

(2023) 10 NCLT CK 0038
In the National Company Law Tribunal
Case No : CA (CAA) No.35/Chd/Hry/2023
Escorts Kubota Limited Vs

Date of Decision : 16-10-2023

Acts Referred:

Companies Act, 2013 — Section 102, 133, 230, 230(3), 230(5), 232, 232(3)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8, 14

Citation : (2023) 10 NCLT CK 0038

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Munisha Gandhi, Vaibhav Sharma, Salina Chalana

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint first motion application filed by Applicant Companies namely; Escorts Kubota Limited (Amalgamated Company/ Applicant Company No. 1), Escorts Kubota India Private Limited (Amalgamating Company No. 1/Applicant Company No. 2), and Kubota Agricultural Machinery India Private Limited (Amalgamating Company No. 2/ Applicant Company No. 3) under Sections 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure-A1 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders of the Applicant Company No. 2 & 3, and Unsecured Creditors of Applicant Company No. 3. Further, to convene the meetings of Equity Shareholders of Applicant Company No.1 and Unsecured Creditors of Applicant Company No.1 & 2. It is further prayed for dispensation of the requirement of issuing individual notices to

Unsecured Creditors of Applicant Company Nos. 1 & 2 having unsecured debt equal to or less than Rs. 5,00,000.

3. The Applicant Company No.1 is presently engaged inter alia, in the business of manufacturing and sale of various agricultural tractors, construction equipment, railway products, implements and spares.

4. The Applicant Company No. 2 is presently engaged inter alia, in the business of production and sale of tractors for the Indian and global markets.

5. The Applicant Company No. 3 is presently engaged inter alia, in the business of assembly, procurement, whether locally or through import, sales, servicing and consultancy within the territory of India, of tractors, combine harvesters, construction equipment, rice transplanters and other agricultural machineries manufactured or assembled by Kubota Corporation, Japan (including those manufactured or assembled by Kubota Corporation's subsidiaries), as well as implements, accessories and spare parts of the foregoing

6. It is submitted that the registered offices of Applicant Companies are situated in the State of Haryana, therefore, the territorial jurisdiction of Applicant Companies fall with this Bench.

7. The rationale of the Scheme is given below:-

(i) The Amalgamated Company proposes to enter into this Scheme with Amalgamating Company No. 1 and Amalgamating Company No. 2, such that the Amalgamated Company will be the exclusive vehicle for the agri-machinery business in India. Amalgamation is proposed to consolidate their respective manufacturing/service capabilities, thereby increasing efficiencies in operations and use of resources, to consolidate their diversified product and services portfolio for improving overall customer satisfaction, to pool their human resource talent for optimal utilization of their expertise, to integrate the marketing and distribution channels for better efficiency, to have a larger market footprint domestically and globally and to ensure optimization of working capital utilization.

(ii) The management of the respective Companies (as defined hereinafter) are of the view that the amalgamation proposed in this Scheme is, in particular, expected to have the following benefits:

(a) Reduction in management overlaps and reduction of legal and regulatory compliances and associated costs due to operation of multiple companies.

(b) Optimization of the allocated capital and availability of funds which can be deployed more efficiently to pursue the operational growth opportunities.

(c) Consolidation of funds and resources will lead to optimization of working capital utilization and stronger financial leverage given the simplified capital structure, improved balance sheet, and optimized management structure.

(d) Consolidation of businesses under the amalgamation, would result in the pooling of financial, managerial, technical and human resources, thereby creating a stronger base for future growth and value accretion for the stakeholders.

(e) Consolidation of production capabilities, integration and efficiency of operations, economies of scale, to create a larger scale of business and operations to cater to the demand of agro-machinery industry. Consolidation of the complementing strengths will enable the Amalgamated Company to be the exclusive vehicle for the agri-machinery business in India.

(iii) The management of the respective Companies are of the view that this Scheme is in the interest of the customers, employees, creditors, shareholders and all other stakeholders of the respective Companies."

8. It is stated that the Board of Directors of the Applicant Company 2 and 3 in their meetings held on 15.09.2022 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the board resolutions of the Applicant Companies are part of Annexure-A11, A17 of the application.

9. The appointed date of the Scheme is 01.04.2023 as mentioned in the Part A Para 1.1. (vii) of Scheme of Amalgamation which is attached as Annexure A-1 of the application.

10. It is stated that the Applicant Companies have filed the audited financial statements as on 31.03.2023 as Annexure-A3, A10 and A16 respectively of the application.

11. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, the Applicant Companies have filed certificates, all dated 15.09.2022 issued by Statutory Auditors of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure-22 of application.

12. It is further submitted by the counsel for applicant companies, as per Valuation Report dated 15.09.2022 submitted by Mr. Niranjan Kumar, Registered Valuer (S&FA) bearing registration No. IBBI/RV/06/2018/10137 is attached as Annexure A-21 of the application. The Share Exchange Ratio as per the conclusion of the valuation report is given below:-

To the equity shareholders of EK1 with respect to amalgamation with EKL.

5 (Five) equity shares of EKL, having a face value INR 10/- (Rupees Ten) each fully paid-up shall be issued for every 129 (One Hundred Twenty-Nine) equity shares held in EK1 having a face value of INR 100/- (Rupees Hundred) each fully paid-up as on the Record date. ("Share Exchange Ratio 1')

To the equity shareholders of KAI with respect to amalgamation with EKL.

5 (Five) equity shares of EKL having a face value INR 10/- (Rupees Ten)

each fully paid-up shall be issued for every 220 (Two Hundred Twenty) equity shares held in KAI having a face value of INR 10/-(Rupees Ten) each fully paid-up as on the Record date. ('Share Exchange Ratio 2")

13. It is submitted by the learned counsel that the Scheme also takes care of the interests of the staff/workers and employees of the Applicant Companies, by virtue of Part-B Para x of the Scheme (Annexure A1 of the application).

14. It is deposed by the way of affidavit that notice of the present Application is to be issued to the said authority and other statutory authorities as set out below pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016: i. Office of the Regional Director (Northern Region), Ministry of Corporate Affairs, Government of India at B-2 Wing, 2nd Floor Paryavaran Bhawan, CGO Complex, New Delhi - 110003 ii. The Registrar of Companies for New Delhi and Haryana, iii. Office of the Income Tax Department, Deputy Commission of Income Circle 13(1) at Room No. 316A, 3rd Floor, C.R. Building, I.P. Estate, New Delhi 110002; iv. Office of the Official Liquidator, Ministry of Corporate Affairs, attached to High Court of Punjab and Haryana v. Securities and Exchange Board of India at SEBI Bhavan, vi. National Stock Exchange India Limited at Exchange Plaza, C-1 Block G, Bandra Kurla Complex, Mumbai - 400 051, Maharashtra; vii. BSE Limited at Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai 400 001, Maharashtra.

15. The applicant companies have furnished the following documents:-

i. Proposed Scheme of Amalgamation (Annexure-A1 of the application).

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexure-A2, and A9 and A15 respectively of the application).

iii. List of Equity Shareholders of the Applicant Company No. 1 as on as on 02.06.2023, Equity Shareholders of the Applicant Company No. 2 as on 31.05.2023 along with the consent obtained on affidavits and Equity Shareholders of the Applicant Company No. 3 as on 31.05.2023 along with the consent obtained on affidavits (Annexure-A5 , A12 and A18 of the application). List of Equity Shareholders as on 02.06.2023, of the Applicant Transferee Company as certified by the Chartered Accountant certificate dated 22.06.2023 (Annexure- A-5 of the Application).

iv. List of Secured Creditors of Applicant Company No. 1 (Amalgamated Company) as on 15.06.2023 duly certified by the Chartered Accountant as on 04.07.2023 (Annexure-A6 of the application).

v. List of Secured Creditors of Applicant Company No. 2 (Amalgamating Company No. 1) as on 31.05.2023 duly certified by the Chartered Accountant as on 16.06.2023 (Annexure-A13 of the application).

vi. List of Secured Creditors of the Applicant Company No. 3 (Amalgamating

Company No. 2) as on 31.05.2023 duly certified by the Chartered Accountant as on 20.06.2023 (Annexure-19 of the application).

vii. List of Unsecured Creditors of the Applicant Company No. 1 (Amalgamated Company) as on 31.05.2023 duly certified by the Chartered Accountant as on 15.06.2023 (Annexure-A7 of the application).

viii. List of Unsecured Creditors of the Applicant Company No. 2 (Amalgamating Company No. 1) as on 31.05. 2023 duly certified by the Chartered Accountant as on 19.06.2023 (Annexure-A14 of the application).

ix. List of Unsecured Creditors of the Applicant Company No. 3 (Amalgamating Company No. 2) as on 31.05. 2023 duly certified by the Chartered Accountant as on 20.06.2023 along with their Consent affidavits. (Annexure-A20 of the application).

x. Certificates of Statutory Auditors dated 15.09.2023 to the effect that Accounting treatment proposed in the Scheme is inconformity with Section 133 of the Companies Act, 2013 (Annexure-A22 of the application).

xi. Audited Financial Statements for the financial years ended 31.03.2021, 31.03.2022 and 31.03.2023 of the Applicant Companies (Annexure-A3, A10 and A16 respectively of the application).

xii. Affidavit of the Applicant Companies with regard to no Sectoral Regulator (Annexure A23 of the application).

16. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors along with consent on affidavits which is as follow:

Name of the Applicant

Companies

Shareholders along with their consent on affidavits

Creditors along with their consent on affidavits

Equity Shareholder

Consent

Preference Shareholder

Consent

Debenture holders

Consent

Secured Creditors

Consent

Unsecured creditors

Consent

Applicant

Company No.1

1,37,592

Meetings to be convened

NIL

NA

NIL

NA

NIL

NA

5923

Meetings to be convened

Applicant

Company No.2

2

100%

NIL

NA

NIL

NA

NIL

NA

334

Meetings to be convened

Applicant

Company No. 3

2

100%

NIL

NA

NIL

NA

NIL

NA

150

97%

17. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Amalgamated Company/ Applicant Company No.1:

a) The meetings of the Equity Shareholders of Applicant Company No.1 be convened as prayed for on 2nd December,2023 (Saturday) at 02:00 PM through video conferencing with facility of remote e-voting, subject to notice of the meeting being issued. The quorum of the meeting of the Equity Shareholders shall be 55,037 in number or 40% in value of the Equity Shareholders.

b) Since, there are no Secured Creditors in the Applicant Company No.1, therefore there is no scope for any meeting.

c) The meeting of the Unsecured Creditors of the Applicant Company No.1 be convened as prayed for on 2nd December, 2023 (Saturday) at 10:00 AM through video conferencing with facility of remote e-voting, subject to notice of the meeting being issued. The quorum of the meeting of the Unsecured Creditors shall be 2369 in number or 40% in value of the Unsecured Creditors;

II. In relation to the Amalgamating Company No.1/ Applicant Company No.2:

a) The meeting of the Equity Shareholders of Applicant Company No.2 is dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent by way of affidavits have been received.

b) Since, there are no Secured Creditors in the Applicant Company No. 2, therefore there is no scope for any meeting.

c) The meetings of the Unsecured Creditors of Applicant Company No.2 be convened as prayed for on 2nd December,2023 (Saturday) at 12:00 PM through video conferencing with facility of remote e-voting, subject to notice of the meeting being issued. The quorum of the meeting of the Unsecured Creditors shall be 133 in number or 40% in value of the Unsecured Creditors.

III. In relation to the Amalgamating Company No.2/ Applicant Company No.3:

a) The meeting of the Equity Shareholders of Applicant Company No.3 is dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent by way of affidavits have been received.

b) Since, there are no Secured Creditors in the Applicant Company No.3, therefore there is no scope for any meeting.

c) The meetings of the Unsecured Creditors of Applicant Company No.3 is dispensed with as the consent of Unsecured Creditors have been received by way of affidavits.

IV. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.

V. Mr. Satwinder Singh, Founder & Managing Partner, Aekom Legal, Address: G-29 (LGF), Lajpat Nagar-III, New Delhi-110024 Mobile No.91-9871686000, email id: satwinder@aekomlegal.com is appointed as the Chairperson for the meetings to be called under this order. An amount of ₹ 1,50,000/- (Rupees One Lakh Fifty Thousand Only) be paid for his services as the Chairperson.

VI. Mr. Arvind Seth, Advocate, address: Flat No. 203, GH 36, MDC Sec. 5, Panchkula, Haryana Mobile No.9779503605, email id: arvindseth258@lawyer.com is appointed as the Alternate Chairperson for the meetings to be called under this order. An amount of ₹ 1,35,000/- (Rupees One Lakh Thirty Five Thousand Only) be paid for her services as the Alternate Chairperson.

VII. Ms. Poonam Verma, address: Kothi No. 395, Phase-I, Mohali, Punjab, Mobile No.9877699652, email id: poonam22office@gmail.com, is appointed as the Scrutinizer for the above meetings to be called under this order. An amount of ₹ 1,00,000/- (Rupees One Lakh Only) be paid for his services as the Scrutinizer.

VIII. The fee of the Chairperson, Alternate Chairperson and Scrutinizer and other out of pocket expenses for them shall be borne by the Applicant Company No.1 & 2.

IX. The Applicant Company No.1 & 2 are required to serve the notices through Speed Post/Courier upon their current unsecured creditors having outstanding debt more than Rs. 5,00,000 and through email upon their unsecured Creditors having outstanding debt less than Rs. 5,00,000 as per the list of creditors as on the date of passing of this Order in the same manner as the notices shall be served to various authorities as per Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to waiver of the meetings and with a direction that they may submit their representations, if any, to the Tribunal and a copy of the same shall be

simultaneously served on the concerned applicant company. If no response is received from such creditors within 30 days of the date of receipt of the notice it shall be presumed that such creditors have no objection to the proposed Scheme.

X. It is further directed that along with the notices, Applicant Company No. 1 & 2 shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members, etc. along with the effect of the scheme of amalgamation on any material interests of the Directors of the Company or the debenture trustees if any, as provided under sub-section (3) of Section 230 of the Act.

XI. That the Applicant Company No.1 & 2 shall publish an advertisement with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and place and the time of the meeting as aforesaid, to be published in "Financial Express" (English) and "Jansatta" (Hindi), both in Delhi NCR Edition. The publication shall also indicate that the explanatory statement required to be furnished pursuant to Sections 230 & 232 read with Section 102 of the Companies Act, 2019 can be obtained free of charge at the registered office of the Applicant Companies. The Applicant Company No.1 & 2 shall also publish the notice on its website, if any.

XII. Voting shall be allowed on the "Scheme" through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Companies under the Act and the Rules framed thereunder.

XIII. The Scrutinizer's report will contain her findings on the compliance to the directions given in Para VIII to XII above.

XIV. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. The Chairperson would be fully assisted by the authorized representative/Company Secretary of the Applicant Companies and the Alternate Chairperson. The Scrutinizer will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

XV. The Applicant Company No. 1 & 2 shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (ii) Jurisdictional Registrar of Companies; (iii) the Official Liquidator; (iv) Income Tax Department (v) NSE (vi) BSE (vii) SEBI; in the mode prescribed by the authorities (viii) Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh through the Nodal Officer by mentioning the PAN number of the Applicant Companies; and to such other Sectoral Regulator(s)

governing the business of the Applicant Companies, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

XVI. The Applicant Companies shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any creditor or member/shareholder entitled to attend the meeting as aforesaid.

XVII. The authorized representative of the Applicant Company No.1 & 2 shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.

XVIII. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies.

18. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.