(2021) 10 NCLT CK 0054

In the National Company Law Tribunal

Case No : CA (CAA)/46/MB-IV/2021

Day2Day Supermarket Private Limited Vs

Date of Decision : 18-10-2021

Acts Referred:

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

Citation : (2021) 10 NCLT CK 0054

Hon'ble Judges : Suchitra Kanuparthi, Member (J);Rajesh Sharma, Member (T)

Bench : Division Bench

Advocate : Vidisha Poonja, Hemant Sethi

Final Decision : Disposed Of

Judgement

Rajesh Sharma, Member (Technical)

1. This Bench is convened through video conferencing today.

2. Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Merger (By absorption) between Day2Day Supermarket Private Limited (Transferor Company 1), Kasana Foods Private Limited (Transferor Company 2), Goel Properties Private Limited (Transferor Company 3) and Haldiram Hotels Private Limited (Transferee Company) and their respective Shareholders and creditors.

3. Learned Counsel for the Applicant Companies further submits that the Scheme has been approved by the Board of Directors of the Applicant Companies vide board resolutions dated 15th January, 2021 by each of the Applicant Companies. The Appointed Date for the Scheme is 1st April, 2020.

4. First Applicant Company is engaged in the business of Marketing, distribution, sellers of wholesale and retail, exporters, importers, buyers, sellers producers, buying agents of finished, processed, semi processed and kinds of goods i.e. all consumables articles, packed materials, grains, foods, vegetables, snacks, confectioneries, clothes, books & stationaries, gifts article, all kinds of savories and sweets, handicrafts, home consumable article, cosmetics, and to do

necessary for carry on the business of supermarkets, Super bazar, Super stores in India and to do all incidental acts and things necessary for the main objects.

5. Second Applicant Company was incorporated to be engaged in the business of millers in all its branches and to set up mills for milling of pulses, grains, oil seeds, and to carry on the business of producing, extracting, refining, storing exporting, importing, transporting and dealing in products of all kinds and description, whatsoever and to construct and run dal mill, oil mill, flour mill, besin mill, and to purchase, sell, import, export, manufacture, repair, assemble, or otherwise deal in and act as commission agents in all types of dals, besin, pulses, grains, oil seeds, cattlefeed and any other by product and to purchase, sell, store, or otherwise deal in wheat, paddy, and other grain, cereals, dals, rice, seeds of all kinds and other raw material necessary for and incidental or conducive to the objects or any of them.

6. Third Applicant Company was incorporated to be engaged in the business of purchase, lease, exchange or otherwise land, buildings and hereditaments of any tenure or description, and any Estate or interest therein, and all other properties, movable and immovable, which the company for the purposes hereof, may from time to time think proper to acquire and any rights over or connected with the some in India or elsewhere and to create, sell and deal in freehold, leasehold, ground rents and other lands and to make advances upon the security of land or house or other property or any interest therein and generally to deal in, traffic by way of sale, lease, exchange, let on, rent, hire purchase, finance, grant option of purchase or otherwise with land and house property and any other property whether real or personal.

7. Fourth Applicant Company is incorporated to be engaged in the business of managing, administer, own and to carry on the business of running hotels, motels, holiday camps, guest house, restaurants, canteens, caterers, café, caverns, pubs, bars, beerhouses, refreshment rooms and lodging or apartments, housekeepers, night clubs, casinos, discotheques, swimming pools, health clubs, baths, dressing rooms, licensed victuallers, wine beer and spirit merchants, exporters, importers and manufacturers of aerated, mineral and artificial waters and other drinks, purveyors, caterers for public amusement generally.

8. Learned Counsel for the Applicant Companies further submits that the management of the Applicant Companies believe that Merger (By absorption) of the Transferor Companies with the Transferee Company would have, inter alia, the following benefits:

a. Consolidation of business;

b. Elimination of a multi layered structure; and

c. Reduction in administrative, compliance and other operational costs.

9. Learned Counsel for the Applicant Companies respectfully submits that:

a. Upon the Scheme becoming effective and in consideration of the merger the Shareholders of the Transferor Companies shall be entitled to fully paid-up Equity Shares of the Transferee Company in the following swap ratio:

Particulars

Swap Ratio

equity shareholders of First Applicant Company

Equity Shares of face value Rs. 10 each of HHPL to be issued to the shareholders of D2D for every 100 Equity Shares held in D2D

equity shareholders of Second Applicant

Company

Equity Shares of face value Rs. 10 each of HHPL to be issued to the shareholders of KFPL for every 100 Equity Shares held in KFPL

equity shareholders of Third Applicant Company

Equity Shares of face value Rs. 10 each of HHPL to be issued to the shareholders of GPPL for every 100 Equity Shares held in GPPL

10. Learned Counsel for the Applicant Companies further submits that in the First Applicant Company there are 5 (Five) Equity shareholders. All 5 (Five) Equity shareholders have given their consent affidavits which are annexed as Exhibit Q1 - Q5 to the Application.

11. Learned Counsel for the Applicant Companies further submits that in the Second Applicant Company there are 6 (Six) Equity shareholders. All 6 (Six) Equity shareholders have given their consent affidavits which are annexed as Exhibit S1 - S6 to the Application.

12. Learned Counsel for the Applicant Companies further submits that in the Third Applicant Company there are 4 (Four) Equity shareholders. All 4 (Four) Equity shareholders have given their consent affidavits which are annexed as Exhibit U1 - U4 to the Application.

13. Learned Counsel for the Applicant Companies further submits that in the Fourth Applicant Company there are 4 (Four) Equity shareholders. All 4 (Four) Equity shareholders have given their consent affidavits which are annexed as Exhibit W1 - W4 to the Application.

14. In view of the fact that all the Equity shareholders of the Applicant Companies have given their consent to the Scheme by way of affidavits, the meeting of the Equity shareholders of the Applicant Companies are hereby dispensed with.

15. Learned Counsel for Applicant Companies submit that there are no Secured Creditors in the Applicant Companies and accordingly, the question of sending

notices to them does not arise.

16. Learned Counsel for the Applicant Companies submit that there are 15 Unsecured Creditors of Rs. 15,39,080/- in value in the First Applicant Company and 2 Unsecured Creditors of Rs. 3,56,00,000/- in value in the Fourth Applicant Company. The present Scheme is an arrangement between the shareholders of the Applicant Companies as contemplated under section 230(1)(b) of the Companies Act, 2013 and not in accordance with the provisions of section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with or diminution of liability of any of the Unsecured Creditors. The rights of Unsecured Creditors are not affected, and all the unsecured creditors of the First and Fourth Applicant Company would be paid off in the ordinary course of business. Therefore, while no meeting of the unsecured creditors of the First and the Fourth Applicant Companies are necessary, this Tribunal hereby directs that notice of the proposed Scheme be given to the Unsecured Creditors of the First and the Fourth Applicant Companies via Registered Post AD/ Speed Post and email, with instructions that they may submit their representations, if any, to the Tribunal within a period of 30 days from the date of receipt of such notice, and copy of such representations shall simultaneously be served upon the Fourth Applicant Company, failing which, it shall be presumed that they have no representations to make on the proposed Scheme.

17. The Applicant Companies are directed to serve notice of the present Application along with its enclosures by Hand delivery and Registered Post AD/ Speed Post on -

I. the Central Government through the office of Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai;

II. Registrar of Companies, Mumbai;

III. Income Tax Authority within whose jurisdiction the respective Applicant Companies are assessed to tax; PAN of First Applicant Company: AACCD0638A, PAN of Second Applicant Company: AACCM3614P, PAN of Third Applicant Company: AAACG9742Q and PAN of Fourth Applicant Company: AABCH1365B;

IV. Official Liquidator in so far as the Transferor Companies are concerned.

V. GST Authorities concerned of applicant Companies.

VI. Any other applicable regulatory authority pursuant to section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representations, if any, within a period of 30 days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme.

18. The Transferor Companies are also directed to serve notice upon Official

Liquidator, High Court, Bombay, 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 CA Hemant K Shah of Hemant K. Shah & Associates, Chartered Accountants, having their office at, Shop No. 15, Shreeji Plaza, Plot No. 24 Sector 25 Nerul, Mumbai-400706, Mobile No. 9004037902, [Email: shahhemant@yahoo.com] to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Companies for the last 5 years and submit its report to the Tribunal. The Transferor Companies to pay fees of Rs. 2,00,000/- for this purpose. If no representation/ response is received by the Tribunal from Official Liquidator, High Court, Bombay within a period of 30 days from the date of receipt of such notice, it will be presumed that he has no representation / objection to the proposed Scheme as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Applicant Companies shall file affidavit of service and compliance proving dispatch of notices to unsecured creditors of the First Applicant Company and Fourth Applicant Company and service of notice to 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.

19. Order accordingly. Pronounced in open Court today.

