(2023) 02 NCLT CK 0009

In the National Company Law Tribunal

Case No : C.A.(CAA)/218/MB/2021

Devcon Estpro Private Limited Vs

Date of Decision : 02-02-2023

Acts Referred:
Companies Act, 2013 — Section 230, 230(1)(b), 230(5), 232

Citation : (2023) 02 NCLT CK 0009

Hon'ble Judges : P. N. Deshmukh (Retd.), Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Aayesh Gandhi, Wadia Ghandy & Co

Final Decision : Allowed

Judgement

P.N. Deshmukh (Retd.), Member Judicial

1. The Bench is convened by videoconference.

2. The Counsel for the Applicants states that the present Scheme is a Scheme of Amalgamation between Devcon Estpro Private Limited ("Transferor No.1"), Yard Prolet Private Ltd. ("Transferor No.2"), Nilayam Prolet Private Limited ("Transferor No.3"), Eco Prolet Private Limited (Transferor No.4"), Goldium Protech Private Limited (Transferor No.5"), Track Prolet Private Limited (Transferor No.6"), Utopia Respro Private Limited (Transferor No.7"), Moss Shelt Let Private Limited (Transferor No.8"), K Raheja Private Limited ("Transferee") and their respective shareholders under the provisions of section 230 to 232 of the Companies Act, 2013.

3. The Counsel for the Applicants states that resolutions approving the Scheme were passed by the Board of Directors of the Transferor Companies and the Transferee Company at their respective meetings all held on March 16, 2021. The Appointed Date fixed under the Scheme is January 1, 2021.

4. The restructuring, consolidation and streamlining pursuant to this Scheme shall achieve the following benefits:

(i) The proposed merger will result in consolidation of the Transferor Companies into the Transferee Company by way of amalgamation. The Transferee is the holding company of the Transferors and the management of both the Transferee Companies and the Transferor Company is the same.

(ii) The proposed merger will achieve restructuring, consolidation and streamlining of certain entities within the K Raheja Group of companies.

(iii) The proposed merger will eliminate certain companies within the Group of Companies and as a result consolidation of the holding of such companies through one company leading to achieving ease of management and holding structures/ layers.

(iv) This will also streamline operations, efforts, employees, if any, costs and will enable better and more efficient management, control and day to day operations. It will also reduce overheads, administrative, and other expenditure and will achieve operational rationalisation, organisational efficiency and optimal utilization of resources which will be in the interest of the shareholders, employees, creditors and other stakeholders. It will eliminate multiple accounting, multiple compliances and multiple auditing resulting in reduction of costs.

5. The Counsel for the Applicants submits that the meetings of the Equity Shareholders of the Applicant Companies be dispensed with in view of the fact that 100% of the Equity Shareholders of the Applicant Companies have given their consent for the said amalgamation. The Consent Affidavits of the Equity Shareholders of the Transferor Companies have been annexed as Exhibits "MM Colly.", "RR Colly", "WW Colly.", "BBB Colly", "GGG Colly", "LLL Colly.", "QQQ Colly." and "VVV Colly." to Company Scheme Application. The Consent Affidavits submitted by Equity Shareholders of the Transferee Company have been annexed at Exhibit "BBBB Colly" to Company Scheme Application. In view of this fact, the meeting of the Equity Shareholders of the Transferor Companies and the Transferee Company is hereby dispensed with.

6. The Counsel for the Applicants submits that there are no Secured Creditors in the Transferor Companies. As regards the Transferee Company, the Counsel for the Applicants submits that there are two (2) Secured Creditors. Further, it is submitted that the meeting of the Secured Creditors of the Transferee Company be dispensed with in view of the fact that both secured creditors of the Transferee Company have given their Consent for the said Amalgamation. The Consent Affidavits submitted by the Secured Creditors have been annexed as Exhibit A Colly to the Additional Affidavit dated 1st November 2021 filed in the Company Scheme Application. In view of this fact, the meeting of the Secured Creditors of the Transferee Company is hereby dispensed with.

7. The Counsel for the Applicants submits that the meetings of the Unsecured Creditors of the Transferor Companies be dispensed with in view of the fact that 100% of the Unsecured Creditors of each of the Transferor Companies have

given their consent for the said amalgamation. The Consent Affidavits of the Unsecured Creditors of the Transferor Companies have been annexed at Exhibits “PP Colly.”, “UU Colly.”, “ZZ Colly.”, ‘EEE Colly.”, “JJJ Colly.”, “OOO Colly.”, “TTT Colly.” and “YYY Colly.” to the Company Scheme Application. In view of this fact, the meeting of the Unsecured Creditors of the Transferor Companies is hereby dispensed with.

8. The Counsel for the Applicants submits that the present Scheme is an arrangement only between the Applicant Companies and their respective shareholders under Section 230(1)(b) of the Companies Act, 2013. There is no compromise or arrangement with any creditors and no sacrifice of any amounts due to creditors is called for. The unsecured creditors of the Applicant Companies will be paid off in due course of business. Thus, the rights of the unsecured creditors of the Applicant Companies will not be prejudicially affected by the Scheme. Accordingly, the necessity of convening and holding meeting of the Unsecured Creditors of the Transferee Company does not arise. The Transferee Company will issue notice of the Scheme to their respective Unsecured Creditors having an outstanding balance of Rs.5,00,000/- and above.

9. The Applicant Companies to serve a notice along with a copy of the Scheme on: (i) the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai; (ii) Registrar of Companies, Mumbai, (iii) (a) Range 331 - Ward 3(1)(2), Range 332 - Ward 3(2)(4), Range 333 – Ward 3(3)(3), Range 333 – Ward 3(3)(4), Range 331 – Ward 3(1)(4) all having their address at Aaykar Bhavan, Mumbai (having PAN AAECD4488Q, AAECT3958P, AAACY6069Q, AAECN3519J, AABCU5859R, AAECG826D, AAICM2356C and AADCE2573Q) and (b) the Deputy Commissioner of Income Tax, Mumbai Central Circle – 4 (2) having address at 19th Floor, Air India Building, Nariman Point, Mumbai – 400 012 (having PAN AAACK1949H), (iv) GST Authority, and (v) Real Estate Regulatory Authority, as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations), Rules, 2016, with an intimation that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice, to the Tribunal and copy of such representations shall simultaneously be served upon the Transferor Companies and Transferee Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

10. The Transferor Companies are also directed to serve a notice along with a copy of the Scheme upon the 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. If no representation/ response is received by the Tribunal from the Official Liquidator within a period of thirty [30] days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation/ objection to the proposed Scheme.

11. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.

12. The Applicant Companies to file a joint 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.

13. Accordingly, C.A.(CAA)/218/MB/2021 is allowed.

