(2022) 12 NCLT CK 0018

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 156/KB/2022

Gaganachal Vyapar Pvt. Ltd Vs

Date of Decision : 15-12-2022

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 : (2022) 12 NCLT CK 0018

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. This Court is congregated through hybrid mode.

2. The instant application has been filed in the first stage of the proceedings under Sub-section 1 of the Section 230 read with Sub-section 1 of the Section 232 of the Companies Act, 2013 (hereinafter referred as "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 Gagananchal Vyapar Pvt. Ltd. being the Applicant Company 1 abovenamed ("Transferor Company 1"), Hema Exports Pvt. Ltd. being the Applicant Company 2 abovenamed ("Transferor Company 2"), Joyous Agencies Pvt. Ltd. being the Applicant Company 3 abovenamed ("Transferor Company 3"), Newtech Vanijya Pvt. Ltd. being the Applicant Company 4 abovenamed ("Transferor Company 4") with Kasturi Vinimay Pvt. Ltd. being the Applicant Company 5 abovenamed ("Transferee Company") whereby and whereunder the Transferor Companies are proposed to amalgamate with the Transferee Company from the Appointed Date, viz 1st April 2021 in the manner and as per the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred as "Scheme"). A copy of the said Scheme is annexed to the Company Application marked Annexure-K in Volume III, Page nos. 493 to 514.

3. It is submitted by the Ld. Authorized Representative appearing for the Applicants that the Appointed Date as per the Scheme is 1st April 2021.

4. 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

15-03-2022

Annexure- L1

Volume III, Page 515-516

2.

Applicant Company 2

15-03-2022

Annexure- L2

Volume III, Page 517-518

3.

Applicant Company 3

15-03-2022

Annexure- L3

Volume III, Page 519-520

4.

Applicant Company 4

15-03-2022

Annexure- L4

Volume III, Page 521-522

5.

Applicant Company 5

15-03-2022

Annexure- L5

Volume III, Page 523-524

5. It is submitted by Ld. counsel appearing for the Applicants that the Valuation Report dated 10th March 2022 recommending the Swap Ratio has been prepared by Ms. Pranita Agarwal, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked Annexure-Q in Volume V, Page nos. 706 to 721.

6. It is submitted by Ld. counsel appearing for the Applicants that Applicant Company 2 and 5 are Non-Banking Financial Companies (NBFC) duly registered with Reserve Bank of India and are holding a valid Certificate of Registration issued by the said Bank.

7. 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

08

NIL

03

2.

Applicant Company 2

11

NIL

01

3.

Applicant Company 3

06

NIL

03

4.

Applicant Company 4

08

NIL

03

5.

Applicant Company 5

11

NIL

02

8. It is submitted by Ld. Authorized Representative appearing for the Applicants that the Equity Shareholders of Applicant Companies representing 100% 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

1.

Applicant Company 1

08

Annexure- M1

Volume III

Page 525-527

Annexure- N1 Volume IV Page 540-555

2.

Applicant Company 2

11

Annexure- M2

Volume III

Page 528-530

Annexure- N2 Volume IV Page 556-577

3.

Applicant Company 3

06

Annexure- M3

Volume III

Page 531-533

Annexure- N3 Volume IV Page 578-589

4.

Applicant Company 4

08

Annexure- M4

Volume III

Page 534-536

Annexure- N4 Volume IV Page 590-605

5.

Applicant Company 5

11

Annexure- M5

Volume III

Page 537-539

Annexure- N5 Volume IV Page 606-663

9. 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- O1

Volume IV, Page 664-666

2.

Applicant Company 2

NIL

Annexure- O2

Volume IV, Page 667-669

3.

Applicant Company 3

NIL

Annexure- O3

Volume IV, Page 670-671

4.

Applicant Company 4

NIL

Annexure- O4

Volume IV, Page 672-674

5.

Applicant Company 5

NIL

Annexure- O5

Volume IV, Page 675-677

10. It is submitted by Ld. Authorized Representative appearing for the Applicants that 100% 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

1.

Applicant Company 1

03

Annexure- O1

Volume IV Page 664-666

Annexure- P1

Volume V Page 678-683

2.

Applicant Company 2

01

Annexure- O2

Volume IV Page 667-669

Annexure- P1

Volume V Page 684-685

3.

Applicant Company 3

03

Annexure- O3 Volume IV

Page 670-671

Annexure- P2 Volume V

Page 686-691

4.

Applicant Company 4

03

Annexure- O4

Volume IV Page 672-674

Annexure- P3

Volume V Page 692-697

5.

Applicant Company 5

02

Annexure- O5 Volume IV

Page 675-677

Annexure- P4 Volume V

Page 698-705

11. 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, 2013 and rules made thereunder.

Sl.

No.

Company

Date

Auditors Certificate

1.

Applicant Company 1

12-08-2022

Annexure- R1

Volume V, Page 722-724

2.

Applicant Company 2

19-07-2022

Annexure- R2

Volume V, Page 725-727

3.

Applicant Company 3

12-08-2022

Annexure- R3

Volume V, Page 728-730

4.

Applicant Company 4

12-08-2022

Annexure- R4

Volume V, Page 731-733

5.

Applicant Company 5

11-08-2022

Annexure- R5

Volume V, Page 734-736

12. 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 Companies.

13. 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

Companies 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, the question of conducting the meeting does not arise.

14. 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; by sending the same by hand delivery through special messenger or by post and 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.

15. 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.

16. The application being Company Application (CAA) No. 156/KB/2022 is disposed of accordingly.

17. Urgent Certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

