(2024) 03 NCLT CK 0016

In the National Company Law Tribunal

Case No : CA (CAA)/266/MB-IV/2023

Choksey Chemicals Private Limited Vs

Date of Decision : 01-03-2024

Acts Referred:

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

Citation : (2024) 03 NCLT CK 0016

Hon'ble Judges : Kishore Vemulapalli, Member (J);Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Kala Agarwal, Manish Ghia & Associates

Final Decision : Disposed Of

Judgement

1. Heard the Ld. Authorised for the Applicant Companies.

2. The Applicant Companies submits that the Applicant Companies have filed the present Company Scheme Application (hereinafter referred to as the "Company Application"), under Section 232 read with Section 230 and other applicable provisions of the Companies Act, 2013 (hereinafter referred to as the "Act") and in terms of Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, seeking directions from this Tribunal in relation to the holding/dispensation of meetings of Equity shareholders, Preference Shareholder(s), Secured Creditors and Unsecured Creditors of the respective Applicant Companies, as the case may be, seeking their approval to the Scheme of Arrangement between Choksey Chemicals Private Limited (?Demerged Company? or ?CCPL? or ?Applicant Company 1?), Choksey Chemicals (India) Private Limited (?Resulting Company? or ?CCIPL? or ?Applicant Company 2?) and their respective Shareholders (hereinafter referred to as ?the Scheme? or ?Scheme of arrangement?).

3. The Applicant Company No. 1 is engaged in the business of manufacturing of waterproofing chemicals and various construction chemicals in India. The Applicant Company No. 2 is incorporated with an objective to engage in the

business of manufacturing refining, importing, exporting, buying, selling and dealing and contracts for application in all Kinds of construction chemicals including sealants, waterproofing compounds, admixtures, floor coatings and such other products used by construction industry.

4. The Applicant Companies submits that the Board of Directors of the Applicant Companies approved the Scheme vide their Board resolution dated 12th July, 2023. The appointed date for the scheme of the scheme is 1st April, 2023.

5. The rationale for the Scheme is as under:

As a part of an overall strategy for the optimum running, growth and development of the businesses of the Demerged Company, it is considered desirable to demerge its Demerged Undertaking, involving the business of manufacturing of waterproofing chemicals and various construction chemicals to the Resulting Company. The Scheme is expected, inter alia, to result in the following benefits:

a. value unlocking for the businesses of the Demerged Company;

b. provide better flexibility in accessing capital and attract business specific partners and investors; and

c. focused management approach for pursuing revenue growth and expansion opportunities in the respective business verticals.

6. The resulting company is a wholly owned subsidiary of the Demerged Company. Upon Scheme coming into effect and in consideration of and subject to the provisions of the Scheme, the Resulting Company shall, without any further application, act, deed, consent, acts, instrument or deed, discharge the consideration in the following manner:

To equity shareholders holding more than 25 (twenty-five) shares in the Demerged Company constituting 99.09 % (ninety-nine point zero nine) of the issued and paid capital of the Demerged Company and whose name is recorded in the register of members / register of beneficial owners of Demerged Company as on the Record Date:

The Resulting Company shall issue and allot, on a proportionate basis to the equity shareholders of the Demerged Company, whose name is recorded in the register of members/register of beneficial owners of Demerged Company as on the Record Date, 1 (One) fully paid up equity share of INR 1000 (Indian Rupees One Thousand Only) each of the Resulting Company, credited as fully paid up, for every 1 (One) equity share of INR 1000 (Indian Rupees One Thousand Only) each of the Demerged Company.

To equity shareholders holding equal to or less than 25 (twenty-five) shares in the Demerged Company constituting 0.91 % (zero point nine one) of the issued and paid capital of the Demerged Company and whose name is recorded in the register of members/register of beneficial owners of Demerged Company as on the Record Date:

The Resulting Company shall pay an amount of INR 73,850.42 (Indian Rupees Seventy-Three Thousand Eight Hundred and Fifty and Forty-Two Paise) for each fully paid-up equity share of INR 1,000 (Indian Rupees One Thousand Only) each of the Demerged Company to the equity shareholders of the Demerged Company.

7. That there are 9 (Nine) Equity Shareholders holding 5,138 (Five Thousand One Hundred Thirty Eight) Equity Shares of Rs.1,000/- (Rupees One Thousand Only) each aggregating to Rs.5,138,000/- (Rupees Fifty-One Lakh Thirty-Eight Thousand Only) in the First Applicant Company. Out of the same 6 (Six) Equity Shareholders holding 5,106 (Five Thousand One Hundred Six) Equity Shares of Rs.1,000/- (Rupees One Thousand Only) each aggregating to Rs.5,106,000/- (Rupees Fifty-One Lakh Six Thousand Only) representing 99.38% of the total number of equity shares have provided their consent by way of affidavit for the purpose of considering and, if deemed appropriate, approving the scheme with or without modifications. Therefore, the meeting of the Equity Shareholders of the Applicant Company No. 1 be dispensed with and Applicant Company 1 undertakes to issue notice to the remaining shareholders holding 0.62% in the Company through Speed Post-AD/Registered Post and through email as required under Section 230 of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representation shall simultaneously be served upon the Applicant Company No. 1.

8. That there are 2 (Two) Equity Shareholders holding 10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten Only) each aggregating to Rs.1,00,000/- (Rupees One Lakh Only) in the Applicant Company No. 2. All the Equity Shareholders, representing 100% of the total Equity Shareholder value of the Applicant Company No. 2 have provided their consent for the purpose of considering and, if deemed appropriate, approving the scheme with or without modifications. In view of consent, the meeting of the Equity Shareholders of the Applicant Company No. 2 is dispensed with.

9. That there is 1 (One) Debenture holder holding 1804 (One Thousand Eight Hundred and Four) Compulsory Convertible Debenture (CCD) of Rs.1,000/- (Rupees One Thousand Only) each aggregating to Rs. 18,04,000/- (Rupees Eighteen Lakhs Four Thousand Only) in the Applicant Company No. 1. That the sole CCD holder has provided its consent in the form of affidavit. Therefore, the meeting of the CCD Holders of the Applicant Company No. 1 be dispensed with.

10. That there are 237 (Two Hundred Thirty-Seven) Unsecured Creditors having an aggregate value of Rs. 10,65,37,793/- (Rupees Ten Crores Sixty-Five Lakhs Thirty-Seven Thousand Seven Hundred and Ninety-Three Only) of the Applicant Company No.1 as on 31st March 2023. The Company has filed an additional affidavit dated January 30, 2024 certifying that 93.20% of the total value of Unsecured Creditors aggregating to Rs. 9,92,56,590/-(Rupees Nine Crores Ninety-Two Lakhs Fifty-Six Thousand Five Hundred Ninety Only) have been

repaid as on 30th January, 2024. Therefore, the meeting of the Unsecured Creditors of the Applicant Company No. 1 be dispensed with and Applicant Company No.1 undertakes to issue notice to its remaining Unsecured Creditors through Speed Post-AD/Registered Post and through Email 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.

11. That there are 2 (Two) Unsecured Creditors having an aggregate value of Rs.33,531/- (Rupees Thirty-Three Thousand Five Hundred and Thirty-One Only) of the Applicant Company No. 2 as on 31st March 2023. The Company has filed an additional affidavit dated January 30, 2024 certifying that 100% of the total value of Unsecured Creditors aggregating to Rs. 33,531/- (Rupees Thirty-Three Thousand Five Hundred and Thirty-One Only) have been repaid as on 30th January, 2024. Therefore, the meeting of the Unsecured Creditors of the Applicant Company 2 be dispensed with.

12. That there are 2 (Two) Secured Creditors having aggregate value of Rs.13,99,32,890/- (Rupees Thirteen Crores Ninety-Nine Lakhs Thirty-Two Thousand Eight Hundred and Ninety Only) of the Applicant Company No. 1 as on 31st March 2023 out of which, one of the Secured Creditor amounting to Rs.12,91,63,644/- (Rupees Twelve crore ninety-one lakh sixty-three thousand six hundred forty-four Only) representing 92.30% in value has given their No Objection certificate. Therefore, the meeting of the Secured Creditors of the Applicant Company No.1 be dispensed with and Applicant Company No. 1 undertakes to issue notice to its Secured Creditors through Speed Post-AD/ Registered Post and through Email 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.

13. That there are no Secured Creditors in the Applicant Company No. 2. Auditor?s Certificate confirming and certifying Nil Secured Creditors of the Applicant Company-2 is duly submitted along with an Affidavit dated January 24, 2024.

14. The Applicant Companies are directed to serve notices along with a copy of the Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, upon the ?

a. Central Government through the office of Regional Director (Western region), Mumbai.

b. Jurisdictional Registrar of Companies, Maharashtra, Mumbai.

c. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company?s assessment are made; and the Nodal Authority in the Income Tax

Department having jurisdiction over such authority i.e., Pr. CCIT, Mumbai, Address: - 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai ? 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];

d. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law; (in case of First Applicant Company);

e. Ministry of Corporate Affairs; and

f. Any other Sectoral/ Regulatory Authorities relevant to the Applicant Companies or their business.

15. The Notice shall be served through by Registered Post-AD/Speed Post and through email along with copy of scheme and state that ?If no response is received by the Tribunal from the concerned Authorities/ Creditors within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities/ Creditors has no objection to the proposed Scheme?. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

16. The Applicant Companies will submit ?

i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.

ii. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.

iii. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

17. The Applicant Companies shall file an Affidavit of Service of the directions given by the Tribunal in the registry for service of notice to the regulatory authorities along with proof of dispatch of documents sent to them, wherever applicable.

18. Ordered accordingly

