(2023) 01 NCLT CK 0050

In the National Company Law Tribunal

Case No : C.A (CAA) No. 172/KB/2022

Fancy Marketing & Investment Company Pvt Ltd Vs

Date of Decision : 19-01-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules 2016 — Rule 8(2)

Citation : (2023) 01 NCLT CK 0050

Hon'ble Judges : Bidisha Banerjee, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Priyanka Jain

Final Decision : Disposed Of

Judgement

Bidisha Banerjee, 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 dispensation of meetings of shareholders and unsecured creditors of all the Applicants in connection with the Scheme of Amalgamation by and amongst Primerose Traders Private Limited being the Applicant Company 1 abovenamed ("Transferor Company 1"), Prudential Dealcomm Private Limited being the Applicant Company 2 abovenamed ("Transferor Company 2"), Pushpkunj Commercial Private Limited being the Applicant Company 3 abovenamed ("Transferor Company 3"), RJK Commercial Private Limited being the Applicant Company 4 abovenamed ("Transferor Company 4"), Sidhant Vanijya Pvt. Ltd. being the Applicant Company 5 abovenamed ("Transferor Company 5"), Swadesh Vanijya Pvt. Ltd. ("Transferor Company 6"), with Fancy Marketing & Investment Company Pvt. Ltd. ("Transferee Company") whereby and where under the Transferor Companies are proposed to amalgamate with the Transferee Company from the Appointed Date, viz 1st April 2022 in the manner and as per the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). A copy of the said Scheme is annexed to the Company Application marked Annexure-O in

Volume IV, Page nos. 629 to 651.

2. It is submitted by the Ld. Authorized Representative appearing for the Applicants that the Appointed Date as per the Scheme is 1st April 2022.

3. The submitted by Ld. Authorized Representative appearing for the Applicants that the Board of Directors of the Applicant Companies have at their respective meeting have passed resolution adopting the proposed Scheme of Amalgamation.

Sl.

No.

Company

Date

Board Resolution

1.

Applicant Company 1

07-06-2022

Annexure- P1

Volume IV, Page 652-653

2.

Applicant Company 2

07-06-2022

Annexure- P2

Volume IV, Page 654-655

3.

Applicant Company 3

07-06-2022

Annexure- P3

Volume IV, Page 656-657

4.

Applicant Company 4

07-06-2022

Annexure- P4

Volume IV, Page 658-659

5.

Applicant Company 5

07-06-2022

Annexure- P5

Volume IV, Page 660-661

6.

Applicant Company 6

07-06-2022

Annexure- P6

Volume IV, Page 662-663

7.

Applicant Company 7

07-06-2022

Annexure- P7

Volume IV, Page 664-665

4. It is submitted by Ld. counsel appearing for the Applicants that the Valuation Report dated 2nd June 2022 recommending the Swap Ratio has been prepared by Ms. Astha Gupta, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked Annexure-U in Volume V, Page nos. 789 to 813.

5. It is submitted by Ld. counsel appearing for the Applicant(s) that Applicant Company 7 is an NBFC Company duly registered with Reserve Bank of India and are holding a valid Certificate of Registration no. 05.00162 issued by the said Bank.

6. It is further submitted by Ld. Authorized Representative appearing for the Applicants that the shares of the Applicant Companies are not listed in any stock exchange. Further, the Applicants have the following classes of shareholders and creditors: -

Sl.

No.

Company

Equity Shareholders as

on 31.03.2022

Secured Creditors as on 30.06.2022

Unsecured Creditors as on 30.06.2022

1.

Applicant Company 1

02

NIL

02

2.

Applicant Company 2

02

NIL

03

3.

Applicant Company 3

02

NIL

NIL

4.

Applicant Company 4

05

NIL

NIL

5.

Applicant Company 5

04

NIL

01

6.

Applicant Company 6

07

NIL

NIL

7.

Applicant Company 7

07

NIL

01

7. It is submitted by Ld. Authorized Representative appearing for the Applicants that the Equity Shareholders of Applicant Companies representing more than 90% in value of shares have already given their consent to the Scheme , all of which are annexed to the Company Application, details whereof are presented hereunder:

Sl.

No.

Company

Equity Shareholders as on

31.03.2022

Auditors Certificate

Consent from Shareholders

Percentage

1.

Applicant

02

Annexure- Q1

Annexure- R1

98.58%

Company 1

Volume IV Page 666-668

Volume IV Page 687-688

2.

Applicant Company 2

02

Annexure- Q2 Volume IV Page 669-671

Annexure- R2 Volume IV Page 689-690

97.35%

3.

Applicant Company 3

02

Annexure- Q3 Volume IV Page 672-674

Annexure- R3 Volume IV Page 691-694

100%

4.

Applicant Company 4

05

Annexure- Q4 Volume IV Page 675-677

Annexure- R4 Volume IV Page 695-704

100%

5.

Applicant Company 5

04

Annexure- Q5 Volume IV Page 678-680

Annexure- R5 Volume IV Page 705-712

100%

6.

Applicant Company 6

07

Annexure- Q6 Volume IV Page 681-683

Annexure- R6 Volume IV Page 713-726

100%

7.

Applicant Company 7

07

Annexure- Q7 Volume IV Page 684-686

Annexure- R7 Volume V Page 727-753

100%

8. It is submitted by Ld. Authorized Representative appearing for the Applicants that there is no requirement of meeting of secured creditors in view of NIL Secured Creditors of the Applicant Companies which is evidenced from the Statutory Auditor's Certificate of the respective Applicant Companies.

Sl.

No.

Company

Secured Creditors as on 30.06.2022

Auditors Certificate

1.

Applicant Company 1

NIL

Annexure- S1

Volume V, Page 754-756

2.

Applicant Company 2

NIL

Annexure- S2

Volume V, Page 757-759

3.

Applicant Company 3

NIL

Annexure- S3

Volume V, Page 760-762

4.

Applicant Company 4

NIL

Annexure- S4

Volume V, Page 763-765

5.

Applicant Company 5

NIL

Annexure- S5

Volume V, Page 766-768

6.

Applicant Company 6

NIL

Annexure- S6

Volume V, Page 769-771

7.

Applicant Company 7

NIL

Annexure- S7

Volume V, Page 772-774

9. It is submitted by Ld. Authorized Representative appearing for the Applicants that more than 90% in the value of Unsecured Creditors of the Applicant Companies have already given their consent to the Scheme, all of which are annexed to the Company Application, details whereof are presented hereunder:

Sl.

No.

Company

Unsecured Creditors as on 30.06.2022

Auditors Certificate

Consent from Unsecured Creditors

Percentage

1.

Applicant Company 1

02

Annexure- S1 Volume V, Page 754-756

Annexure- T1 Volume V Page 775-778

100%

2.

Applicant Company 2

03

Annexure- S2 Volume V, Page 757-759

Annexure- T2 Volume V Page 779-782

99.70%

3.

Applicant Company 3

NIL

Annexure- S3 Volume V, Page 760-762

-

-

4.

Applicant Company 4

NIL

Annexure- S4 Volume V, Page 763-765

-

-

5.

Applicant Company 5

01

Annexure- S5 Volume V, Page 766-768

Annexure- T3 Volume V Page 783-784

100%

6.

Applicant Company 6

NIL

Annexure- S6 Volume V, Page 769-771

-

-

7.

Applicant Company 7

01

Annexure- S7 Volume V, Page 772-774

Annexure- T4 Volume V Page 785-788

100%

10. It is submitted by the Ld. Authorized Representative appearing for the Applicants that the Statutory Auditor of the respective Applicant Companies have by their certificates confirmed that the accounting treatment proposed in the Scheme is in conformity with the accounting Standards prescribed under Section 133 of the Companies Act, 2013and rules made thereunder.

Sl.

No.

Company

Date

Auditors Certificate

1.

Applicant Company 1

05-07-2022

Annexure- V1

Volume V, Page 814-816

2.

Applicant Company 2

05-07-2022

Annexure- V2

Volume V, Page 817-819

3.

Applicant Company 3

05-07-2022

Annexure- V3

Volume V, Page 820-822

4.

Applicant Company 4

05-07-2022

Annexure- V4

Volume V, Page 823-825

5.

Applicant Company 5

05-07-2022

Annexure- V5

Volume V, Page 826-828

6.

Applicant Company 6

05-07-2022

Annexure- V6

Volume V, Page 829-831

7.

Applicant Company 7

05-07-2022

Annexure- V7

Volume V, Page 832-834

11. Directions are accordingly sought for:

(a) Dispensing with meetings of the Equity Shareholders of all the Applicant Companies; and

(b) Dispensing with meetings of the Unsecured Creditors of the Applicant Company No. 1, 2, 5 and 7.

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 order:-

(a) Meetings dispensed:

Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant Company No. 1, 2, 5 and 7 are dispensed with under Section 230(1) read with Section 232(1) of the Act.

(b) Meeting not required to be conducted:

Given that there are nil Secured Creditors in all the Applicant Companies, and nil Unsecured Creditors in Applicant Company No. 3, 4 and 6 the question of conducting the meeting does not arise.

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 :

- Regional Director, Eastern Region; Ministry of Corporate Affairs, Kolkata;
- Registrar of Companies with whom the Applicants are registered;
- Official Liquidator, High Court, Calcutta;
- Reserve Bank of India; and
- Income Tax Department having jurisdiction over the Applicants.

These notices shall be sent by hand delivery through special messenger, by post & also by email within two weeks from the date of receiving the Order. The notice shall specify that representation, if any, shall 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 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. 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 Applicant Companies shall file affidavit with the Registry in regard to the directions given in this Order to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

15. The application being Company Application (CAA) No. 172/KB/2022 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.

