(2019) 02 NCLT CK 0040

In the National Company Law Appellate Tribunal

Case No : Company Application No. (CAA)-02/ND Of 2019

Arg Udyog Pvt. Ltd. APPELLANT

Vs

Technico Industries Ltd. RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Companies (Companies, Arrangements And Amalgamation) Rules, 2016 — Rule 3
Companies Act, 2013 — Section 133, 210, 230, 230(7), 231, 232, 232(3)

Citation : (2019) 02 NCLT CK 0040

Hon'ble Judges : R. Varadharajan, J

Bench : Single Bench

Advocate : K.B. Legal

Final Decision : Allowed

Judgement

1. This is an application which is filed by the applicant companies herein, ARG UDYOG Private Limited (for brevity ""Transferor Company""), with

TECHNICO INDUSTRIES Limited (for brevity ""Transferee Company"") jointly under section 230-232 of Companies Act, 2013, and other applicable

provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme

of Arrangement by way of Amalgamation (hereinafter referred to as the ""SCHEME"") proposed between the applicants. The said Scheme is also

annexed as Annexure ""A"" to the application. The applicants above named have preferred the instant application in effect for the following purpose as

evident inter alia from the reliefs sought for in the Application, namely:

a. Issue directions for holding the meeting of the Equity Shareholders of the Transferee Company i.e. Applicant Company- I, to fix the time, date and

place of such meeting, appointment of the Chairman and Alternate Chairman for the meeting and other matters as provided in Rule 3 of the

Companies (Companies, Arrangements and Amalgamation) Rules 2016,

b. Issue directions for holding meeting of the Equity Shareholders of the Transferor Company i.e. Applicant Company-II, to fix the time, date and

place of such meeting, appointment of the Chairman and Alternate Chairman for the meeting and other matters as provided in Rule 3 of the

Companies (Companies, Arrangements and Amalgamation) Rules 2016.

c. Issue direction for dispensing with the meeting of the Unsecured Creditors of the Transferor Company/ Applicant Company- I having regard of the

fact that the single Unsecured Creditor of the Transferor Company/ Applicant Company-I has given its Unconditional No Objection on the form of

affidavit giving no objection to the Scheme of Amalgamation.

d. Issue directions for holding the meeting of the Secured Creditors of the Transferee Company i.e. Applicant Company - II, to fix the time, date and

place of such meeting, appointment of the Chairman for the meeting and other matters as provided In Rule 3 of the Companies (Compromises,

Arrangements and Amalgamation) Rules 2016.

e. Issue directions for holding the meeting of the Unsecured Creditors of the Transferee Company i.e. Applicant Company No. II, to fix the time, date

and place of such meeting, appointment of the Chairman for the meeting and other matters as provided in Rule 3 of the Companies (Compromises,

Arrangements and Amalgamation) Rules 2016.

It is prayed that the meetings may be held at Hotel Atithi Palace, Darya Ganj, Near Ram Mandir & Hind Park, Delhi- 110002 and notices of the

meetings may be published once in the following two newspapers having wide circulation in Delhi District in which the registered offices of the

Applicant Companies are situated:

(i) Jansatta (Hindi Daily), having circulation in district Delhi.

(ii) Financial Express (English Daily), having circulation in district Delhi.

2. An affidavit in support of the above application sworn for and on behalf of the applicant companies by one Mr. Arun Gupta has been filed, being the

Director of the applicant Companies along with the application and it is also represented that the registered office of both the applicant companies are

situated within the territorial jurisdiction of this Tribunal and falling within

Registrar of Companies, NCT, New Delhi.

3. In relation to ARG UDYOG PRIVATE LIMITED being the Transferor Company, in the Scheme marked as Annexure ""A"", it is represented that it

is having 18 Equity Shareholders whose consents have not been obtained by way of affidavits. It is further represented by the counsel for Applicants

that the Transferor Company has 01 Unsecured Creditors as on 30.09.2018. In relation to the equity shareholders, it seeks convening of the meetings

as the Tribunal finds fit, and in relation to the Unsecured Creditor it seeks dispensation of the meetings in view of consent been obtained by way of

affidavit.

4. In relation to Technico Industries Limited being Transferee Company in the Scheme marked as Annexure ""A"", Learned Counsel represents that

company is having 10 Equity Shareholders. It is further represented by the counsel for Applicants that the Transferee Company has 4 Secured

Creditors and 433 Unsecured creditors as on 30th September 2018, whose consents have not been obtained on affidavits. In relation to the equity

shareholders, secured creditors and unsecured creditors of the transferee company, it seeks convening of the meetings.

5. In relation to the territorial jurisdiction, Ld. Counsel for the applicant companies submit that since the registered office of the respective companies

fall within the purview of Registrar of Companies, NCT, New Delhi, this Tribunal has the necessary territorial jurisdiction to entertain the joint

application.

6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Arrangement contemplated

between the Applicant companies.

7. From the certificate of incorporation filed, it is evident that Transferor Company is a private limited company incorporated under the provisions of

Companies Act, 1956 on 1sT July, 1985 with Registrar of Companies, Punjab, H.P. & Chandigarh, under the name and style of ""R.N. GUPTA

DRILLING PRIVATE LIMITED"" . On 10th June, 2008, the name of the Transferor Company changed to ""ARG UDYOG PRIVATE LIMITED"".

The Transferor Company by special resolution altered the provisions of its Memorandum of Association with respect to the place of the Registered

Office by changing it from the state of Haryana to Delhi and such alternation was confirmed by an order of Regional Director on 08.11.2017.

8. The Authorized Share Capital of the Transferor Company is Rs. 7,75,00,000/- (Rupees Seven Crore Seventy Five Lakh Only) divided into 7,75,000

(Seven Lakh Seventy Five Thousand) Equity Shares of Rs.100/-(Rupees Hundred only) each .The Issued , subscribed and Paid-up Share Capital of

the Transferor Company is Rs.1,35,52,200 /-(Rupees One Crore Thirty Five Lac Fifty Two Thousand Two Hundred) divided into 1,35,522 (One Lakh

Thirty Five Thousand Two Hundred and Twenty Two) Equity shares of Rs. 100 each fully paid-up.

9. From the certificate of incorporation filed, it is evident that the Transferee Company is a public limited company incorporated under the provisions

of Companies Act, 1956 on 11th January, 1985, vide CIN: U74210DL1985PLC019823 with Registrar of Companies, NCT of Delhi & Haryana under

the name and style of ""TECHNICÂ° INDUSTRIES PRIVATE LIMITED"" which later by passing a special resolution on 30.06.1998 had its name

changed to ""TECHNICÂ° INDUSTRIES LIMITED"" on 09' December, 1998.

10.The Authorized Share Capital of the Transferee Company is Rs.400,000,000/- (Rupees Forty Crore Only) divided into 25,000,000 (Two Crore and

Fifty Lakh Only) equity Shares of Rs.10/- (Rupee Ten only) each and 15,000,000 10% non- convertible cumulative Preference Shares of Rs. 10 each.

The Issued, Subscribed and Paid-Up Share Capital of the Transferee Company as on date is Rs. 167,510,250/-(Rupees Sixteen Crores Seventy Five

Lakh Ten Thousand and Two Hundred and Fifty Only) divided into 16,751,025/- (Rupees One Crore Sixty Seven lakh Fifty One Thousand and

Twenty Fiveonly) Equity Shares of Rs.10/- (Rupee Ten only) each.

11. Both the applicants have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their

last available Audited Annual Accounts for the year ended 31.03.2018, and Unaudited Financial Statements for the period ended on September 30,

2018.

12. The Board of Directors of the Applicant companies vide meeting held on 26.11.2018, have unanimously approved the proposed Scheme of

Amalgamation as contemplated above and copies of resolutions passed thereon have been placed on record by the companies.

13. The appointed date as specified in the Scheme is 01.04.2018 subject to the directions of this Tribunal.

14. That the Applicant Company has complied with the proviso to Section 230 (7) and Section 232 (3) by filing the certificate of the Company's

Auditor in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013.

15. The Applicant companies have stated in the application that no investigation proceedings are pending against them under Sections 210 or any other

applicable provisions of the Companies Act, 2013,

16.Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this Tribunal propose to issue

the following directions with respect to calling, convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors, or

dispensing with the same as well as issue of notices including by way of paper publication as follows:-

A) In relation to the Transferor Company:

(i) With respect to Equity shareholders:

Meeting of the Equity shareholders of the Transferor Company is directed to be held at 10.00 AM on 5th April, 2019 at Hotel Atithi Palace, Darya

Ganj, Near Ram Mandir & Hind Park, Delhi - 110002. The quorum for the meeting of the Equity Shareholders shall be 9 in numbers or 50 % in value

terms whichever is higher.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferor Company that there is one Unsecured Creditor in the company whose consent has been obtained by way of

an affidavit and is placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is

dispensed with.

B) In relation to Transferee Cornoanv:

(i) With respect to Equity shareholders:

Meeting of the Equity shareholders of the Transferee Company is directed to be held at 12.00 Noon on 5th April, 2019 at Hotel Atithi Palace, Darya

Ganj, Near Ram Mandir & Hind Park, Delhi - 110002. The quorum for the meeting of the Equity Shareholders shall be 5 in numbers or 50 % in value terms whichever is higher.

(ii) With respect to Secured Creditor:

Meeting of the Secured Creditors of the Transferee Company is directed to be held at 02.00 PM on 5' April, 2019 at Hotel Atithi Palace, Darya Ganj,

Near Ram Mandir & Hind Park, Delhi - 110002. The quorum for the meeting of the Equity Shareholders shall be 2 in numbers or 50 0/0 in value

terms whichever is higher.

(iii) With respect to Unsecured Creditors:

Meeting of the Unsecured Creditors of the Transferee Company is directed to be held at 03.00 PM on 5th April, 2019 at Hotel Atithi Palace, Darya

Ganj, Near Ram Mandir & Hind Park, Delhi - 110002. The quorum for the meeting of the Equity Shareholders shall be 105 in numbers or 250/0 in

value terms whichever is higher.

17. The quorum for the meeting directed to be convened shall be as specified under the meeting directed to be convened as above.

a) In case the quorum as noted above for the above meeting of the Applicant Companies is not present at the meetings, then the meetings shall be

adjourned by half an hour, and thereafter the persons present and voting shall deemed to constitute the quorum. For the purpose of computing the

quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the

meeting, is filed with the registered office of the applicant companies at least 48 hours before the meeting. The Chairperson and Alternate

Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavor should be

made by the applicant companies to attain at least the quorum fixed, if not more in relation to approval of the scheme.

b) Mr. Sudeep Kumar Shrotriya, Advocate (Mobile: 9871908584) is appointed as the Chairperson and Ms. Easha Kadian, Advocate (Mobile:

9871121201) is appointed as the Alternate Chairperson for the meeting of equity shareholders of Transferor Company and Equity Shareholders,

Secured and Unsecured Creditors of the Transferee company as may have been directed to be convened by this Tribunal as above of the Applicant

Companies.

c) The fee of the Chairperson for the aforesaid meetings shall be Rs.1,00,000/- and the fee of the Alternate Chairperson shall be Rs. 75,000/- in

addition to meeting their incidental expenses. Mr. Himanshu Harbola, Company Secretary (Mobile: 9818993836) is appointed as a Scrutinizer and

would be entitled to fee of Rs.50, 000/- for services in addition to meeting incidental expenses. The Chairpersons will file their reports within a week

from the date of holding of the above said meetings.

d) That individual notices of the above said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier

or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together

with a copy of Scheme of Amalgamation, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form

of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent

with the notice.

e) That the Applicant Companies shall publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date

and the place and time as aforesaid, to be published in the English Daily ""Financial Express"" in English, and ""Jansatta"" in Vernacular stating the copies

of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of

proxy shall be provided free of charge at the registered office of Applicant Companies.

f) Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be

applicable to the respective companies under the Act and rules framed there under. The Chairperson shall as aforestated be responsible to report the

result of the meeting within two weeks of the conclusion of the meeting with details of voting on the proposed scheme.

g) The companies shall individually send notice to Central Government, the Income Tax Authorities, Registrar of Companies NCT Delhi & Haryana,

Official Liquidator and Regional Director, RBI if either of the companies is /are registered as an NBFC, or required to be registered as one as well as

other sectoral regulators who may have significant bearing on the operation of the applicant companies or the Scheme per se along with copy of

required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements,

Amalgamations) Rules, 2016.

h) The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every

creditor or member of all the companies entitled to attend the meetings as aforesaid.

i) The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement

and compliance of all directions contained herein at least a week before the proposed meetings.

j) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the

Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed on the aforesaid terms.

