(2022) 10 NCLT CK 0037

In the National Company Law Tribunal

Case No : CA (CAA) No. 115/KB/2022

Cougar Vanijya Private Limited & Anr Vs

Date of Decision : 19-10-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules 2016 — Rule 6, 8(2)

Citation : (2022) 10 NCLT CK 0037

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Rahul Agarwal

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical):

1. The instant application has been filed under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“Act”) for orders and directions with regard to dispensation of meeting of shareholders and creditors as applicable, in connection with the Scheme of Amalgamation of Anukaran Marketing Private Limited, being the Applicant No. 1 abovenamed ("Transferor Company No. 1"), with Cougar Vanijya Private Limited, being the Applicant No. 2 abovenamed ("Transferee Company") whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1st Day of April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).

2. The Board of Directors of the Applicant Companies have, at their respective Board meetings, held on 31.01.2022, by a resolution passed unanimously, and the said resolution is annexed with the Application and referred in “Annexure F.

3. The report determining the number and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of the Transferor Company by the Transferee Company for implementing the terms of the Scheme has been

prepared by Registered Valuer Mr. Ajay Siwach having Regn. No. IBBI/ RV/05/2019/11412 and such recommendation has been accepted by the Board of Directors of all the Applicant Companies. The said report is annexed with the Application and marked as "Annexure H".

4. The Transferor Company has 2 (Two) equity shareholders and the Transferee Company has 5 (Five) equity shareholders.

5. The list of equity shareholders of each Company as on 31.03.2022 along with the certificate by the Chartered Accountant verifying the correctness of the same as on that date is annexed with the Application and marked as "Annexure I" and "Annexure J" respectively.

6. Each and every shareholder of the Applicant Companies have considered the Scheme of Amalgamation and have given their consent in writing agreeing to the Scheme of Amalgamation and also consenting to waive the holding of the meeting of the shareholders of the concerned Applicant Companies.

7. The copies of the consent letters of the equity shareholders along with their respective affidavit of all the Applicant Companies are annexed with the application and collectively marked as "Annexure I" and "Annexure J" respectively.

8. There are NIL secured creditor and NIL unsecured creditor in the Transferor Company.

9. There are 3 (Three) secured creditors and 34 (Thirty-four) unsecured creditors in the Transferee Company. All the Creditors of all the Transferee Company have considered and agreed in writing to the Scheme of Amalgamation and have also consented to waiving the holding of the meeting of Creditors of the Applicant Companies concerned.

10. The statutory auditors of each of the Applicant Companies have given certificate certifying the list of secured and unsecured creditors in the Transferor Companies and Transferee Company as on 31.03.2022. The copies of such certificate along with the list of secured and unsecured creditors drawn as on the dates mentioned above, are annexed with the Application and marked as "Annexure K" and "Annexure L" respectively.

11. The certificate by the Chartered Accountant in respect of both the Applicant Companies verifying conformity with Accounting Standard under Section 133 of the Companies Act, 2013 is annexed with the Application and marked as "Annexure M".

12. Heard the learned Counsel for the applicants, perused the records, documents annexed the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed:

a. Meetings dispensed: Meetings of the Equity Shareholders of the Applicant Companies, Meeting of Secured Creditors and Unsecured Creditors of Applicant

Company No. 2 are dispensed with under Section 230(1) read with Section 232(1) of the Act.

b. No requirement of Meetings: NIL Secured and NIL unsecured creditors of Applicant No. 1, as verified by the auditor’s certificate.

c. Meetings to be held: No meeting is required to be held.

d. 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 be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies with whom the Applicant is registered; Official Liquidator; and Income Tax Department having jurisdiction over the Applicant; by sending the same by hand delivery through special messenger, by speed post and also by 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 Authorised Representative of the said Applicant. 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 Composite Scheme of Arrangement. 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 disclosures required under Rule 6 & incorporating the directions herein.

13. The Company Application being CA (CAA) No. 115/KB/2022 is, accordingly, disposed of.

14. The applicants to file an affidavit proving service of notices to all statutory / sectoral authorities and compliance of all the directions contained.

15. Connected Company Petition should be filed within a period of three weeks from the date of issue of this order.

16. Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.