(2023) 04 NCLT CK 0022

In the National Company Law Tribunal

Case No : C.A. (CAA) No. 07/ KB/ 2023

Ashika Global Securities Private Limited Vs

Date of Decision : 11-04-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(1), 230(5), 230(6), 232, 232(1)
Companies (Compromises, AmalgamationsandAmalgamations) Rules 2016 — Rule 8(2)

Citation : (2023) 04 NCLT CK 0022

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

Rohit Kapoor Member (Judicial)

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 ("Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation for amalgamation of

Ivory Consultants Private Limited

Transferor Company No 1 / Applicant No.1

Hari Darshan Sales Private Limited

Transferor Company No 2 /Applicant No.2

Ashika Global Securities Private Limited

Transferee Company / Applicant No. 3

from the Appointed Date, 01st April,2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). A copy of the said Scheme is annexed to the Company Application marked – Annexure – G in VOL III at page No 387 to 423.

2. It is submitted by Ld. counsel appearing for the Applicant(s) that the Appointed Date as per the Scheme is 01st April,2022.

3. It is submitted by Ld. counsel appearing for the Applicant(s) that the Applicant Companies are all NBFC Company duly registered with Reserve Bank of India and are all holding a valid Certificate of Registration issued by the said Bank .

4. It is submitted by Ld. counsel appearing for the Applicant(s) that the Board of Directors of the Applicant Companies have passed resolution at the meeting held on 13th December,2022 approving the Scheme of Amalgamation. A copy of the said Resolution passed by the Board are all annexed to the Company Application marked – Annexure – H in VOL III at page No 424 to 426.

5. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation Report dated 08-12-2022 recommending the Swap Ratio has been prepared by Mukesh Banka , IBBI Registered Valuer, (Reg. No. IBBI/RV/06/2020/12905). A copy of the said Valuation Report is annexed to the Company Application marked – Annexure – I in VOL III at page No 427 to 440 .

6. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Applicant(s) have the following classes of shareholders and creditors:-

PARTICULARS

AS ON 12th DECEMBER,2022

EQUITY

SHARE HOLDERS

PREFERENCE

SHARE HOLDERS

SECURED CREDITORS

UNSECURED CREDITORS

TRANSFEROR COMPANY NO 1 /

APPLICANT NO 1

2

NIL

NIL

NIL

TRANSFEROR COMPANY NO 2 /

APPLICANT NO 2

2

NIL

NIL

NIL

TRANSFEREE COMPANY /

APPLICANT NO 3

15

NIL

2

17

7. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Auditors Certificate , the Affidavit of Consents, the calculation of percentage of consents are as below :

% of

Consent

Auditors Certificate

Affidavit of consents

Annexure

Page no

Annexure

Page no

EQUITY

SHAREHOLDERS

TRANSFEROR COMPANY NO 1

/ APPLICANT

NO 1

100

J

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J

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442 TO 449

TRANSFEROR COMPANY NO 2

/ APPLICANT

NO 2

100

J1

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J1

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451 TO 458

TRANSFEREE COMPANY / APPLICANT NO 3

100

J2

VOL IV PAGE 459 TO

460

J2

VOL IV PAGE

461 TO 509

SECURED

CREDITORS

TRANSFEROR COMPANY NO 1

/ APPLICANT NO 1

NIL

K

VOL IV PAGE 510

NOT REQUIRED

NOT REQUIRED

TRANSFEROR

COMPANY NO 2 / APPLICANT NO 2

NIL

K1

VOL IV

PAGE 511

NOT

REQUIRED

NOT

REQUIRE D

TRANSFEREE COMPANY / APPLICANT NO 3

100

K2

VOL IV PAGE 512 TO

513

ANN – K2

VOL IV PAGE

516 TO 529

UNSECURED

CREDITORS

TRANSFEROR COMPANY NO 1 /

APPLICANT NO 1

NIL

K

VOL IV PAGE

510

NOT REQUIRE

D

NOT REQUIRE

D

TRANSFEROR

COMPANY NO 2 / APPLICANT NO 2

NIL

K1

VOL IV

PAGE 511

NOT

REQUIRE D

NOT

REQUIRE D

TRANSFEREE COMPANY / APPLICANT NO 3 **

99.75

K2

VOL IV PAGE 512 TO

513

K2

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530 TO 570

** % Calculation Sheet at VOL IV, PAGE 514 TO 515

8. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Statutory Auditors of the Petitioner Companies have by their certificate dated 14th December,2022 have confirmed that the accounting treatment mentioned in the Scheme is in conformity with Accounting Standard prescribed under Section 133 of the Companies Act ,2013 and Rules made there under. Copy of the said certificates are all annexed to the Company Petition being – Annexure – L in VOL IV at Page No 571 to 576.

9. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

a. Meetings dispensed: Equity Shareholders

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of all shareholders of Applicant Companies having respectively given their consent to the Scheme by way of affidavits.

Secured Creditors

Meeting of Secured Creditors of the Applicant No 3 for considering the Scheme are dispensed with in view of consent by 100% in value of Unsecured Creditors of the Applicant No 3 having respectively given their consent to the Scheme by way of affidavits.

Unsecured Creditors

Meeting of Unsecured Creditors of the Applicant No 3 for considering the Scheme are dispensed with in view of consent by 98.46% in value of Unsecured Creditors of the Applicant No 3 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 Auditors Certificate .

Unsecured Creditors

Unsecured Creditors of Applicant No 1 and Applicant No 2 – Nil Creditors verified by Auditors Certificate

10. 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 with whom the Applicant(s) are registered;

c. Reserve Bank of India

d. Income Tax Department having jurisdiction over the Applicant(s)

e. Official Liquidator, High Court Calcutta

by sending the same by hand delivery through special messenger and 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 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, Amalgamation s and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

11. The Applicant(s) to file an affidavit proving service of notices for compliance of all directions contained herein.

12. Company Application (CAA) No. 07 / KB / 2023 is disposed of accordingly.

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

