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**(2022) 11 NCLT CK 0072**

**In the National Company Law Tribunal**

**Case No :** Company Application (CAA) NO. 138 / KB /2022

**Akriti Finance Private Limited Vs**

**Date of Decision :** 22-11-2022

**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 0072

**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. This Court convened 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 ABRN FINANCE PRIVATE LIMITED being the Applicant No. 1 above named ("Transferor Company No 1" or "Applicant No.1") and AKRITI COMMODEAL PRIVATE LIMITED being the Applicant No. 2 above named ("Transferor Company No 2" or "Applicant No.2") and BLUECHIP COMMOTRADE PRIVATE LIMITED being the Applicant No. 3 above named ("Transferor Company No 3" or "Applicant No. 3 " ) and JDS SECURITIES PRIVATE LIMITED being the Applicant No. 4 above named ("Transferor Company No 4" or "Applicant No.4") JODHANI MANAGEMENT PRIVATE LIMITED being the Applicant No. 5 above named ("Transferor Company No 5" or "Applicant No.5" ) and PUSHPA ENCLAVE PRIVATE LIMITED being the Applicant No. 6 above named ("Transferor Company No 6" or "Applicant No.6") and SHARDA SMELTERS PRIVATE LIMITED being the Applicant No. 7 above named ("Transferor Company No 7" or "Applicant No.7") and VANILLA TIE – UP PRIVATE LIMITED

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being the Applicant No. 8 above named ("Transferor Company No 8" or "Applicant No.8") with AKRITI FINANCE PRIVATE LIMITED being the Applicant No.9 above named ("Transferee Company" or "Applicant No.9" ) 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 – S in VOL IV at Page No 572 to 610.

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 09th September,2022 have passed resolution adopting the proposed Scheme of Amalgamation. A copy of the Board Resolution is annexed to the Company Application marked – ANNEXURE – T in VOL IV at Page No 611 to 619.

5. It is submitted by Ld. counsel appearing for the Applicants that the Valuation Report dated 08-09-2022 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 – U in VOL IV at Page No 620 to 642

6. It is submitted by Ld. counsel appearing for the Applicants that the Transferor Company No 1 / Applicant No 1, Transferor Company No 4 / Applicant No 4, Transferor Company No 5 / Applicant No 5 and Transferee Company / Applicant No 9 are all 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 AUGUST, 2022.

EQUITY

SHARE HOLDERS

PREFERENCE

SHARE HOLDERS

SECURED CREDITORS

UNSECURED CREDITORS

TRANSFEROR

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COMPANY NO 1 / APPLICANT NO 1

6

NIL

NIL

NIL

TRANSFEROR  COMPANY NO 2 /

APPLICANT NO 2

3

NIL

NIL

NIL

TRANSFEROR  COMPANY NO 3 /

APPLICANT NO 3

3

NIL

NIL

NIL

TRANSFEROR

COMPANY NO 4 / APPLICANT NO 4

5

NIL

NIL

NIL

TRANSFEROR  COMPANY NO 5 /

APPLICANT NO 5

4

NIL

NIL

NIL

TRANSFEROR  COMPANY NO 6 /

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APPLICANT NO 6

2

NIL

NIL

NIL

TRANSFEROR  COMPANY NO 7 /

APPLICANT NO 7

3

NIL

NIL

1

TRANSFEROR  COMPANY NO 8 / APPLICANT NO 8

2

NIL

NIL

NIL

TRANSFEREE  COMPANY / APPLICANT NO 9

6

NIL

NIL

NIL

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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE –V in VOL – IV at Page No 643 to 673 .

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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively

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annexed to the Company Application marked – ANNEXURE – VI in VOL – IV at Page No 674 to 687.

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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – V2 in VOL – IV at Page No 688 to 703.

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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – V3 in VOL – V at Page No 704 to 730.

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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE –V4 in VOL – V at Page No 731 to 752.

13. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 6 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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE –V5 in VOL – V at Page No 753 to 761.

14. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 7 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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – V6 in VOL – V at Page No 762 to 776.

15. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 8 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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively

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annexed to the Company Application marked – ANNEXURE – V7 in VOL – V at Page No 777 to 787.

16. It is submitted by Ld. counsel appearing for the Applicants that the Equity Shareholders of Applicant No 9 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 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE –V8 in VOL –V at Page No 788 to 820.

17. 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 – W in VOL – V at Page No 819, ANNEXURE – W1 in VOL – V at Page No 820, ANNEXURE – W2 in VOL – V at Page No 821, ANNEXURE – W3 in VOL – V at Page No 822, ANNEXURE – W4 in VOL – V at Page No 823, ANNEXURE – W5 in VOL – V at Page No 824, ANNEXURE – W6 in VOL – V at Page No 825, ANNEXURE – W7 in VOL – V at Page No 830 and ANNEXURE – W8 in VOL – V at Page No 831.

18. It is submitted by Ld. counsel appearing for the Applicants that there is no requirement of meeting of Unsecured Creditors of Applicant No 1 , Applicant No 2 , Applicant No 3 , Applicant No 4 , Applicant No 5 , Applicant No 6 , Applicant No 8 , and Applicant No 9 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 – W in VOL – V at Page No 819, ANNEXURE – W1 in VOL – V at Page No 820, ANNEXURE – W2 in VOL – V at Page No 821, ANNEXURE – W3 in VOL – V at Page No 822, ANNEXURE – W4 in VOL – V at Page No 823, ANNEXURE – W5 in VOL – V at Page No 824, ANNEXURE – W7 in VOL – V at Page No 830 and ANNEXURE – W8 in VOL – V at Page No 831.

19. It is submitted by Ld. counsel appearing for the Applicants that the statutory auditor of the Applicant Companies has by their certificate all dated 10TH 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 V at Page No 832 to 840.

20. 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) Meetings dispensed:

EQUITY SHAREHOLDERS

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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 7 for considering the Scheme are dispensed with in view of consent by 100 % in value of Unsecured creditors of Applicant No 7 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.

UNSECURED CREDITORS

Secured Creditors of Applicant No 1 , Applicant No 2 , Applicant No 3 , Applicant No 4 , Applicant No 5 , Applicant No 6 , Applicant No 8 , and Applicant No 9 - NIL Creditors verified by auditors certificate ..

(c) Meetings to be held

No meetings are required to be held

21. 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 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

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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.

22. The Applicants to file an affidavit proving service of notice and compliance of all directions contained herein 3 days before the meetings to be held.

23. The application being Company Application (CAA) No. 138 / KB / 2022 is disposed of accordingly.

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

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