(2021) 02 NCLT CK 0089

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 1039/MB Of 2020

Adequate Infrastructure Pvt. Ltd. Vs

Date of Decision : 08-02-2021

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 6, 7, 8, 12, 14

Companies Act, 2013 — Section 103, 230(3), 230(5)

Citation : (2021) 02 NCLT CK 0089

Hon'ble Judges : H.P. Chaturvedi, J;Ravikumar Duraisamy, Member (Technical)

Bench : Division Bench

Advocate : Nirman Sharma, Dharmesh Kotadia, Shalvika Nachankar

Judgement

1. The Court is convened through Video Conference. Arguments were heard in respect of the present company application. The Applicant Companies have sought relief in the terms of its prayer relief clause.

2. The Learned Counsel appearing for the Applicant Companies submits that the present company application is filed in respect of the proposed Scheme seeking Amalgamation of the Applicant Company Nos. 1 to 17 (Transferor Companies) with Applicant Company No. 18 (Transferee Company) and their respective Shareholders.

3. The Learned Counsel for the Applicant Companies informs that the Board of Directors of the Applicant Companies have already approved the proposed company Scheme in their respective Board meetings. Copies of such Board resolutions are annexed with the present Company Scheme Application.

4. The Learned Counsel further submits that the Appointed Date in the Scheme is 01.04.2019.

5. As per the present company application the rationale for the Proposed Company Scheme is described as under:

a) Consolidating the business operations of the companies which have significant potential for growth by optimizing the control over the operations in more efficiently, conveniently, economically and advantageously under the single management;

b) Greater efficiency in cash management of the combined entity, unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities; It is an opportunity to unlock the locked capital and use the liquidated capital in an optimized manner.

c) Improved organizational capability and leadership, arising from the pooling of the human capital who have diverse talent, skills and vast experience to compete successfully in an increasingly competitive industry;

d) Cost savings are expected to flow from more focused operational efforts, rationalization and standardization and simplification of the business processes, productivity and improvements, improved procurement, and the elimination of duplication, and rationalization of administrative expenses;

e) Strengthened leadership in the industry, in terms of asset base, revenue, and market share of the combined entity. The combined entity will have the ability to leverage on its large asset base and vast pool of intellectual capital;

f) The combined managerial and financial resources will enhance the capability of the Transferee Company;

g) The Transferee Company can be operated with better economies of scale, more productive and optimum utilisation of various resources and ability to raise resources for conducting business, achieve synergies in business activities, further development and growth of the business and to eliminate unnecessary duplication of costs;

h) The benefit of operational synergies to the combined entity which can be put to the best advantage of the stakeholders and greater leverage in operations planning and process optimization and enhanced flexibility in product slate.

6. The Learned Counsel for the Applicants submits that the First Transferor Company has six equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 1 deserves to be dispensed with.

7. The Learned Counsel for the Applicants submits that the Second Transferor Company has six equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 2 deserves to be dispensed with.

8. The Learned Counsel for the Applicants submits that the Third Transferor Company has six equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the

present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 3 deserves to be dispensed with.

9. The Learned Counsel for the Applicants submits that the Fourth Transferor Company has six equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 4 deserves to be dispensed with.

10. The Learned Counsel for the Applicants submits that the Fifth Transferor Company has seven equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 5 deserves to be dispensed with.

11. The Learned Counsel for the Applicants submits that the Sixth Transferor Company has six equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 6 deserves to be dispensed with.

12. The Learned Counsel for the Applicants submits that the Seventh Transferor Company has six equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 7 deserves to be dispensed with.

13. The Learned Counsel for the Applicants submits that the Eighth Transferor Company has nine equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 8 deserves to be dispensed with.

14. The Learned Counsel for the Applicants submits that the Ninth Transferor Company has eight equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 9 deserves to be dispensed with.

15. The Learned Counsel for the Applicants submits that the Tenth Transferor Company has six equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 10 deserves to be dispensed with.

16. The Learned Counsel for the Applicants submits that the Eleventh Transferor Company has seven equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity

Shareholders of Applicant No. 11 deserves to be dispensed with.

17. The Learned Counsel for the Applicants submits that the Twelfth Transferor Company has nine equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 12 deserves to be dispensed with.

18. The Learned Counsel for the Applicants submits that the Thirteenth Transferor Company has eight equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 13 deserves to be dispensed with.

19. The Learned Counsel for the Applicants submits that the Fourteenth Transferor Company has eight equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 14 deserves to be dispensed with.

20. The Learned Counsel for the Applicants submits that the Fifteenth Transferor Company has eight equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 15 deserves to be dispensed with.

21. The Learned Counsel for the Applicants submits that the Sixteenth Transferor Company has eight equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 16 deserves to be dispensed with.

22. The Learned Counsel for the Applicants submits that the Seventeenth Transferor Company has nine equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 17 deserves to be dispensed with.

23. The Learned Counsel for the Applicants submits that the Transferee Company has four equity shareholders all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure A-Colly' to the present Company Application. In view this, the meeting of the Equity Shareholders of Applicant No. 18 deserves to be dispensed with.

24. Though all the equity shareholders of all the Applicant Companies (Seventeen Transferor Companies and One Transferee Company) have given their consent affidavits and requested to dispense the holding, conducting meeting of the equity shareholders, upon perusal of the request and facts the bench observed that there are 123 equity shareholders in all 17 transferor

companies and 4 equity shareholders in transferee company therefore, the bench is of the considered view that meeting of the equity shareholders, meeting of mind to discuss the proposed scheme of arrangement is essential therefore, their request to dispense with conducting meetings of equity shareholders of all the Applicant companies have not been considered positively by this bench. Therefore, the Bench directs all the Applicant Companies to conduct meetings of the equity shareholders of all the Applicant Companies.

25. It is recorded that there are no Secured Creditors in the Applicant Companies as stated in Paragraph IX (B) of the Company Scheme Application. Therefore, the requirement of convening and holding such meeting of the Secured Creditors of the Applicant Companies does not arise.

26. The Learned Counsel for the Applicants submits that the First Transferor Company has one unsecured creditor, who has given its consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditor of Applicant No. 1 deserves to be dispensed with and accordingly, it is dispensed with.

27. The Learned Counsel for the Applicants submits that the Second Transferor Company has three unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 2 deserves to be dispensed with and accordingly, it is dispensed with.

28. The Learned Counsel for the Applicants submits that the Third Transferor Company has two unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 3 deserves to be dispensed with and accordingly, it is dispensed with.

29. The Learned Counsel for the Applicants submits that the Fourth Transferor Company has two unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 4 deserves to be dispensed with and accordingly, it is dispensed with.

30. The Learned Counsel for the Applicants submits that the Fifth Transferor Company has one unsecured creditor who has given its consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditor of Applicant No. 5 deserves to be dispensed with and accordingly, it is dispensed with.

31. The Learned Counsel for the Applicants submits that the Sixth Transferor Company has one unsecured creditor who has given its consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditor of Applicant No. 6 deserves to be dispensed with and accordingly, it is dispensed with.

32. The Learned Counsel for the Applicants submits that the Seventh Transferor Company has one unsecured creditor who has given its consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditor of Applicant No. 7 deserves to be dispensed with and accordingly, it is dispensed with.

33. The Learned Counsel for the Applicants submits that the Eighth Transferor Company has two unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 8 deserves to be dispensed with and accordingly, it is dispensed with.

34. The Learned Counsel for the Applicants submits that the Ninth Transferor Company has three unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 9 deserves to be dispensed with and accordingly, it is dispensed with.

35. The Learned Counsel for the Applicants submits that the Tenth Transferor Company has two unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 10 deserves to be dispensed with and accordingly, it is dispensed with.

36. The Learned Counsel for the Applicants submits that the Eleventh Transferor Company has two unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 11 deserves to be dispensed with and accordingly, it is dispensed with.

37. The Learned Counsel for the Applicants submits that the Twelfth Transferor Company has two unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 12 deserves to be dispensed with and accordingly, it is dispensed with.

38. The Learned Counsel for the Applicants submits that the Thirteenth Transferor Company has one unsecured creditor who has given its consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditor of Applicant No. 13 deserves to be dispensed with and accordingly, it is dispensed with.

39. The Learned Counsel for the Applicants submits that the Fourteenth Transferor Company has two unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 14 deserves to be dispensed with and accordingly, it is dispensed with.

40. The Learned Counsel for the Applicants submits that the Fifteenth Transferor Company has five unsecured creditors, out of which unsecured creditors representing 92.26% value of the unsecured creditors of the Fifteenth Transferor Company have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 15 deserves to be dispensed with and accordingly, it is dispensed with.

41. The Learned Counsel for the Applicants submits that the Sixteenth Transferor Company has one unsecured creditor who has given its consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditor of Applicant No. 16 deserves to be dispensed with and accordingly, it is dispensed with.

42. The Learned Counsel for the Applicants submits that the Seventeenth Transferor Company has two unsecured creditors, all of whom have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 17 deserves to be dispensed with and accordingly, it is dispensed with.

43. The Learned Counsel for the Applicants submits that the Transferee Company has forty-seven unsecured creditors, out of which unsecured creditors representing 93.49% value of the unsecured creditors of the Transferee Company have given their consent to the Scheme by way of consent affidavits annexed as 'Annexure B-Colly' to the present Company Application. In view this, the meeting of the Unsecured Creditors of Applicant No. 18 deserves to be dispensed with and accordingly, it is dispensed with.

44. The Learned Counsel for the Applicant Companies submits that Unsecured Creditors representing 92.96% of the total Unsecured Creditors of the Applicant Companies have given their consent to the Scheme as stated in Paragraph IX (B) by way of consent affidavits annexed as 'Annexure B-Colly' to the present

Company Application. In view of the above, the meeting of the Unsecured Creditors of the Applicant Companies deserves to be dispensed with and accordingly, it is dispensed with.

45. This Bench directs to the Applicant Companies to serve notice in the prescribed form on: -

a) The Central Government through the office of Regional Director, Western region, Mumbai;

b) Registrar of Companies, Maharashtra, Mumbai;

c) The Income Tax Authority within whose jurisdiction the Applicant Companies' assessed to tax, clearly indicating the PAN of the Applicant Company concerned for Applicant No. 1, having PAN No: AAICA3941M, for the Applicant No. 2, having PAN No: AAICA3942J, for Applicant No. 3, having PAN No: AAICA3945R, for Applicant No. 4, having PAN No: AADCD4071G, for Applicant No. 5, having PAN No: AACCJ3332P, for Applicant No. 6, having PAN No: AAECR7309A, for Applicant No. 7, having PAN No: AADCV4344A, for Applicant No. 8, having PAN No: AAKCA3889N, for Applicant No. 9, having PAN No: AAKCA3890M, for Applicant No. 10, having PAN No: AAKCA4098D, for Applicant No. 11, having PAN No: AAECD1858N, for Applicant No. 12, having PAN No: AACCJ8009K, for Applicant No. 13, having PAN No: AAGCP5269F, for Applicant No. 14, having PAN No: AAFCR7790G, for Applicant No. 15, having PAN No: AARCS2230G, for Applicant No. 16, having PAN No: AADCV9824B, for Applicant No. 17, having PAN No: AADCV9823G, for Applicant No. 18, having PAN No: AACCP1584H.

d) Reserve Bank of India;

pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, if no response is received by the Tribunal from such Authorities, within a period of 30 (thirty) days from the date of receipt of such notice, it will be presumed that such authorities have no representations/objections to the Scheme.

46. In addition to the above, the transferor Applicant Companies shall serve notice upon the Official Liquidator, High Court, Bombay pursuant to Section 230(5) of the Companies Act, 2013, read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016. The Tribunal hereby appoints Mr. Jitender Kothari, Chartered Accountant (office at Veera Desai Road, Andheri West, Mumbai 400053 Maharashtra. Contact No. 9969117020 and email id is jitenderkothari@rediffmail.com) to assist the Official Liquidator to scrutinize the books of accounts of the Applicant Companies and submit its report to the Tribunal as proposed or suggested by the Official Liquidator. Each transferor Company shall pay a fees of Rs. 25,000/- and transferee company shall pay a fee of Rs. 40,000/- for this purpose excluding all applicable taxes. It is further, made clear that if no representation/objection is received by the Tribunal from the Official Liquidator, High Court, Bombay within a period of thirty

(30) days from the date of receipt of such notice, it shall be presumed that the Official Liquidator has no objection to the proposed Scheme.

47. That at least 30 days before the said meeting of the Equity Shareholders of the Applicant Companies to be held as aforesaid, the Applicant Companies shall serve a notice convening the said meeting, indicating day, date and time aforesaid, together with a copy of the Scheme of Amalgamation and a copy of Explanatory statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Since 18 companies are involved in the scheme, meetings can be conducted between 8,9 & 10 April 2021.

48. That at least 30 days before the meeting of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meeting, the date and time aforesaid be published once each in "Business Standard" in English and "Navshakti" in Marathi, both having wide circulation in the State of Maharashtra, and stating that copies of the Scheme and the said Statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 can be obtained free of charge.

49. The Applicant Companies shall:

(i) Issue Notice convening meeting of the Equity shareholders in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

(ii) Issue Explanatory Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

(iii) Advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

50. The Chairperson appointed for the aforesaid meeting shall issue the advertisements and send out the notices of the meeting referred to above. The said Chairperson shall have all powers as per Articles of Association of the Applicant Companies and also under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Companies (Management and Administration) Rules, 2014 and MCA Circulars, to the extent necessary and applicable, in relation to the conduct of the meeting including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including, an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

51. The quorum for the aforesaid meeting of the Equity Shareholders of the Applicant Companies shall be as prescribed under Section 103 of the Companies Act, 2013.

52. The value and number of shares of each member shall be in accordance with the respective books/register of the Applicant Companies or books of accounts and where the entries in the books/register or books of accounts are disputed, the Chairperson for the meeting shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf shall be final.

53. The Chairperson shall file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to the Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. For the purpose of conducting meetings of all the Applicant Companies, the bench hereby appoints Adv. Mr. Y. R. Mishra as Chairman (Contact No. 9619287747 and the email id is yrmishra@hotmail.com) and the fee fixed for this purpose to the Chairman is Rs. 2,00,000/- excluding all taxes.

54. The Chairperson to report to the Tribunal, the result of the aforesaid meetings within 10 (ten) days of the conclusion of the meetings, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites.

55. The Applicant Companies to file proof of compliance electronically with regard to the directions issued in the paragraphs above and to report to this Tribunal that the directions regarding the issue of notices, public advertisement, hosting on the websites have been duly complied with.

56. Pronounced today in open Court. File to be consigned to records.

