**(2022) 09 NCLT CK 0023**

**In the National Company Law Tribunal**

**Case No :** C.A (CAA) No. 92/ KB/ 2022

**Beekay Auto Private Limited Vs**

**Date of Decision :** 07-09-2022

**Acts Referred:**
Companies Act, 2013 — Section 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations)Rules 2016 — Rule 8(2)

**Citation :** (2022) 09 NCLT CK 0023

**Hon'ble Judges :** Rohit Kapoor, Member (J);Satya Ranjan Prasad, Member (T)

**Bench :** Division Bench

**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 Arrangement for Demerger of INFRASTRUCTURE & REALTY BUSINESS DIVISION of BEEKAY AUTO PRIVATE LIMITED being the Applicant No. 1 above named (" Demerged Company " or "Applicant No.1") by transfer and vesting of the same in BEEKAY AUTOCORP PRIVATE LIMITED being the Applicant No. 2 above named (" Resulting Company " or "Applicant No. 2 " ) from the Appointed Date, 01st April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Arrangement ("Scheme").

2. It is submitted by Ld. counsel appearing for the Applicant(s) that the Appointed Date as per the Scheme is 01st April,2021.

3. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation Report dated 11-03-2022 recommending the Swap Ratio has been prepared by VIKASH GOEL , IBBI Registered Valuer.

4. It is submitted by Ld. counsel appearing for the Applicant(s) that none of the Applicant Companies are NBFC Companies .

5. It is submitted by Ld. counsel appearing for the Applicant(s) that they have a filed a Supplementary Affidavit wherein they annexed the consent of the Secured Creditors received by the Applicant Companies after the filing of Company Application .

6. 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 14th March,2022 approving the Scheme of Arrangement .

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

a. Applicant No 1

Number of EQUITY SHARE HOLDERS : 9 as on 28th February,2022

Number of PREFERENCE SHARE HOLDERS : NIL

Number of SECURED CREDITORS : 25 as on 28th February,2022.

Number of UNSECURED CREDITORS : 121 as on 28th February,2022.

b. Applicant No 2

Number of EQUITY SHARE HOLDERS : 2 as on 28th February,2022.

Number of PREFERENCE SHARE HOLDERS : NIL

Number of SECURED CREDITORS : 1 as on 28th February,2022.

Number of UNSECURED CREDITORS : 9 as on 28th February,2022.

8. It is further submitted that all the Equity Shareholders of the Applicant Companies have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application.

9. It is further submitted that out of 25 Secured Creditors aggregating to Rs 97,84,17,907/ of Applicant No 1 as on 28-02-2022 , 1 Secured Creditor aggregating to Rs 10,01,91,775/ has been fully paid and discharged 27-06-2022 and the same has been confirmed by the said Secured Creditor which is annexed at Page No 17 & 17A of the supplementary affidavit .

Out of the remaining 24 Secured Creditors aggregating to Rs 87,82,26,132/ of Applicant No 1 as on 28-02-2022 , 15 Secured Creditors aggregating to Rs 85,06,39,164/ representing 96.86% of the total secured debt have given their letter of consent conveying their No Objection to the proposed Scheme of Arrangement all of which are annexed at Page No 18 to 25 to the Supplementary affidavit .

10. It is further submitted that 1 Secured Creditors representing 100 % in value of the secured debts of Applicant No 2 have given their letter of consent conveying their No Objection to the proposed Scheme of Arrangement all of

which are annexed at Page No 27 to the Supplementary affidavit.

11. It is further submitted that 94.38% in value of Unsecured Creditors of the Applicant No.1 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application.

12. It is further submitted that 99.53% in value of Unsecured Creditors of the Applicant No.2 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application.

13. 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 1 for considering the Scheme are dispensed with in view of consent by 96.86% in value of Secured Creditors of the Applicant No 1 having respectively given their No Objection to the Scheme by way of letters all of which are annexed to the Supplementary Affidavit.

Meeting of Secured Creditors of the Applicant No 2 for considering the Scheme are dispensed with in view of consent by 100 % in value of Secured Creditors of the Applicant No 2 having respectively given their No Objection to the Scheme by way of letters all of which are annexed to the Supplementary Affidavit.

Unsecured Creditors

Meeting of Unsecured Creditors of the Applicant No 1 for considering the Scheme are dispensed with in view of consent by 94.38% in value of Unsecured Creditors of the Applicant No 1 having respectively given their consent to the Scheme by way of affidavits.

Meeting of Unsecured Creditors of the Applicant No 2 for considering the Scheme are dispensed with in view of consent by 99.53% in value of Unsecured Creditors of the Applicant No 2 having respectively given their consent to the Scheme by way of affidavits.

b. No requirement of Meetings No meeting is required to be held

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

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

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

16. The application being Company Application (CAA) No. 92 / KB / 2022 is disposed of accordingly.

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