(2023) 04 NCLT CK 0051

In the National Company Law Tribunal

Case No : C.A. (CAA)/122/MB /2022

Anand Veena Twisters Private Limited Vs

Date of Decision : 28-04-2023

Acts Referred:

Companies Act, 2013 — Section 103, 230, 230(1)(a), 230(1)(b), 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 — Rule 6, 7, 8, 10

Citation : (2023) 04 NCLT CK 0051

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ajit Singh Tawar

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member (Technical)

UPON the application of the Applicant Companies above named by a Company Notice of Admission AND UPON HEARING Mr. Ajit Singh Tawar i/b Ajit Singh Tawar & Co, Advocates for the Applicant Companies AND UPON READING the Application along with the Notice of Admission dated 28th day of April, 2022 of Shri Chandra Kant Khaitan, Authorized Signatory of the Applicant Company 1 and Applicant Company 2 and Applicant Company 3 and the Affidavit in support of Notice of Admission along with Application and Annexures therein referred to, IT IS ORDERED THAT:

1. This Court is convened by video conferencing.

2. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Amalgamation of Anand Veena Twisters Private Limited ('AVTPL' or 'Transferor Company 1') and Vishwas Investment And Trading Company Private Limited ('VITPL' or 'Transferor Company 2') into Houghton Hardcastle (India) Private Limited ('HHIPL' or 'Transferee Company') and their respective Shareholders ('Scheme').

3. The Learned Counsel for the Applicant Companies submits that the Applicant Company 1 and Applicant Company 2 is engaged in the business of supply of personnel and investments and Applicant Company 3 is engaged in the business of commission agents and investments.

4. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective Board meetings held on 19th Day of April, 2022 have approved the proposed Scheme with the Appointed Date as 1st day of April, 2022. The Board Resolutions approving the Scheme for the Applicant Company 1 and Applicant Company 2 and Applicant Company 3 are annexed as Annexure 'D' to the Company Scheme Application.

5. The Appointed Date for the Scheme of Amalgamation is 1st day of April, 2022.

6. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31st day of March, 2022 is as under:

i. The Authorized Share Capital of the Applicant Company 1 is Rs. 10,20,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each; 1,90,000 12% Redeemable Non-Cumulative Preference Shares of Rs. 10/- each and 1,00,00,000 8% Redeemable Non-Cumulative Preference Shares of Rs. 10/- each. Issued, Subscribed and Paid-up Share Capital of the Applicant Company 1 is Rs. 9,99,62,250/- divided into 6,225 Equity Shares of Rs. 10/- each, fully paid-up and 99,90,000 8% Redeemable Non-Cumulative Preference Shares of Rs. 10/- each., fully paid-up.

ii. The Authorized Share Capital of the Applicant Company 2 is Rs. 5,07,00,000/- divided into 4,000 Equity Shares of Rs. 100/- each; 20,000 8% Non-Cumulative Preference Shares of Rs. 10/- each; 50,00,000 6% Non-Cumulative Preference Shares of Rs. 10/- each and 10,000 Unclassified Shares of Rs. 10 each. Issued, Subscribed and Paid-up Share Capital of the Applicant Company 2 is Rs. 2,82,600/- divided into 2,826 Equity Shares of Rs. 100/- each, fully paid-up.

iii. The Authorized Share Capital of the Applicant Company 3 is Rs. 5,00,00,000/- divided into 50,00,000 Equity Shares of Rs. 10/- each. Issued, Subscribed and Paid-up Share Capital of the Applicant Company 3 is Rs. 2,73,69,250/- divided into 27,36,925 Equity Shares of Rs. 10/- each, fully paid-up.

7. The Learned Counsel for the Applicant Companies further submits that the rationale for the Scheme is as follows:

(i) Consolidation and simplification of the group structure.

(ii) Reduction of administrative and operative costs;

(iii) Reduction of legal and regulatory compliances;

(iv) Greater administrative efficiency; and

(v) Operational rationalization, organizational efficiency and optimal utilization of various resources.

In view of the aforesaid, the Board of Directors of the Companies have considered and proposed the present Scheme of Amalgamation of Transferor Company 1 and Transferor Company 2 in the Transferee Company.

8. The Learned Counsel for the Applicant Companies submits that the consideration for the Scheme is as follows:

Between Shareholders of Transferor Company 1 and Transferee Company "1,82,797 (One Lakh Eighty Two Thousand Seven Hundred and Ninety Seven) Equity Shares of Transferee Company of Rs. 10/- each fully paid-up for every 1,000 (One Thousand) Equity Shares held in Transferor Company 1 of Rs. 10/- each fully paid up.

12,480 (Twelve Thousand Four Hundred and Eighty) Equity Shares of Transferee Company of Rs. 10/- each fully paid-up for every 1,00,000 (One Lakh) Preference Shares held in Transferor Company 1 of Rs. 10/- each fully paid up"

Between Shareholders of Transferor Company 2 and Transferee Company

"9,77,424 (Nine Lakhs Seventy Seven Thousand Four Hundred and Twenty Four) Equity Shares of Transferee Company of Rs. 10/- each fully paid-up for every 1,000 (One Thousand) Equity Shares held in Transferor Company 2 of Rs. 100/- each fully paid up."

9. The Learned Counsel for the Applicant Companies submits that as on 31st day of March 2022, there are 3 (Three) Equity Shareholders holding 6225 Equity Shares of Rs. 10/- each amounting to Rs. 62,250/- and 1 (One) Preference Shareholder holding 9990000 8% Redeemable Non-cumulative Preference Shares of Rs. 10/- amounting to Rs. 9,99,00,000/-in Applicant Company 1, all the Equity and Preference Shareholders of the Applicant Company 1 have given their written consent affidavits to the proposed Scheme. The List of Shareholders in the Applicant Company 1 as on 31st day of March, 2022 and their Consent Affidavits are annexed as Annexure 'H1 & H2' to the Company Scheme Application. In view of the Consent Affidavits filed by all the Equity and Preference Shareholders of the Applicant Company 1, the meetings of the Equity and Preference Shareholders of the Applicant Company 1, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with.

10. The Learned Counsel for the Applicant Companies submits that as on 31st day of March, 2022, there are 3 (Three) Equity Shareholders in Applicant Company 2 holding 2826 Equity Shares of Rs. 100/ each amounting to Rs. 2,82,600/-, all the Equity Shareholders of the Applicant Company 2 have given their written consent affidavits to the proposed Scheme. The List of Shareholders in the Applicant Company 2 as on 31st day of March, 2022 and their Consent Affidavits are annexed as Annexure 'I1 & I2' to the Company Scheme Application. In view of the Consent Affidavits filed by all the Equity Shareholders of the Applicant Company 2, the meeting of the Equity Shareholders of the

Applicant Company 2, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with.

11. The Learned Counsel for the Applicant Companies submits that as on 31st day of March, 2022, there are 4 (Four) Equity Shareholders in Applicant Company 3 holding 2736925 Equity Shares of Rs. 10/- each amounting to Rs. 2,73,69,250/-, 3 out 4 Equity Shareholders comprising 90.87% of shareholding/ voting power of the Applicant Company 3 have given their written consent affidavits to the proposed Scheme. The List of Shareholders in the Applicant Company 3 as on 31st day of March, 2022 and their Consent Affidavits are annexed as Annexure 'J1 & J2' to the Company Scheme Application. In view of the same the meeting of the Equity Shareholders of the Applicant Company 3 be convened and held at registered office of the Applicant Company 3 at Office No. 802, Floor-8, Plot – 213, Raheja Chambers, Free Press Journal Marg, Nariman Point, Mumbai - 400021 on 27th June 2023 at 11.00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.

12. That at least one month before the said meeting of the Equity shareholders of the Applicant Company 3 to be held as aforesaid, a notice convening the said meetings indicating the day, date and time as aforesaid, together with a copy of the Scheme, a copy of 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) Rule, 2016 shall be sent through Email to each of the Shareholders of the Applicant Company 3, at their email addresses as per the records of the Applicant Company 3, as on cut-off date determined by the Board of Directors of the Applicant Company 3.

13. That at least one month before the meeting of the shareholders of the Applicant Company 3 to be held as aforesaid, a notice convening the said meeting, indicating the day, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 can be obtained free of charge at the Registered Office of the Applicant Company 3 as aforesaid and / or at the office of its Advocates, M/s. Ajit Singh Tawar & Co., office no. 305 / 306, Regent Chamber, above Status Restaurant, Jamnalal Bajaj Marg, Nariman Point, Mumbai – 400 021.

14. That a notice of the aforesaid meeting of the Applicant Company 3 shall be advertised in two local newspapers viz. "Free Press Journal" in English and translation thereof in "Navshakti" in Marathi, both circulated in Mumbai not less than one month before the date fixed for the meeting.

15. The Applicant Company 3 undertakes to:

i. Issue Notice convening meeting(s) of the shareholders of Applicant Company 3 in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

ii. Issue Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013; and

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

16. That Mr. M. Raghunatha Bhatt, Former Regional Director, Ministry of Corporate Affairs, Mobile No.: 9731833133 and residing at Flat No. 1101, Satyam Heights, Plot No. 66, Sector 20, Koparkhairane, Navi Mumbai- 400 709 shall be the Chairman of the meeting of the Equity Shareholders of the Applicant Company 3 to be held as aforesaid or any adjournment or adjournments thereof. The fees of the Chairman shall be Rs. 3,75,000/- (Rupees Three Lakhs Seventy-Five Thousand) Only.

17. The Scrutinizer for the aforesaid meeting shall be CA Jiyan Shah, Practicing Chartered Accountant, having membership no. 175828 and FR No. 145980W. The fee of the Scrutinizer is fixed at Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) per meeting for the services rendered for the Company.

18. The Chairman of the Applicant Company 3 appointed for the aforesaid meeting(s) to issue the advertisement and send out the notices of the meeting(s) referred to above. The said Chairman of the meeting(s) shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting(s), including the decision on the procedural questions that may arise at the aforesaid meeting(s) or at any adjournment thereof or any other matter including any amendment to the Scheme or resolution, if any, proposed at the meeting(s) by any person(s).

19. The quorum of the aforesaid meeting of the Applicant Company 3 shall be as prescribed under Section 103 of the Companies Act, 2013, present either in person or by authorized representative or proxy If the quorum is not present within half an hour from the time appointed for the holding of the meeting, the members present shall be the quorum and the meeting shall be held.

20. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the meetings, is filed with Applicant Company 3 at their Registered Office, not later than, 48 hours before the aforesaid meetings as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

21. That the value and number of the shares of each shareholder of the Applicant Company 3 shall be in accordance with the books / register of the Applicant Company 3 and where the entries in the books / register are disputed, the Chairman of the meeting shall determine the value for the purpose of the

aforesaid meeting and his decision in that behalf would be final.

22. That the Chairperson of the Applicant Company 3 shall file an Affidavit not less than seven (7) days before the date fixed for the holding of the aforesaid meeting and to report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.

23. That the Chairperson of the meeting of Applicant Company 3 to report to this Tribunal, the results of the aforesaid meeting within the period of thirty days from the conclusion of the meeting.

24. The Learned Counsel for the Applicant Companies submits that the Applicant Companies do not have any Secured Creditors, therefore, the question of convening and holding of the meeting of Secured Creditors of the Applicant Companies does not arise.

25. The Learned Counsel for the Applicant Companies submits that the Applicant Company 1 and Applicant 3 do not have any Unsecured Creditors, therefore, the question of convening and holding of the meeting of Unsecured Creditors of the Applicant Company 1 and Applicant Company 3 does not arise.

26. The Learned Counsel for the Applicant Companies submits that the Applicant Company 2 has 1 (One) unsecured creditor having outstanding of Rs. 18,00,00,000/- (Rs Eighteen Crores) as on 31st day of March, 2022. The said Unsecured Creditor of the Applicant Company 2 has given its written consent affidavit to the proposed Scheme. The List of Unsecured Creditors in the Applicant Company 2 and their Consent Affidavits are annexed as Annexure 'L1 & L2' to the Company Scheme Application. In view of the Consent Affidavit filed by the said Unsecured Creditor of the Applicant Company 2 and as, the present Scheme is an arrangement between the Applicant Companies and its Shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 and there is no Compromise and/or Arrangement with the Creditors as no sacrifice is called for and the proposed Scheme would only improve its net worth as the Transferor Companies carries positive net worth, the meeting of the Unsecured Creditors of the Applicant Company 2, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with.

27. The Applicant Company 1 is directed to serve notice upon the – (1) Central Government through the office of Regional Director (Western Region), Mumbai; (2) Registrar of Companies, Mumbai; (3) Income Tax Authority within whose jurisdiction the Applicant Company 1 is assessed to tax, bearing PAN number AAACA4262F having IT ward jurisdiction DCIT.CEN7(1); and (4) Official Liquidator, High Court Bombay, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be

presumed that they have no objection to the proposed Scheme.

28. The Applicant Company 2 is directed to serve notice upon the – (1) Central Government through the office of Regional Director (Western Region), Mumbai; (2) Registrar of Companies, Mumbai; (3) Income Tax Authority within whose jurisdiction the Applicant Company 2 is assessed to tax, bearing PAN number AAACV1612L having IT ward jurisdiction DCIT.CEN7(1); (4) Official Liquidator, High Court Bombay; and (5) GST Authority within whose jurisdiction the Applicant Company 2 is assessed to GST, bearing GSTIN 27AAACV1612L1ZE having jurisdiction in Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

29. The Official Liquidator may submit his representations, if any, to the Tribunal within a period of thirty (30) days from the date of the receipt of such notice and that copy of all such representations shall simultaneously be served upon the Transferor Companies.

30. The Applicant Company 3 is directed to serve notice upon the – (1) Central Government through the office of Regional Director (Western Region), Mumbai; (2) Registrar of Companies, Mumbai; (3) Income Tax Authority within whose jurisdiction the Applicant Company 3 is assessed to tax, bearing PAN number AAACH0403P having IT ward DCIT 5(1)(1); and (4) GST Authority within whose jurisdiction the Applicant Company 3 is assessed to GST, bearing GSTIN 27AAACH0403P1ZP having jurisdiction in Mumbai, pursuant to section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

31. The Applicant Companies to file Affidavits of Service respectively, with the Registry proving regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

32. Ordered accordingly.

