(2021) 02 NCLT CK 0093

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 1172/MB-V Of 2020

Blackberry Vanijya Pvt. Ltd. And Ors. Vs

Date of Decision : 18-02-2021

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8
Companies Act, 2013 — Section 230, 230(3), 230(5), 231, 232

Citation : (2021) 02 NCLT CK 0093

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Ahmed M Chunawala

Judgement

1. The Bench is convened by videoconference today.

2. Learned Counsel for the Transferor Companies and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation of BLACKBERRY VANIJYA PRIVATE LIMITED, the First Transferor Company and PEACEFUL AGENCIES PRIVATE LIMITED, the Second Transferor Company and DAHLIA AGENCIES PRIVATE LIMITED, the Third Transferor Company with NIRMITI REALTIES PRIVATE LIMITED, the Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Companies and Transferee Company in their respective meetings conducted on 02.12.2020 for the Transferor Companies and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is 31.03.2021.

4. The rationale for the proposed Scheme is as under:

(a) The Amalgamating Companies and Amalgamated Company are part of the same Group and are substantially owned by the members of the Deshmukh family. Further, after recent changes the ultimate beneficial shareholders of the Amalgamating Companies and Amalgamated Company have a mirror shareholding pattern (with respect to 94% of the shareholding) i.e. at the level of ultimate individual shareholder, each individual shareholder owns same percentage of shares in the amalgamating companies and the amalgamated company.

(b) In order to consolidate the group structure and reduce the various administrative costs incurred for the four companies, the Management proposes, by way of this Scheme to amalgamate the Amalgamating Companies into and with the Amalgamated Company in accordance with the terms hereof.

(c) The scheme is expected to have the following benefits

(i) Benefit to the shareholders and other stakeholders of the respective companies by consolidating and simplifying the group structure, business operations, pool resources and provide optimal utilization of various resources;

(ii) Economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

(iii) Enhance growth prospects, reduce overheads, administrative, managerial and other costs and expenditure and remove inefficiencies and bring operational rationalization and organizational efficiency.

(iv) Result in improved shareholder value for the shareholders of the respective companies, thus providing a stronger and wider capital and financial base for future growth /expansion of the Amalgamated Company.

5. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of BLACKBERRY VANIJYA PRIVATE LIMITED, the First Transferor Company and PEACEFUL AGENCIES PRIVATE LIMITED, the Second Transferor Company and DAHLIA AGENCIES PRIVATE LIMITED, the Third Transferor Company with NIRMITI REALTIES PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the two Equity Shareholders of the Applicant Company No.1, which are annexed as 'Exhibit O-1 and O-2' to the Company Scheme Application.

6. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of BLACKBERRY VANIJYA PRIVATE LIMITED, the First Transferor Company and PEACEFUL AGENCIES PRIVATE LIMITED, the Second Transferor Company and DAHLIA AGENCIES PRIVATE LIMITED, the Third Transferor Company with NIRMITI REALTIES PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the two Equity Shareholders of the Applicant Company No.2, which are annexed as 'Exhibit P-1 and P-2' to the Company Scheme Application.

7. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.3 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of BLACKBERRY VANIJYA PRIVATE LIMITED, the First Transferor Company and PEACEFUL AGENCIES PRIVATE LIMITED, the Second Transferor Company and DAHLIA AGENCIES PRIVATE LIMITED, the Third Transferor Company with NIRMITI REALTIES PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the two Equity Shareholders of the Applicant Company No.3, which are annexed as 'Exhibit Q-1 and Q-2' to the Company Scheme Application.

8. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.4 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of BLACKBERRY VANIJYA PRIVATE LIMITED, the First Transferor Company and PEACEFUL AGENCIES PRIVATE LIMITED, the Second Transferor Company and DAHLIA AGENCIES PRIVATE LIMITED, the Third Transferor Company with NIRMITI REALTIES PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the thirteen Equity Shareholders of the Applicant Company No.4, which are annexed as 'Exhibit R-1 to R-13' to the Company Scheme Application.

9. That Counsel for the Applicant Company No. 1 submits that since the scheme is an arrangement between the Applicant Company No.1 and their respective shareholders in accordance with the provisions of the Companies Act, 2013, there is no compromise or arrangement with the Secured Creditors as no sacrifice is called for. Post the Scheme, the assets of the Applicant Company No.1 will be sufficient to discharge its liabilities. This bench hereby directs the Applicant Company to obtain the consent of the Secured Creditors having value of more than 90% on or before the date of final hearing.

10. That Counsel for the Applicant Company No. 2 submits that since the scheme is an arrangement between the Applicant Company No.2 and their respective shareholders in accordance with the provisions of the Companies Act, 2013, there is no compromise or arrangement with the Secured Creditors as no sacrifice is called for. Post the Scheme, the assets of the Applicant Company No.2 will be sufficient to discharge its liabilities. This bench hereby directs the Applicant Company to obtain the consent of the Secured Creditors having value of more than 90% on or before the date of final hearing.

11. That Counsel for the Applicant Company No. 3 submits that since the scheme is an arrangement between the Applicant Company No.3 and their respective shareholders in accordance with the provisions of the Companies Act, 2013, there is no compromise or arrangement with the Secured Creditors as no sacrifice is called for. Post Scheme, the assets of the Applicant Company No.3 will be sufficient to discharge its liabilities. This bench hereby directs the Applicant Company to obtain the consent of the Secured Creditors having value of more

than 90% on or before the date of final hearing.

12. That Counsel for the Applicant Company No. 4 submits that since the scheme is an arrangement between the Applicant Company No.4 and their respective shareholders in accordance with the provisions of the Companies Act, 2013, there is no compromise or arrangement with the Secured Creditors as no sacrifice is called for. Post Scheme, the assets of the Applicant Company No.4 will be sufficient to discharge its liabilities. This bench hereby directs the Applicant Company to obtain the consent of the Secured Creditors having value of more than 90% on or before the date of final hearing.

13. That Counsel for the Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant Company No. 1 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 1 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected by the Scheme of Arrangement. Therefore, the meeting of the Unsecured Creditors of the Applicant Company No. 1 is dispensed with. However, this bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

14. That Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. Therefore, the meeting of the Unsecured Creditors of the Applicant Company No. 2 is dispensed with. However, this bench hereby directs the Applicant Company No.2 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

15. That Counsel for the Applicant Company No. 3 submits that so far as Unsecured Creditors of the Applicant Company No. 3 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 3 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 3 and hence they will in no way be affected by the Scheme of Arrangement. Therefore, the meeting of the Unsecured Creditors of the Applicant Company No. 3 is dispensed with. However, this bench hereby directs the Applicant Company No.3 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may

submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.3.

16. That Counsel for the Applicant Company No. 4 submits that so far as Unsecured Creditors of the Applicant Company No. 4 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 4 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 4 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.4 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 4 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Therefore, the meeting of the Unsecured Creditors of the Applicant Company No. 4 is dispensed with. However, this bench hereby directs the Applicant Company No.4 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.4.

17. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

19. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made - The Applicant Company No. 1 PAN:-AADCB3562E having his address at The Income Tax Officer,Ward 1(4), Kolkata, Aayakar Bhavan, Kolkata; The Applicant Company No. 2 PAN:- AAECP5435H having his address at The Income Tax Officer, Ward 10(2), Kolkata, Aayakar Bhavan, Kolkata; The Applicant Company No. 3 PAN:- AACCD8035H having his address at The Income Tax Officer, Ward 3(1), Kolkata, Dwarkin House, Calcutta; The Applicant Company

No. 4 PAN:- AACCB9095M having his address at The Income Tax Officer, DCIT/ ACIT Circle-2, Nagpur, Aayakar Bhawan, Telankhedi Road, Civil Lines, Nagpur - pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The Transferor Companies are also directed to serve intimations of the Scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing M/s. T. R. Chadha & Co. LLP, Chartered Accountant, to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Company for the last 5 years and submit its representation / report to the Tribunal. The aforesaid Companies to pay fees of Rs. 2,00,000/- for this purpose. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

22. The Appointed Date is 31.03.2021

