(2020) 07 NCLT CK 0126

In the National Company Law Appellate Tribunal

Case No : Company Application No. Ca(CAA)-46(Nd) Of 2020

Fibcom India Limited	APPELLANT
Vs	
Prima Telecom Limited	RESPONDENT

Date of Decision : 01-07-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 3(2)
Companies Act, 2013 — Section 230, 230(2), 230(9), 231, 232

Citation : (2020) 07 NCLT CK 0126

Hon'ble Judges : P.S.N. Prasad, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Kabir Diwan, Deepak Diwan

Final Decision : Allowed

Judgement

P.S.N. Prasad, J

1. This is an application filed by the applicant companies herein namely, Fibcom Inida Limited (for brevity "Transferor/Applicant Company No. 1") and Prima Telecom Limited (for brevity "Transferee/Applicant Company No. 2") under Section 230-232 of Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants. The said Scheme is also annexed as "Annexure- A" to the application. The applicants above named have preferred the instant application in effect for the following purpose as is evident from the reliefs sought in Application, namely:-

a) Dispensation of meetings of Equity Shareholders, Preference Shareholders and Unsecured Creditors of Transferor/ Applicant Company No. 1 and the convening of meeting of Secured Creditors of Transferor/Applicant Company No. 1:

b) Dispensation of meetings of Equity Shareholders and Preference Shareholders of Transferee/Applicant Company No, 2 and convening of meetings of Secured Creditors and Unsecured Creditors of Transferee/Applicant Company No. 2:

c) Appropriate Orders/Directions for serving a notice to the Regional Director, Registrar of Companies, Official Liquidator and Jurisdictional Assessing Officer of the Applicant Companies;

d) Appropriate Orders/ Directions for permitting the fling of application, petition, other documents as may be required, for the purpose of sanctioning the proposed Scheme;

e) Pass such other and further orders as are deemed necessary in the facts and circumstances of the case;

2. Affidavits in support of the above application sworn for and on behalf of the Applicant Companies have been filed along with the application. Counsel for the joint applicants took us through the averments made in the application. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated in under Section 230(2) of the Act. It is further represented that a joint application filed by the applicant companies are maintainable in vies of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamation) Rules 2016 and it is also represented that the Registered Office of both the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within the domain of Registrar of Companies, NCT, New Delhi.

3. in relation to the Transferor/Applicant Company No. 1 it is represented that it is having Seven (7) Equity Shareholders and One (1) Preference Shareholder. In relation to the Equity and Preference Shareholders, the Transferor Company/ Applicant Company No. 1 seeks dispensation from convening and holding meetings of the Equity and Preference shareholders as both the Equity and Preference shareholders holding 100% in value of the Equity and Preference shareholding of the Transferor Company have given their consents by way of affidavit and they are placed on record. It is further represented by the counsel for the applicants that Transferor Company/Applicant Company No. 1 seeks dispensation of meeting of Unsecured creditors since Unsecured Creditors amounting to 92% in value have given their consent by way of affidavits and its placed on record. In relation to the Secured creditors, it is represented that the Transferor Company/Applicant Company No. 1 has Five (5) Secured Creditors and that the Transferor/Applicant Company No. 1 is seeking convening and holding of the meeting of the Secured creditors to obtain their approval to the proposed Scheme.

4. In relation to the Transferee Company/Applicant Company No, 2, the Learned Counsel represents that the company is having Nine (9) equity shareholders and no Preference Shareholders. All the Equity Shareholders holding 100% in value have given their consents and is therefore seeking dispensation of shareholders meeting of the Transferee/Applicant Company No. 2. It is further represented by

the counsel for applicants that the Transferee/Applicant Company No. 2 has Three (3) Secured Creditors and One Hundred and Fifty Five (155) Unsecured Creditors. In relation to the Secured Creditors and Unsecured Creditors, the Transferee/ Applicant Company No. 2 seeks convening of the meetings for the purpose of obtaining their approval to the proposed Scheme.

5. Both the companies have filed their Memorandum and Articles of Association as well as their last available audited financial statements for the year ended 31.03.2019.

6. The Board of Directors of the Transferor Company and the Transferee Company vide separate meetings have approved the proposed Scheme of Amalgamation as contemplated above and copies of the resolutions passed there at have been placed on record by the companies.

7. It is submitted that the proposed amalgamation is sought to be made under the provisions of Section 230 and 232 of the Companies Act, 2013 read with Companies (Amalgamations, Compromises and Amalgamations) Rules, 2016, All the applicant companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of Companies, Act, 2013 or under the provisions of the Companies Act, 1956 is pending against any of the applicant companies.

8. It is pertinent to mention here that in respect of shareholders of both applicant companies the applicant has prayed for dispensation from holding and convening their respective meetings on the ground that the shareholders have given their written consent in favour of the Scheme. Heard the submissions of the Ld. Counsel for the Applicant Companies.

In terms of section 230 of the Companies Act, 2013 there are no enabling provision to dispense with the meetings of shareholders/ members of the companies. Additionally in terms of Section 230(9) of the Companies Act, 2013 the meetings of the creditors can be dispensed only If the creditors have given consent by way of affidavits. The Section 230 has been reproduced below:

230. Power to compromise or make arrangements with creditors and members

(1) Where a compromise or arrangement is proposed-

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order meeting of the creditors or class of creditors, or of the members or class of members, as thecase may be, to be called, held and conducted in such manner as the Tribunal directs

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at feast ninety

percent value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement ....

8. Therefore, in light of mandatory statutory provisions of Section 230 of the Companies Act, 2013 we are not able to dispense meetings of shareholders/ members of both the companies.

9. Taking into consideration the application filed jointly by the Transferor company and the Transferee company and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and unsecured creditors or dispensing with the same as well as issue of notices including by way of paper publications as follows:

A) In relation to the Transferor Company/Applicant Company No. 1

(i) With respect to Equity Shareholders:

Meeting of the Equity Shareholders of the Transferor/Applicant Company No. 1 is directed to be held on August 08th, 2020 at 12:00 PM at ML 13, Forest Lane, Sainik Farm,New Delhi-110068 or Online subject to the notice of meeting being issued. The quorum for the meeting of the Equity Shareholders of the Transferor/ Applicant Company No. 1 shall be 4 in number or 75 %in value whichever is higher.

(ii) With respect to Preference Shareholders:

Meeting of the Preference Shareholders of theTransferor/Appiicant Company No. 1 is directed to be held on August 8th, 2020 at 01:00 PM at ML 13, Forest Lane, Sainik Farm, New Delhi-110068 or Online subject to the notice of meeting being issued. The quorum for the meeting of the Preference Shareholders of the Transferor/Applicant Company No. 1 shall be 1 in number.

(iii) With respect to Secured Creditors:

Meeting of the Secured Creditors of the Transferor/Applicant Company No. 1 is directed to be held on August 08th 2020 at 02:00 PM at ML 13, Forest Lane, Sainik Farm, New Delhi-110068 or Online subject to the notice of meeting being issued. The quorum for the meeting of the Secured Creditors of theTransferor/ Applicant Company No. 1 shall be 3 in number or 75% in value whichever is higher.

(iv) With respect to Unsecured Creditors:

Since it is represented by the Transferor/Applicant Company No. 1 that Unsecured creditors holding 92% in value of the Unsecured debt in the Company have given their consent and it's placed on record, therefore necessity of convening a meeting of Unsecured Creditors does not arise.

B) In relation to the Transferee Company/Applicant Company No. 2

(i) With respect to Equity Shareholders:

Meeting of the Equity Shareholders of the Transferee/Applicant Company No. 2 is directed to be held on August 08th, 2020 at 3:00 PM at ML 13, Forest Lane, Sainik Farm, New Delhi-1 10068 or Online subject to the notice of meeting being issued. The quorum for the meeting of the Equity Shareholders of the Transferee/ Applicant Company No. 2 shall be 6 in number or 75% in value whichever is higher,

(ii) With respect to Preference Shareholders:

Since it is represented by the Transferee/Applicant Company No. 2 that there are no Preference shareholders in the Company, therefore necessity of convening a meeting of Preference Shareholders does not arise.

(iii) With respect to Secured Creditors:

Meeting of the Secured Creditors of the Transferee/Applicant Company No. 2 is directed to be held on August 08th, 2020 at 04:00 PM at ML 13, Forest Lane, Sainik Farm, New Delhi-1 10068 or Online subject to the notice of meeting being issued. The quorum for the meeting of the Secured Creditors oftheTransferee/ Applicant Company No. 2 shall be 2 in number or 75% in value whichever is higher.

(iv) With respect to Unsecured Creditors:

Meeting of the Unsecured Creditors of the Transferee/Applicant Company No. 2 is directed to be held on August 08th 2020 at 05:00 PM at ML 13, Forest Lane, Sainik Farm, New Delhi-110068 or Online subject to the notice of meeting being issued. The quorum for the meeting of the Unsecured Creditors of the Transferee Company No. 2 shall be 80 in number or 75% in value whichever is higher.

C. Rajiv Shankar Divedi (AOR), (Mobile: 9313061263) is appointed as the Chairperson, Adv. Soyansh, (Mobile: 8800879009) is appointed as the Alternate Chairperson and Milan singh negi (CS), (Mobile: 90155332650) is appointed as Scrutinizer for the aforesaid meetings in terms of direction issued herein.

D. In case the quorum as noted above for the above meetings are not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the Applicant Companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with scrutinizer shall ensure that the proxy registers are properly maintained.

E. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/- (One Lakh Fifty Thousand) and the fee of the Alternate Chairperson shall be Rs. 1,25,000/- (One Lakh Twenty Five Thousand) the fee of the Scrutinizer shall be

Rs. 1,25,000/-(One Lakh Twenty Five Thousand) in addition to meeting their incidental expenses. The Chairpersons will file their reports within a week from the date of holding of the above said meetings.

F. That individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meetings, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

G. That the Applicant Companies shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi editions of 'Business Standard' both English and Hindi stating the copies of Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Company-II/ Transferee Company.

H. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of the Applicant Companies under the Companies Act, 2013 and rules framed there under.

I. The companies shall individually send notice to Centra! Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana, Official Liquidator along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

J. The Applicant Companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor of the Applicant Company-II/ Transferee Company entitled to attend the meetings as aforesaid.

K. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

L. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed in the aforesaid terms.

Let the copy of the order be served to the parties.

