(2023) 04 NCLT CK 0049

In the National Company Law Tribunal

Case No : C.A. 122/ MB/ 2023 In C.A(CAA)/244/MB-II/2022

Evergrow Trading Pvt Ltd Vs

Date of Decision : 28-04-2023

Acts Referred:
Companies Act, 2013 — Section 230, 230(3), 230(5), 232, 232(3)(i)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 04 NCLT CK 0049

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala

Final Decision : Disposed Of

Judgement

Kuldip Kumar Kareer, Member (Judicial)

1. The Bench is convened by videoconference.

2. CA 122 of 2023 was filed by the Applicants for early hearing of CA (CAA) 244 of 2022. The said CA is allowed and disposed of.

3. Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation of EVERGROW TRADING PRIVATE LIMITED, the Transferor Company with KHEM PROJECTS INVESTMENTS PRIVATE LIMITED, the Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

4. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 20th June, 2022 for the Transferor Company and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2022.

5. The rationale for the proposed Scheme is as under:

(a) With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of Transferor Company with Transferee Company. The amalgamation of all undertaking of Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. This would enable streamlining the activities and consequently reducing managerial overlaps by reducing the number of companies under the same Management and thus lead to reduction in administration efforts.

(b) It would be advantageous to combine the activities and operations of both the Companies into a single Company for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance issues as the Companies are in similar businesses.

(c) Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances. The Scheme of amalgamation will result in cost saving for both the Companies and is expected to result in administrative efficiency and higher profitability levels for the Transferee Company.

6. The Authorised Share Capital of the Applicant Company No.1, as on the 31st day of March, 2022 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

4,80,000 Equity Shares of Rs.10/- each.

48,00,000

Total

48,00,000

Issued, Subscribed and Paid-up

4,72,501 Equity Shares of Rs. 10/- each fully paid-up

47,25,010

Total

47,25,010

As on date there is no change in the capital structure of the Applicant Company No.1.

7. That the convening and holding the meeting of the Equity Shareholders of the

Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of EVERGROW TRADING PRIVATE LIMITED, the Transferor Company with KHEM PROJECTS INVESTMENTS PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the two Equity Shareholders of the Applicant Company No.1, which are annexed as 'Exhibit I-1 to I-2' to the Company Scheme Application.

8. The Share Capital of the Applicant Company No.2 as on the 31st day of March, 2022 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

50,00,000 Equity Shares of Rs.100/- each.

5,00,00,000

Total

5,00,00,000

Issued, Subscribed and Paid-up

24,61,400 Equity Shares of Rs. 100/- each fully paid- up.

2,46,14,000

Total

2,46,14,000

As on date there is no change in the capital structure of the Applicant Company No.2.

9. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of EVERGROW TRADING PRIVATE LIMITED, the Transferor Company with KHEM PROJECTS INVESTMENTS PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the four Equity Shareholders of the Applicant Company No.2, which are annexed as 'Exhibit J-1 to J-4' to the Company Scheme Application.

10. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 1 mentioned in Para 23 of the Application.

11. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 2 mentioned in Para 24 of the

Application.

12. That there are 1 (One) Unsecured Creditor having value of Rs. 7,500/- (Rupees Seven Thousand Five Hundred only). The Counsel for the Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant Company No. 1 are concerned most of them are in the nature of loan/sundry/ trade creditors for activities of the Applicant Company No. 1 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.1 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 1 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

13. That there are 1 (One) Unsecured Creditor having value of Rs.3,000/- (Rupees Three Thousand only). The Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.2 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 2 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.2 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

14. The Consideration is as follows:

Since the entire equity share capital of the Transferor Company is held by The Transferee Company, upon amalgamation, the Transferee Company would not be required to issue and allot any shares to the shareholders of the Transferor Company. The Shares so held by the Transferee Company shall stand cancelled and extinguished pursuant to the implementation of the Scheme of Amalgamation.

15. The Applicant Companies to serve the notice upon the Regional Director,

Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

16. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

17. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction, The Applicant Company No. 1 PAN: AABCE0946R having his address at The Income Tax Officer, WARD 9(1), Aayakar Bhavan, Kolkata - 700069 and The Applicant Company No. 2 PAN: AADCK2170R having his address at The Income Tax Officer, WARD 10(1)(1), Aaykar Bhawan, Mumbai-400020. The Applicant Company’s assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Applicant Companies are directed to serve Notice by Registered Post AD/ Speed Post/Courier and Hand Delivery to the concerned GST Authorities (if registered) as per Rule 8 of theCompanies(Compromises,Arrangementsand Amalgamations) Rules, 2016. If no response is received by the Tribunal from the GST Authority within 30 days of the date of receipt of the notice it will be presumed that GST Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. The Transferor Company are also directed to serve intimations of the Scheme upon Official Liquidator, 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 Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The Applicant Companies to file an 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.

21. The Appointed Date is 1st April, 2022

