMITED being the Applicant No. 1 above named ("Transferor Company No 1" or "Applicant No.1") and BALAJI SCALES PRIVATE LIMITED being the Applicant No. 2 above named ("Transferor Company No 2" or "Applicant No.2") and R F S L EXPORTS PRIVATE LIMITED being the Applicant No. 3 above named ("Transferor Company No 3" or "Applicant No. 3") and SANKATMOCHAN DEALTRADE PRIVATE LIMITED being the Applicant No. 4 above named ("Transferor Company No 4" or "Applicant No.4") with KAYAN INVESTMENT & TRADING CO PRIVATE LIMITED being the Applicant No.5 above named ("Transferee Company" or "Applicant No.5") whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April,2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred as "Scheme"). A copy of the said Scheme is annexed to the

Company Application marked – ANNEXURE – K in VOL II at Page No 294 to 328.

3. It is submitted by Ld. counsel appearing for the Applicants that the Appointed Date as per the Scheme is 01st April,2022.

4. It is submitted by Ld. counsel appearing for the Applicants that the Board of Directors of the Applicant Companies have at their respective meeting held on 30TH July,2022 have passed resolution adopting the proposed Scheme of Amalgamation. A copy of the Board Resolution is annexed to the Company Application marked – ANNEXURE – L in VOL II at Page No 329 to 333.

5. It is submitted by Ld. counsel appearing for the Applicants that the Valuation Report dated 25-07-2022 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 – M in VOL II at Page No 334 to 350.

6. It is submitted by Ld. counsel appearing for the Applicants that the Transferee Company / Applicant No 5 is a Non-Banking Financial Company (NBFC) duly registered with Reserve Bank of India and are holding a valid Certificate of Registration issued by the said Bank.

7. It is submitted by Ld. counsel appearing for the Applicants that, the Applicants have the following classes of shareholders and creditors: -

PARTICULARS

AS ON 31ST JULY, 2022.

EQUITY

PREFERENCE

SECURED

UNSECURED

SHARE

SHARE

CREDITORS

CREDITORS

HOLDERS

HOLDERS

TRANSFEROR

7

NIL

NIL

NIL

COMPANY NO 1 /

APPLICANT NO 1

TRANSFEROR

7

NIL

NIL

NIL

COMPANY NO 2 /

APPLICANT NO 2

TRANSFEROR

6

NIL

NIL

NIL

COMPANY NO 3 /

APPLICANT NO 3

TRANSFEROR

7

NIL

NIL

NIL

COMPANY NO 4 /

APPLICANT NO 4

TRANSFEREE

13

NIL

NIL

NIL

COMPANY /

APPLICANT NO 5

8. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 1 representing 100% in value of shares have already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-07-2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – N in VOL – III at Page No 351 to 382.

9. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 2 representing 100% in value of shares have already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-07-2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – O in VOL – III at Page No 383 to 414.

10. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 3 representing 100% in value of shares have already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-07-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – P in VOL – III at Page No 415 to 445.

11. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 4 representing 100% in value of shares have already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-07-2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – Q in VOL – III at Page No 446 to 482.

12. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 5 representing 100% in value of shares have already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-07-2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – R in VOL – IV at Page No 483 to 549.

13. It is submitted by Ld. counsel appearing for the Applicants that there is no requirement of meeting of Secured Creditors of Applicant Companies in view of NIL Creditors evidenced by the statutory auditor’s certificate of the Company all of which are annexed to the Company Application marked – ANNEXURE – S in

VOL – IV at Page No 550, ANNEXURE – T in VOL – IV at Page No 551, ANNEXURE – U in VOL – IV at Page No 552, ANNEXURE – V in VOL – IV at Page No 553, and ANNEXURE – W in VOL – IV at Page No 554.

14. It is submitted by Ld. counsel appearing for the Applicants that there is no requirement of meeting of Unsecured Creditors of Applicant Companies in view of NIL Creditors evidenced by the statutory auditor's certificate of the Company all of which are annexed to the Company Application marked – ANNEXURE – S in VOL – IV at Page No 550, ANNEXURE – T in VOL – IV at Page No 551, ANNEXURE – U in VOL – IV at Page No 552, ANNEXURE – V in VOL – IV at Page No 553, and ANNEXURE – W in VOL – IV at Page No 554.

15. It is submitted by Ld. counsel appearing for the Applicants that the statutory auditor of the Applicant Companies has by their certificate all dated 07TH September,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 – X in VOL IV at Page No 555 to 564.

16. 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 1 for considering the Scheme are dispensed with in view of consent by 99.95 % in value of Unsecured creditors of Applicant No 1 having respectively given their consent to the Scheme by way of affidavits.

Meeting of Unsecured Creditors of Applicant No 2 for considering the Scheme are dispensed with in view of consent by 98.84 % 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 99.96 % 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 auditor's certificate.

(c) Meetings to be held

No meetings are required to be held

17. 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) Reserve Bank of India, Kolkata Regional Office

(d) Official Liquidator; High Court Calcutta

(e) Income Tax Department having jurisdiction over the Applicants

by sending the same 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. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

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

19. The application being Company Application (CAA) No. 140 / KB / 2022 is disposed of accordingly.

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