(2024) 01 NCLT CK 0013

In the National Company Law Tribunal

Case No : C.A(CAA)/234/MB-I/2023

Ajmera Citi Developers Private Limited Vs

Date of Decision : 04-01-2024

Acts Referred:
Companies Act 2013 — Section 230, 230(3), 230(5), 232

Citation : (2024) 01 NCLT CK 0013

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ahmed Chunawala, Rajesh Shah & Advocates

Final Decision : Disposed Of

Judgement

1. Heard the Ld. Counsel for the Applicant Companies.

2. The present Scheme is a Scheme of Amalgamation of Ajmera Citi Developers Private Limited, the Transferor Company with Troika Estates Private Limited, the Transferee Company and their respective shareholders under sections 232 r/w Section 230 of the Companies Act, 2013 (‘Scheme’).

3. The Board of Directors of the Transferor Company and Transferee

Company in their respective meetings conducted on 29th July, 2023 for the Transferor Company and the Transferee Company have approved the Scheme of Amalgamation. The Appointed Date fixed under the Scheme is April 1, 2023.

4. The rationale for the proposed Scheme is as under:

(a) The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.

(b) It would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.

(c) This Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform.

(d) The Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies. The merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme.

(e) The Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels with lesser compliance issues for the Amalgamated Company.

(f) The Transferor Company and the Transferee Company have common shareholders and Directors. The shareholders would consolidate their holdings and leverage the share value consequent to higher profitability.

5. The nature of Business are as follows:

i. The Applicant Company No.1 has been undertaking the business as builders, real estate developers and general construction contractors and own, sell, acquire, process, develop, construct, demolish, enlarge, rebuild, renovate, decorate, repair, maintain, let out hire, lease, rent, pledge, mortgage, invest, intermediaries, or otherwise deal in construction and development.

ii. The Applicant Company No.2 has been presently carrying on the business of purchase, sell, develop, take in exchange, or on lase, hire on otherwise, acquire, whether for investment of sale or working the same, any real including lands, mines, buildings, factories, mills, house, cottages, shops, depots, warehouses, machinery, plant, stock in trade, mineral rights, concessions, privileges, licenses.

6. The Authorized Share Capital of the Applicant Company No. 1, as on the 31st day of March, 2023 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

50,000 Equity Shares of Rs.10/- each.

5,00,000

Total

5,00,000

Issued and Subscribed and Paid-up

50,000 Equity Shares of Rs. 10/- each fully paid-up.

5,00,000

TOTAL

5,00,000

As on date there is no change in the capital structure of the Applicant Company No.1

7. That there are 16 (Sixteen) Equity Shareholders in the Applicant Company No.1. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Ajmera Citi Developers Private Limited, the Transferor Company with Troika Estates Private Limited, the Transferee Company is dispensed with in view of the consent affidavits given by all the Sixteen Equity Shareholders of the Applicant Company No.1.

8. The Share Capital of the Applicant Company No.2 as on the 31st day of March, 2023 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

39,700 Equity Shares of Rs.100/- each.

39,70,000

300 Preference Shares of Rs.100/- each.

30,000

Total

40,00,000

Issued, Subscribed and Paid-up

39,650 Equity Shares of Rs.10/- each fully paid-up.

39,65,000

Total

39,65,000

As on date, there is no change in the capital structure of the Applicant Company

No.2.

9. That there are 2 (Two) Equity Shareholders in the Applicant Company No. 2. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Ajmera Citi Developers Private Limited, the Transferor Company with Troika Estates Private Limited, the Transferee Company is dispensed with in view of the consent affidavits given by both the Equity Shareholders of the Applicant Company No.2.

10. That there are no Secured Creditors in the Applicant Company No. 1 as mentioned in Para 23 of the Company Scheme Application.

11. That there are 3 (Three) secured Creditors having value of Rs. 2,30,56,986/- as on 31st March, 2023 in the Applicant Company No.2. That Counsel for the Applicant Company No. 2 submits that since the scheme is an arrangement between the Applicant Company No.2 and their respective shareholders in accordance with the provisions of the Companies Act, 2013. After consideration of submissions of the Applicant Company in this respect, this Tribunal if considered view that the Applicant companies have low capital base and huge unsecured creditors obligations, which may impact the financial ratios upon the merger and consequently security coverage ratio in so far merged entity is concerned may get impacted. Accordingly, this Bench considers it appropriate to direct the Applicant Company no. 2 to obtain consent from the secured creditors and the file the same by next date of hearing.

12. That there are 6 (Six) Unsecured Creditors having value of Rs.13,97,77,135/- as on 31st March, 2023 in the Applicant Company No. 1. The Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant Company No. 1 are concerned most of them are in the nature of loan/ sundry/trade creditors for activities of the Applicant Company No. 1 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.1 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 1 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. The Applicant Company submits that there is no arrangement with the creditors and they will be paid in ordinary course of business. Hence, this bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors through RPAD/Speed Post and by way of Email as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

13. That there are 350 (Three Hundred Fifty) Unsecured Creditors having value of Rs. 34,44,12,760/- as on 31st March, 2023. The Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.2 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 2 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. The Applicant Company submits that there is no arrangement with the creditors and they will be paid in ordinary course of business. Hence, this bench hereby directs the Applicant Company No.2 to issue notice to its Unsecured Creditors through RPAD/Speed Post, Email and Hand Delivery etc. as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

14. The Consideration is as follows:

Upon the Scheme becoming effective and upon the amalgamation of the Transferor Company with the Transferee Company in terms of this Scheme, Transferee Company shall, without any further application or deed, issue and allot shares to each shareholders of the "Transferor Company" whose name appears in the register of members of the Transferor Company as on the Date as may be stipulated by the Board of Directors of Transferee Company or to such of their heirs, executors, administrators or the successors in title, as the case may be as may be recognized by the Board of Directors, in the following Ratio viz:

"72 (Seventy-two) fully paid up Equity Shares of Re. 100/- each of Transferee Company shall be issued and allotted as fully paid up for every 100 (One hundred) Equity Shares of Rs. 10/- each fully paid up held in the Transferor Company pursuant to this Scheme of Amalgamation."

15. The Applicant Companies shall serve the Notice in terms of Section 230 (5) of the Companies Act, 2013, upon -

a. The Central Government, through Regional Director, Everest, 5th Floor, 100 Marine Drive, Mumbai-400002;

b. The Registrar of Companies, Mumbai;

c. Jurisdictional Proper Officer in the GST Department exercising jurisdiction over the Applicant Companies;

d. Jurisdictional Income Tax Authorities; within whose jurisdiction; the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax

Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3 rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];

e. The Office of Official Liquidator, Hon'ble High Court of Bombay;

f. Real Estate Regulatory Authority;

g. Any other sectoral regulator as may be directed by this Hon’ble Tribunal.

16. The Notice shall be served through by Registered Post-AD, Speed Post and email along with copy of Scheme and state that “If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme”. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

17. The Applicant Companies will submit –

i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.

ii. List of pending IBC cases, if any, along with all other litigation;

iii. pending against the Applicant Companies having material impact on the proposed Scheme.

iv. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

18. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

