(2020) 02 NCLT CK 0121

In the National Company Law Appellate Tribunal

Case No : Company Application (CAA) No. 21/ND Of 2020

Chiragh Tanners And Exporters Private Limited And Ors — APPELLANT

Vs

Pushpanjali Trexim Private Limited — RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 231, 232

Citation : (2020) 02 NCLT CK 0121

Hon'ble Judges : Ina Malhotra, J;L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Sumit Kumar Batra

Final Decision : Allowed

Judgement

Ina Malhotra, J

This is a joint petition filed by way of a 1st Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as 'the Act') by the Applicant Companies No. 1-3, (Transferor Companies 1-3) in connection with the Scheme of Amalgamation (hereinafter referred to as 'the Scheme') for merging its business with M/s. Pushpanjali Trexim Private Limited (Applicant Company No.4/ Transferee Company).

2. As per averments, the registered offices of the Transferor as well as that of the Transferee Companies are situated in the National Capital Territory of Delhi, falling within the territorial jurisdiction of this Court.

3. The Applicant No. 1 / Transferor No. 1 Company was incorporated under the Act on 29.04.1987 under the name and style of "Chiragh Tanners and Exporters Private Limited". Its authorized share capital is Rs. 10,00,000/- while its issued, subscribed and paid up capital is Rs. 2,01,000/-divided into 2010 equity shares of Rs. 100/-each.

The main object of the Applicant Company No.1 is to carry on the business of importers and exporters of leather and leather goods of all descriptions and of leather dresses, hides, skins and deals in material connected therein.

4. The Applicant No. 2 / Transferor No. 2 Company was incorporated on 22.10.1986 under the Act under the name and style of " Chowdhary Cables Private Limited". Its authorized share capital is Rs. 10,00,000/-while its issued, subscribed and paid up capital is Rs. 2,27,000/-divided into 2,270 equity shares of Rs. 100/- each.

The main object of the Applicant Company No.2 is to carry on the business of all types and kinds of copper conductors, aluminium conductors made of any metal or substance and all type of machinery, plant or apparatus and things.

5. The Applicant No. 3 / Transferor No. 3 Company was incorporated on 08.03.1995 under the Act under the name and style of " Northland Metal Technologies Private Limited". Its authorized share capital and issued, subscribed and paid up capital is Rs. 40,00,000/-divided into 40,000 equity shares of Rs. 100/-each. The main object of the Applicant Company No. 1 is to carry on the business of manufacturers and dealers of ferrous metals and alloys.

6. The Applicant No. 4 / Transferee No. 4 Company was incorporated under the Act on 07.09.1987 under the name and style of" Pushpanjali Trexim Private Limited". Its authorized share capital is Rs. 20,00,00,000/- while its issued, subscribed and paid up capital is Rs. 5,05,33,160/-divided into 50,53,316 equity shares of Rs. 10/- each.

The main object of the Applicant Company No.1 is to carry on the business of hotels, motels, rest houses and to provide all kind of conveniences and attractions for customers.

7. As per averments, the Transferor Companies are desirous of amalgamating with the Transferee Company and have formulated a Scheme of Amalgamation.

8. Copies of the Memoranda of Association and Articles of Association along with their latest audited Balance Sheets, as on 31.03.2019 and reports of the Statutory Auditors of all the Applicant Companies No. 1 to 4 have been filed. Provisional Balance Sheets upto 6th January, 2020 have also been filed.

It has also been certified by the Statutory Auditor that each of the applicant companies has adhered to the Accounting Treatment which is in compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013.

9. It has been stated on behalf of the Applicant Companies that the Scheme of Amalgamation is necessitated and justified on grounds that :-

a. Consolidation and simplification of the group structure, cost savings resulting from rationalization, standardization of business processes;

b. Improved organizational capability arising from pooling of financial resources;

c. Re-aligning the business operations as part of overall business reorganization plan;

d. Avoiding un-necessary duplication of costs of administration, distribution, selling and marketing;

e. Maximize the overall shareholder value.

The Appointed date of the Scheme is 1st April, 2019

10. The Board of Directors of the Transferor Companies Nos. 1 to 3 and Transferee Company/ Applicant No.4 vide their respective meetings held on 06.01.2020 have unanimously approved the proposed Scheme of Amalgamation. Copy of the board resolutions passed have been filed.

11. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 1st January 2020, issued by Sameer Verma, Chartered Accountants, New Delhi, as per the settled principles of valuation. The Share Exchange ratio, based on net asset value. The Chartered accountants have proposed the following:-

a. 2,10,934 fully paid up in the Transferee company of Rs. 10/-each for every 2010 fully paid up equity shares of Rs. 100/-each in the Transferor Company No. 1 after cancellation of cross holding shares;

b. 17,615 fully paid up Equity Share in the Transferee company of Rs. 10/- each for every 2270 fully paid up equity shares of Rs. 100/- each in the Transferor Company No.2;

c. 6,52,536 fully paid up equity share in the Transferee company of Rs. 10/- each for every 40,000 fully paid up equity shares of Rs. 100/- each in the Transferor Company No.1 after cancellation of cross holding shares;

12. Vide the present application, a prayer is made for dispensation of convening meetings in view of the following facts:-

A. In respect of the Transferor Company No.1 / Applicant Company No.1:-

It has 4 Equity Shareholders who have accorded their consent vide affidavits placed on record.

It has no Secured or Unsecured Creditors as certified by the Chartered Accountants.

In view of the consent accorded by its 2 Shareholders vide affidavits, the requirement of convening the meeting of the shareholders is dispensed with. Further, as there is no secured creditor or unsecured creditor, the question of convening their meeting does not arise.

B. In respect of the Transferor Company No.2/ Applicant Company No.2:-

It has 9 Equity Shareholders who have accorded their consent vide affidavits placed on record.

It has no Secured or Unsecured Creditors as certified by the Chartered Accountants.

In view of the consent accorded by its 9 Shareholders vide affidavits, the requirement of convening the meeting of the shareholders is dispensed with. Further, as there is no secured creditor or unsecured creditor, the question of convening their meeting does not arise.

C. In respect of the Transferor Company No.3/ Applicant Company No.3:-

It has 12 Equity Shareholders who have accorded their consent vide affidavits placed on record.

It has no Secured or Unsecured Creditors as certified by the Chartered Accountants.

In view of the consent accorded by its 12 Shareholders vide affidavits, the requirement of convening the meeting of the shareholders is dispensed with. Further, as there is no secured creditor or unsecured creditor, the question of convening their meeting does not arise.

D. In respect of the Transferee Company

It has 10 Equity Shareholders who have accorded their consent vide affidavits placed on record.

It has no Secured or Unsecured Creditors as certified by the Chartered Accountants.

In view of the consent accorded by its 10 Shareholders vide affidavits, the requirement of convening the meeting of the shareholders is dispensed with. Further, as there is no secured creditor or unsecured creditor, the question of convening their meeting does not arise.

13. The proposed Scheme of Amalgamation is annexed along with the present application.

14. It is submitted that the proposed arrangement is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the Scheme if sanctioned by this Tribunal, will take effect from the date of on which certified copy of the order of sanctioning of proposed Scheme, passed by this Tribunal is filed with the Registrar of Companies.

15. It has also been submitted that there are no proceedings pending inquiry or investigation in respect of the applicant company.

16. While dispensing with the meetings, this Bench also directs that notices be sent to the Central Government through the office of the Regional Director (Northern Region), the Income Tax Authorities, Registrar of Companies, NCT of

Delhi & Haryana, Official Liquidator and other sectoral regulators or authorities as required under sub- section (5) of section 230 of the Companies Act, 2013 who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangement, and Amalgamation) Rules, 2016. Copies of the notices along with the proof of dispatch be filed before this Bench along with the affidavit of compliance.

17. 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 Applicant.

As sequel to the above, the present application stands allowed by dispensing with the meetings of shareholders of the applicant companies.