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(2022) 05 NCLT CK 0019

In the National Company Law Tribunal

Case No : C.A. NO.(CAA) NO. 214/ KB /2021

Fourfox Engineering Private Limited Vs

Date of Decision : 09-05-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232

Citation : (2022) 05 NCLT CK 0019

Hon'ble Judges : Rohit Kapoor, Member (J);Harish Chander Suri, Member (T)

Bench : Division Bench

Advocate : Yashraj Roy, Subhadeep Chatterjee

Final Decision : Disposed Of

Judgement

Harish Chander Suri, Member (Technical)

1. The instant petition has been filed in the first stage of the proceedings under Section 230-232 of the Companies Act, 2013 ("Act") for dispensation of meetings of equity shareholders and the secured and unsecured creditors for sanction of the Scheme of Amalgamation of SARAF VINIMAY PRIVATE LIMITED and S.B. GASKETS & ENGINEERING PRODUCTS PRIVATE LIMITED with FOURFOX ENGINEERING PRIVATE LIMITED and their respective shareholders and creditors,whereby and whereunder the Transferor Companies is proposed to be amalgamated with the Transferee Company from the Appointed Date, i.e. 01.04.2020 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation annexed with the Application as "Annexure-G".

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

a) Transferee Company /Applicant Company has 7 (Seven) Equity Shareholders, 3 (Three) Secured Creditors and 3 (Three) Unsecured Creditors.

b) Transferor Company No. 1 / Applicant Company No. 1 has 2 (Two) Equity

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Shareholders and NIL Secured Creditors & Unsecured Creditors

c) Transferor Company No. 2 /Applicant Company No. 2 has 2 (Two) Equity Shareholders and NIL Secured Creditors & Unsecured Creditors

3. The Board of Directors of the Transferee Company and Transferor Companies at their Board Meetings, held on 30.06.2021 approved and resolved to carry out the said Scheme of Amalgamation. The copies of the resolution passed by the applicant Companies are annexed with the Application as "Annexure H"

4. It is further submitted that all the equity shareholders of the Transferee Company and Transferor Companies, have consented to the Scheme of Amalgamation by way of consent in the form of affidavit to waive off the convening and holding of meeting for consideration and approval of the Scheme of Amalgamation. The consents given by the equity shareholders of the Applicant Companies in the form of affidavits are annexed with the application and marked "Annexure M" and "Annexure O".

5. It is further submitted that the Transferor Companies has NIL number of Secured and Unsecured Creditors and the Transferee Company has 3 (Three) Secured Creditors and 3 (Three) Unsecured Creditors have consented to the Scheme of Amalgamation by way of consent in the form of affidavit to waive off the convening and holding of meeting for consideration and approval of the Scheme of Amalgamation. The consents given by the Secured Creditors and Unsecured Creditors of Transferee Company in the form of affidavits are annexed with the application and marked as "Annexure S"

6. The statutory auditors of each of the Applicant Companies have given certificate certifying the list of secured and unsecured creditors in the Transferor Companies and Transferee Company as on 28.02.2021. The copies of such certificate along with the list of secured and unsecured creditors drawn as on the dates mentioned above, are annexed with the Application and marked as "Annexure P, Q and R".

7. The certificate by the Chartered Accountant in respect of the Applicant Companies verifying conformity with Accounting Standard under Section 133 of the Companies Act, 2013 is annexed with the Application and marked as "Annexure I".

8. Directions are sought accordingly for dispensing with meetings of the shareholders and the creditors of the Applicant Companies.

9. 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 pass the following directions:-

a) In view of the consents given in affidavit form by all the shareholders of the Transferee and the Transferor Companies, meeting of shareholders of the Transferee and Transferor companies are hereby dispensed with.

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b) Since there are NIL secured and unsecured Creditors in Transferor Companies, hence the requirement for obtaining the consent in writing by way of affidavit agreeing to the Scheme of Amalgamation and also consenting to waive holding of separate meeting of the creditors of the concerned Applicant Companies, as certified by the statutory auditor of the respective Applicant companies, convening and holding of separate meetings of the creditors of the Applicant Companies, are not applicable;

c) Since there are 3 (Three) Secured Creditors and 3 (Three) Unsecured Creditors in Transferee Company, the consents given in affidavit form by all the Secured Creditors and Unsecured Creditors of the Transferee Company in writing agreeing to the Scheme of Amalgamation and also consenting to waive holding of separate meeting of the creditors of the concerned Applicant Companies, therefore convening and holding of separate meetings of the Secured Creditors and meeting of Unsecured Creditors of the Transferee Company are hereby dispensed with.

d) To serve a 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 Applicant(s) are registered; Official Liquidator and Income Tax Department having jurisdiction over the Applicant(s), by sending the same by hand delivery through special messenger, registered post, by post and by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should 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 Authorised Representative of the said Applicant Companies. 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 of Amalgamation. 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. CAA-3 of the said Rules with necessary variations, incorporating the directions herein.

e) The Applicant Companies shall file affidavit of service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with

10. The application being Company Application (CAA) No.214/KB/2021 is disposed of accordingly.

11. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

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