(2022) 03 NCLT CK 0068

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 208 / KB / 2021

Dreamon Commercial Private Limited Vs

Date of Decision : 25-03-2022

Acts Referred:

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

Citation : (2022) 03 NCLT CK 0068

Hon'ble Judges : Rohit Kapoor, Member (J);Harish Chander Suri, Member (T)

Bench : Division Bench

Advocate : Madan Kumar Maroti, N. Gurumurthy, Aisha Amin

Final Decision : Disposed Of

Judgement

Rohit Kapoor, Member (Judicial)

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 ("Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Composite Scheme of Amalgamation for amalgamation of INTER GLOBE INFRALOG LIMITED being the Applicant No. 2 above named ("Transferor Company No 1 for SECTION A " or "Applicant No.2") and KOTYARK DISTRIBUTORS PRIVATE LIMITED being the Applicant No. 3 above named ("Transferor Company No 2 for SECTION A " or "Applicant No. 3") and NIVEDAN VANIJYA NIYOJAN LIMITED being the Applicant No. 4 above named ("Transferor Company No 3 for SECTION A " or "Applicant No. 4 ") and SARITA COMPUTERS PRIVATE LIMITED being the Applicant No. 5 above named ("Transferor Company No 4 for SECTION A " or "Applicant No. 5 ") and VERONIA TIE-UP PRIVATE LIMITED being the Applicant No. 6 above named ("Transferor Company No 5 for SECTION A " or "Applicant No. 6 ") and VIKRAM PROPERTIES AND MERCHANDISE PRIVATE LIMITED being the Applicant No. 7 above named ("Transferor Company No 6 for SECTION A " or "Applicant No. 7 ") with DREAMON COMMERCIAL PRIVATE LIMITED being the Applicant No.1 above

named ("Transferee Company for SECTION A " or "Applicant No.1") whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April, 2021 in SECTION A of the Scheme in the manner and on the terms and conditions stated in the said Scheme of Amalgamation and amalgamation of PACIFIC MANAGEMENT PRIVATE LIMITED being the Applicant No. 8 above named ("Transferor Company for SECTION B " or "Applicant No. 8") with DREAMON COMMERCIAL PRIVATE LIMITED being the Applicant No.1 above named ("Transferee Company for SECTION B " or "Applicant No.1") whereby and where under the Transferor Company are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April, 2021 in SECTION B of the Scheme in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

2. It is submitted by Ld. counsel appearing for the Applicants that the Applicant No 1 , Applicant No 3 , Applicant No 5 , Applicant No 6 , Applicant No 7 and Applicant No 8 are Non-Banking Financial Companies (NBFC) .

3. It is further submitted that the Applicant No 4 was an NBFC and its Certificate of Registration has been Cancelled by the Reserve Bank of India .

4. It is submitted by Ld. counsel appearing for the Applicants that the Appointed Date of the scheme is 01st April, 2021.

5. It is submitted by Ld. counsel appearing for the Applicants that the Valuation has been carried out CA VIDHI CHANDAK , IBBI Registered Valuer .

6. It is submitted by Ld. counsel appearing for the Applicants that the Applicants have the following classes of shareholders and creditors:-

a. Applicant No 1

Number of Equity Shareholders: 14 as on 31ST August, 2021

Number of Preference Shareholders: NIL as on 31ST August, 2021

Number of Secured Creditors: NIL as on 31ST August, 2021

Number of Unsecured Creditors: NIL as on 31ST August, 2021

b. Applicant No 2

Number of Equity Shareholders: 12 as on 31ST August,2021

Number of Preference Shareholders: NIL as on 31ST August,2021

Number of Secured Creditors: NIL as on 31ST August,2021

Number of Unsecured Creditors: NIL as on 31ST August,2021

c. Applicant No 3

Number of Equity Shareholders: 11 as on 31ST August,2021

Number of Preference Shareholders: NIL as on 31ST August,2021

Number of Secured Creditors: NIL as on 31ST August,2021

Number of Unsecured Creditors: NIL as on 31ST August,2021

d. Applicant No 4

Number of Equity Shareholders: 15 as on 31ST August,2021

Number of Preference Shareholders: 15 as on 31ST August,2021

Number of Secured Creditors: NIL as on 31ST August,2021

Number of Unsecured Creditors: NIL as on 31ST August,2021

e. Applicant No 5

Number of Equity Shareholders:10 as on 31ST August,2021

Number of Preference Shareholders: NIL as on 31ST August,2021

Number of Secured Creditors: NIL as on 31ST August,2021

Number of Unsecured Creditors: NIL as on 31ST August,2021

f. Applicant No 6

Number of Equity Shareholders: 10 as on 31ST August,2021

Number of Preference Shareholders: 13 as on 31ST August,2021

Number of Secured Creditors: NIL as on 31ST August,2021

Number of Unsecured Creditors: NIL as on 31ST August,2021

g. Applicant No 7

Number of Equity Shareholders: 10 as on 31ST August,2021

Number of Preference Shareholders: NIL as on 31ST August,2021

Number of Secured Creditors: NIL as on 31ST August,2021

Number of Unsecured Creditors: NIL as on 31ST August,2021

h. Applicant No 8

Number of Equity Shareholders: 11 as on 31ST August,2021

Number of Preference Shareholders: NIL as on 31ST August,2021

Number of Secured Creditors: NIL as on 31ST August,2021

Number of Unsecured Creditors: NIL as on 31ST August,2021

7. It is further submitted that all Equity Shareholders of the Applicant Companies have already given their consent to the Scheme by way of affidavits which are

annexed to the application.

8. It is further submitted that all Preference Shareholders of the Applicant No 4 and Applicant No 6 have already given their consent to the Scheme by way of affidavits which are annexed to the application.

9. It is further submitted that none of the Applicant Companies have Secured Creditors as verified by Auditors Certificate which are annexed to the application.

10. It is further submitted that none of the Applicant Companies have Unsecured Creditors as verified by Auditors Certificate which are annexed to the application.

11. Directions are sought accordingly for dispensing with the meeting of equity shareholders of the Applicant Companies, for dispensing with the meeting of Preference shareholders of the Applicant No 4 and Applicant No 6 and for recording that there is no requirement of meeting of Secured Creditors of Applicant Companies in view of NIL Creditors verified by auditors certificate and also for recording that there is no requirement of meeting of Unsecured Creditors of Applicant Companies in view of NIL Creditors verified by auditors certificate

12. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders:-

a. Meetings dispensed:

Equity Shareholders

Meeting of Equity Shareholders of the Applicant Companies , for considering the Scheme are dispensed with in view of all shareholders of Applicant Companies having given their consent to the Scheme by way of affidavits.

Preference Shareholders

Meeting of Preference Shareholders of the Applicant No 4 and Applicant No 6 for considering the Scheme are dispensed with in view of all Preference shareholders of Applicant No 4 and Applicant No 6 having given their consent to the Scheme by way of affidavits.

b. No requirement of Meetings Secured Creditors

Secured Creditors of Applicant Companies NIL Creditors verified by auditors certificate.

Unsecured Creditors

Unsecured Creditors of Applicant Companies NIL Creditors verified by auditors certificate.

c. Meetings to be held

No meeting is required to be held.

13. 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 also be served on the :

a. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

b. Registrar of Companies with whom the Applicants are registered;

c. Official Liquidator; High Court, Calcutta;

d. Income Tax Department having jurisdiction over the Applicants;

e. Reserve Bank of India

by sending the same by hand delivery through special messenger or by post or 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 Authorized Representative of the said Applicants. 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 Scheme of Amalgamation. 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 necessary variations, incorporating the directions herein.

14. The Applicants to file an affidavit proving service of notices and compliance of all directions contained herein.

15. The application being Company Application (CAA) No. 208 / KB / 2021 is disposed of accordingly.

16. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

