(2023) 09 NCLT CK 0042

In the National Company Law Tribunal

Case No : C.A.(CAA)/164 /MB- V /2023

Cosmea Financial Holdings Privatelimited Vs

Date of Decision : 27-09-2023

Acts Referred:
Companies Act, 2013 — Section 103, 230, 230(5), 232

Citation : (2023) 09 NCLT CK 0042

Hon'ble Judges : Reeta Kohli, Member (J);Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah

Final Decision : Disposed Of

Judgement

Madhu Sinha, Member (Technical)

1. The Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation of Cosmea Financial Holdings Private Limited ("Cosmea Financial" or "Transferor Company") with Cosmea Investments Private Limited ("CIPL" or "Transferee Company") and their respective shareholders ("the Scheme").

2. The Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 16th June, 2023 have approved the Scheme. The Appointed Date fixed under the Scheme is May 31, 2023.

3. The First Applicant Company is engaged is operating in the capital market, banking and wellness platform segments as follows: Capital market segment offers Broking & Distribution, Structured and Prop trading, Institutional broking, Wealth/PMS, Investment & Asset management and AIF, Wellness platform offers financial product distribution, payments and wallets, Mass Wealth Robo Advisory and health and education wellness and Banking sector comprises of the Asset Reconstruction and Loan Sourcing.

4. The Second Applicant Company is engaged in the business of providing all kinds of advisory, marketing, collection and consultancy services pertaining to any business aspects including but not limited to management, technical, accountancy, commercial, business, statistical, financial, information technology, medical, legal, educational, engineering, data processing, communication and other business aspects.

5. The Rationale of the proposed Scheme is as under:

"Cosmea Financial has applied for Small Finance Bank license ("SFB") and General Insurance license. In order to primarily comply with the conditions with respect to Non-Operative Financial Holding Company (NOFHC) / Core Investment Company (CIC) guidelines for setting up SFB and also to achieve optimal and efficient utilization of capital, enhance operational and management efficiencies and have a simplified organizational structure, it is proposed to amalgamate the Transferor Company with the Transferee Company."

6. There are 3 (three) Equity Shareholders in Applicant Company No.1. That the convening and holding the meeting of the Equity Shareholders of the First Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation is dispensed with in view of the consent given by all the Equity Shareholders of the First Applicant Company, which are annexed to the Company Scheme Application.

7. There are 2 (two) Equity Shareholders along with the nominees in Applicant Company No.2. That the meeting of the Equity Shareholders of the Second Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation is dispensed with in view of the consent given by all the Equity Shareholders of the Second Applicant Company, which are annexed to the Company Scheme Application.

8. There are 513 Secured Creditors (i.e. Debenture Holders) of the First Applicant Company as on March 31, 2023 having an aggregate outstanding of INR 53,25,00,000. The Bench directs the meeting of the Secured Creditors (i.e. Debenture Holders) of the First Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of COSMEA FINANCIAL HOLDINGS PRIVATE LIMITED, the Transferor Company, and COSMEA INVESTMENT PRIVATE LIMITED, the Transferee Company shall be convened & held at 1802/C, Lotus Off W.E.H, Jai Coach, Goregaon East Mumbai - 400063 on Wednesday, 9th November 2023 at 11:00 AM.

9. At least 30 clear days before the said meeting of the Secured Creditors (i.e. Debenture Holders) of the First Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the

prescribed form of proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery or email to each of the Secured Creditors (i.e. Debenture Holders) of the First Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Secured Creditors (i.e. Debenture Holders) as per the records of the First Applicant Company or can be obtained free of charge at the registered office of the First Applicant Company as aforesaid. The First Applicant Company shall publish the notice convening the meeting of Secured Creditors (i.e. Debenture Holders) in 'Free Press Journal' in English and 'Navshakti' in Marathi having circulation in Mumbai.

10. The First Applicant Company undertakes to:

a. Issue notice convening meeting of the Secured Creditors (i.e. Debenture Holders) as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

b. issue statement containing all the particulars as per Section 230 of the Companies Act, 2013 and;

c. advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

11. That Ghanshyam Dass, Independent Director of the First Applicant Company, shall be the Chairperson of the meeting of Secured Creditors (i.e. Debenture Holders) of the First Applicant Company and failing him, Soumen Ghosh, shall be the alternate Chairperson of the said meeting. The Scrutinizer for the meeting of the Secured Creditors (i.e. Debenture Holders) of the First Applicant Company shall be Mr. Bhupendra Fafdia & Co., Chartered Accountant having office at – 4th Floor, Office No.412, Navjivan Commercial Premises, Cooperative Society Ltd., Building No. 3, Lamington Road, Mumbai – 400008 on a fees of Rs. 50,000/-.

12. The Chairperson appointed for the aforesaid Secured Creditors (i.e. Debenture Holders) of the First Applicant Company to issue the notices of the meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

13. The quorum for the aforesaid meeting of the Secured Creditors (i.e. Debenture Holders) of the First Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.

14. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, is filed with all the First Applicant Company at their respective Registered Office not later than,

48 hours before the aforesaid Secured Creditors (i.e. Debenture Holders) meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The value and number of the Secured Creditors (i.e. Debenture Holders) shall be in accordance with the books/ register of the First Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

16. The Chairperson to file an affidavit not less than seven days before the date fixed for holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within thirty days of the conclusion of the meeting, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. That the Counsel for the Second Applicant Company submits that there are no Secured Creditors in the Second Applicant Company as mentioned in Para 28 of the Application. That the meeting of the Secured Creditors of the Second Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation would not be required.

19. That there are 38 (Thirty Eight) Unsecured Creditors having value of Rs. 42,30,16,139 (Rupees Forty Two Crore Thirty Lakh Sixteen Thousand One Hundred and Thirty Nine only) as on March 31, 2023 in the First Applicant Company. That the meeting of the Unsecured Creditors of the First Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation is dispensed with in view of the 94.57% consent affidavits given by the Unsecured Creditors of the First Applicant Company, which are annexed to the Company Scheme Application.

20. That there are no Unsecured Creditors as on May 31, 2023 in the Second Applicant Company. That the meeting of the Unsecured Creditors of the Second Applicant Company for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation would not be required.

21. The Learned Authorized representative submits that upon the Scheme becoming effective and in consideration of amalgamation of the Transferor Company with Transferee Company, the Transferee Company shall, without any application, act or deed, issue and allot equity shares, credited as fully paid up, to the extent indicated below, to the shareholders of the Transferor Companies

whose name appears in the Register of Members of the Transferor Companies as on the Effective Date in the following ratio:

TRANSFEROR COMPANY

“1280 equity shares of face value of Rs. 10/- each of Transferee Company shall be issued and allotted as fully paid up for every 10 equity shares of the face value of Rs. 10/- each fully paid up held in Transferor Company”.

22. The Counsel for the Applicant Companies submits that there is no litigation against the Applicant Companies. This Bench hereby directs the Applicant Company to submit that there is no investigation against the Applicant Companies by way of an affidavit while filling the compliance of this order and also submit the same in the Petition.

23. 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.

24. 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.

25. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction, The First Applicant Company (PAN: AAJCC1358D) having his address at Office No. 1, Deputy Commissioner of Income Tax, Circle 4(1)(1), Aayakar Bhawan, Maharishi Karve Road, Mumbai 400020. The Second Applicant Company (PAN: AALCC0404G) having his address at Office No. 1, Deputy Commissioner of Income Tax, Circle 4(1)(1), Aayakar Bhawan, Maharishi Karve Road, Mumbai 400020 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.

26. The Applicant Companies is directed to serve Notice by Registered Post AD/ Speed Post and Hand Delivery to the concerned GST Authorities as per Rule 8 of

the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the GST Authority within 30 days of the date of receipt of the notice it will be presumed that GST Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

27. The Applicant Companies is 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. 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.

28. 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.

29. The Appointed Date is May 31, 2023.

30. Ordered Accordingly.

