**(2023) 11 NCLT CK 0013**

**In the National Company Law Tribunal**

**Case No :** C.A. (CAA) No. 263 of 2023

**Dvaro Merchantile Private Limited Vs**

**Date of Decision :** 29-11-2023

**Acts Referred:**
Companies Act, 2013 — Section 230, 230(5), 232
Companies (Compromises, arrangements and Amalgamations) Rules, 2016 — Rule 8

**Citation :** (2023) 11 NCLT CK 0013

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

**Bench :** Division Bench

**Advocate :** Pulkitesh Dutt Tiwari, Kalash Bakliwal, Menon, Mankava

**Final Decision :** Disposed Of

## Judgement

Madhu Sinha, Member (Technical)

1. The Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Amalgamation ("Scheme") amongst Dvaro Merchantile Private Limited ("Transferor Company") and Dhoot Instruments Private Limited ("Transferee Company"), (together, "Applicant Companies") and their respective shareholders and creditors. The Applicant Companies are situated within the jurisdiction of this Bench of the Tribunal.

2. The Counsel for the Applicant Companies further submits that the Applicant Companies are primarily engaged in the business of trading in commodities.

3. The Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 7th July 2023 have approved the proposed Scheme with the Appointed Date as 1st April 2023. The Board Resolution approving the Scheme for the Transferor Company and the Transferee Company are annexed as Annexure H and Annexure I, respectively to the Company Scheme Application.

4. The Appointed Date for this Scheme of Amalgamation is 1st April 2023.

5. The Authorised, Issued, Subscribed and Paid-up Share Capital of the

Transferee Company as on 31st March 2023 is as under:

Particulars

Amount (in INR)

Authorized Capital

28,495 Equity Shares of 100/- each

28,49,500

24,115 Compulsory Convertible Preference

Share (CCPS) of Rs.100/- each

24,11,500

Total Authorized Capital

52,61,000

Issued, Subscribed and Paid-up Capital

28,495 Equity Shares of 100/- each

28,49,500

Total Issued, Subscribed and Paid-up

Capital

28,49,500

6. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company as on 31st March 2023 is as under:

Particulars

Amount (in INR)

Authorized Capital

2,00,000 Equity Shares of 100/- each

2,00,00,000

64,75,000 6% Non-Cumulative Non- Convertible Redeemable Preference Shares of

Rs.100/- each

64,75,00,000

Total Authorised Capital

66,75,00,000

Issued, Subscribed and Paid-up Capital

25,000 Equity Shares of 100/- each

25,00,000

64,66,000 6% Non-Cumulative Non- Convertible Redeemable Preference Shares of

Rs.100/- each, Partly Paid up Rs.50/- per share

32,33,00,000

Total Issued, Subscribed and Paid-up

Capital

32,58,00,000

7. The Counsel for the Applicant Companies further submits that the rationale for the Scheme are as follows:

a. The proposed Scheme of amalgamation of the Applicant Companies is to enlarge its balance sheet size for greater leveraging and achieve faster expansion of business and to bring about consolidation of business with larger asset base and ability to access cheaper financing for its business including efficiency in operation and to prevent overlapping of cost.

b. The combined resources of the amalgamated company will be conducive to continuing its business activity with greater efficiency and economy. The merger of the Applicant Companies will result in greater cost benefits and economies, which will accrue to the amalgamated company.

c. The arrangement under the Scheme will be conducive to better and more efficient and economical control and conduct of the Applicant Companies. The merger of the Transferor and Transferee Company will result in following distinctive advantages:

i. Simplified operational architecture;

ii. Cost efficiency in operations; and

iii. Consolidation of the group’s business creating a larger company with stronger balance sheet.

8. Upon the Scheme taking effect and upon the transfer to and vesting of the undertaking of the Transferor Company in terms of the Scheme, the equity shareholders of the Transferor Company shall be issued 7,656 (Seven Thousand Six Hundred and Fifty Six Only) Equity shares of Rs.100/- each fully paid up of the Transferee Company for every 25,000 (Twenty Five Thousand only) fully paid equity shares of Rs. 100/- each held by the shareholders in Transferor Company (“Entitlement Ratio”). The preference shareholders of the Transferor Company

shall be issued 1,00,000 fully paid Non- Convertible Non-Cumulative Compulsorily Redeemable Preference Shares of Rs. 100 each of the Transferee Company in the terms set out in Schedule-I of the Scheme, for the existing preference shares held by the preference shareholders in the Transferor Company. The Equity Shares to be allotted as aforesaid shall rank for pro-rata dividend, voting and all other rights paripassu with the existing Equity Shares of the Transferee Company provided they shall not qualify for dividend declared in respect of the period prior to their allotment. In respect of fractional entitlement, if any, to which the shareholders of the Transferor Company may be entitled to in terms of the Entitlement Ratio, shall be rounded off to the nearest integer.

9. That there are 2 (Two) Equity Shareholders in Transferor Company and that they have procured consent affidavits from all the Equity Shareholders of the Transferor Company which are annexed as Annexure P(Colly) to the Company Scheme Application.

10. That there are 7 (Seven) Equity Shareholders in Transferee Company and that they have procured consent affidavits from all the Equity Shareholders of the Transferee Company which are annexed as Annexure N(Colly) to the Company Scheme Application.

11. In view of the fact that all the Equity Shareholders of all the Transferor Company and the Transferee Company have given their consent affidavits, the meetings of the Equity Shareholders of the Transferor Company and the Transferee Company for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with.

12. The Counsel for the Applicant Companies submits that there are 0 (Zero) Preference Shareholders in Transferee Company and therefore, the question of convening and holding of the meeting of Preference Shareholders of the Transferee Company does not arise.

13. That there is 1 (One) Preference Shareholder in Transferor Company and that they have procured consent affidavits from all the Preference Shareholders of the Transferor Company which are annexed as Annexure Q to the Company Scheme Application.

14. In view of the fact that the 1 (One) Preference Shareholder of the Transferor Company has given their consent affidavit, the meeting of the Preference Shareholders of the Transferor Company for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with.

15. The Counsel for the Applicant Companies submits that the Applicant Companies do not have any Secured Creditors and Unsecured Creditors, therefore, the question of convening and holding of the meeting of Secured Creditors and Unsecured Creditors of the Applicant Companies does not arise. The Certificate issued by Statutory Auditor of the Applicant Companies

 

confirming that the Applicant Companies have 0 (Zero) Secured Creditors and 0 (Zero) Unsecured Creditors are annexed from Annexure R to Annexure U to the Company Scheme Application.

16. The Applicant Companies to serve the notice of the present Company Scheme Application complete with enclosures on - (i) Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra; (ii) Registrar of Companies; (iii) Official Liquidator, High Court, Bombay; (iv) concerned Income Tax Authority within whose jurisdiction the Applicant Companies' assessments are made, as more specifically mentioned hereinunder, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, arrangements and Amalgamations) Rules, 2016.

Company

PAN No.

Address of the Authority

Transferee Company

AAACD2010L

Deputy Commissioner of Income- Tax 3(1)(1), Ayakar Bhavan, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai – 400 020.

Transferor Company

AAGCD7186B

Deputy Commissioner of Income-Tax 6(1)(1), Ayakar Bhavan, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai – 400 020.

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

17. The Applicant Companies shall host the notices directed herein, on their respective websites, if any.

18. That the Applicant Companies to file a joint Affidavit of Service with the Registry proving dispatch of notices to regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

19. Ordered Accordingly. C.A. (CAA) No. 263 of 2023 is allowed.