(2024) 01 NCLT CK 0026

In the National Company Law Tribunal

Case No : C. A. (CAA) No. 212/(KB)/2023

Akshara Villa Private Limited Vs

Date of Decision : 02-01-2024

Acts Referred:

Companies Act 2013 — Section 133, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 7, 8(2)

Citation : (2024) 01 NCLT CK 0026

Hon'ble Judges : Bidisha Banerjee, Member (J);Arvind Devanathan, Member (T)

Bench : Division Bench

Advocate : Anil Kr. Dubey

Final Decision : Disposed Of

Judgement

Arvind Devanathan, Member (Technical)

1. This Application has been filed under Sections 230-232 of the Companies Act by the Applicant Companies namely; AKSHARA VILLA PRIVATE LIMITED, (hereinafter referred to as the TRANSFEROR COMPANY NO. 1), GURU KRIPA INN PRIVATE LIMITED, (hereinafter referred to as the TRANSFEROR COMPANY NO. 2), GURU KRIPA MINING WORKS PRIVATE LIMITED (hereinafter referred to as the TRANSFEROR COMPANY NO. 3), RICHA INFRAPROJECTS PRIVATE LIMITED (hereinafter referred to as the TRANSFEROR COMPANY NO. 4) with SUGAM SECURITIES PRIVATE LIMITED (hereinafter referred to as the TRANSFEREE COMPANY) for obtaining sanction of this Tribunal to the Scheme of Amalgamation proposed to be made between the Transferor Companies and the Transferee Company. A copy of the Scheme of Amalgamation has been annexed with the application as Annexure – “05”.

2. Ld. Authorized Representative for the Applicant(s) submits that the shares of the Applicant Companies are not listed at any stock exchange.

3. Further, the Applicant(s) have the following classes of shareholders and creditors: -

Applicant Company

Equity

Shareholder

Unsecured

Secured

Akshara Villa Private

Limited

4

4

NIL

Guru Kripa Inn Private

Limited

5

1

NIL

Guru Kripa Mining Works

Private Limited

5

4

NIL

Richa Infraprojects Private

Limited

4

9

NIL

Sugam Securities Private

Limited

7

4

NIL

4. It is submitted that the Board of Directors of the Applicant Companies in their respective meetings held on 26th June, 2023 approved the Scheme. Copy of the board resolution dated 26th June, 2023 of all the Applicant Companies are annexed with the application and marked as Annexure – “06”.

5. The accounting treatment as proposed in the scheme is in conformity with the Indian Accounting Standard prescribed under Section 133 of the Companies Act, 2013 for which the Certificates from the Auditors of the Applicant Companies are annexed with the application and marked as Annexure – “10”.

6. The Valuation Report dated 15th June, 2023 issued by Anil Kumar Dubey, Registered Valuer, IBBI Registration Number: IBBI/RV/03/2019/12411 recommending the fair equity share exchange ratio in respect of the Proposed Amalgamation. Copy of the Valuation Report dated June, 2023 is annexed with the application and marked as Annexure – “11”.

7. It is submitted that the Scheme does not contemplate any compromise or arrangement with the Creditors of the Amalgamating Company and the Amalgamated Company. The Scheme does not provide or contemplate any variation in the rights of the Creditors of the Amalgamating Company and the Amalgamated Company. It is submitted that the Creditors of the Amalgamating Company and the Amalgamated Company are not in any manner adversely or prejudicially affected by the Scheme. It is further submitted that the Amalgamated Company shall have a positive net worth post effectiveness of the Scheme and accordingly, the creditors of the Amalgamating Company and the Amalgamated Company are not in any manner adversely or prejudicially affected by the Scheme. There is nil secured creditor in the Applicant Companies and 4 unsecured creditors in the Transferor Company No.1, 1 unsecured creditor in the Transferor Company No.2, 4 unsecured creditors in the Transferor Company No.3, 9 unsecured creditors in the Transferor Company No.4 and 4 unsecured creditors in Transferee Company, have given their written consents to the Scheme by way of affidavits. List of the creditors along with Consent of Affidavits approving the Scheme are annexed with the application and marked as Annexure – “08”.

8. It is submitted that:

(a) The Applicant Company No. 1 have 4 (four) equity shareholders, the Applicant Company No 2 has 5 (five), the Applicant Company No 3 has 5 (five), the Applicant Company No. 4 have 4 (four) equity shareholders. List of the equity shareholders along with Consent of Affidavits of all the equity shareholders approving the Scheme are annexed with the application and marked as Annexure – “07”.

(b) Applicant Company/Transferee Company has 7 (seven) equity shareholders. List of the equity shareholders along with Consent of Affidavits of all the equity shareholders approving the Scheme are annexed with the application and marked as Annexure – “07”.

9. Directions are sought accordingly for dispensation with meetings of the equity shareholders and preference shareholders and secured creditors and unsecured creditors of all the Applicant Companies.

10. Heard the Ld. Authorized Representative for the Applicant(s), perused the records, documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following Orders are passed: -

(a) Meetings of equity shareholders of all the Applicant Companies i.e., the Transferor Companies and Transferee Company are dispensed with in view of all the equity shareholders having already considered and given their written consents to the Scheme by way of affidavits.

(b) Meetings of unsecured creditors of the Transferor Companies are dispensed and given their written consents to the Scheme by way of affidavits.

(c) In view of all the aforesaid meetings being dispensed with, the notice of the meeting in Form No. CAA.2, in one English newspaper and in one (Bengali) newspaper as per Rule 7 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is also dispensed with.

11. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents including copy of scheme and statement under provisions of the Companies Act, 2013 shall also be served to on the Regional Director (Eastern Region) - Ministry of Corporate Affairs, Kolkata and the Registrar of Companies - West Bengal and the Official Liquidator at Kolkata and the concerned Income Tax Authority having jurisdiction over the Applicant Companies indicating the PAN numbers of the respective Applicant Companies by sending the same by registered post or by speed post or by courier or by email or through hand delivery. 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 Ld. 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.

12. All the Applicant Companies before the date of hearing of the Confirmation petition shall file an affidavit of service of notices on the Authorities specified above by way of an affidavit of compliance.

13. The Company Application being C.A. (CAA) No. 212/KB/2023 is disposed of accordingly.

14. No order as to costs.

15. Urgent certified copies of this Order, if applied for, be supplied to the parties upon compliances of all requisite formalities.

