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(2024) 01 NCLT CK 0027

In the National Company Law Tribunal

Case No : CA (CAA) No. 214/ KB /2023

Goenka Leasing & Finance Pvt. Ltd Vs

Date of Decision : 04-01-2024

Acts Referred:

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

Citation : (2024) 01 NCLT CK 0027

Hon'ble Judges : Bidisha Banerjee, Member (J);Arvind Devanathan, Member (T)

Bench : Division Bench

Advocate : Arti Vyas

Final Decision : Disposed Of

Judgement

Bidisha Banerjee, Member (Judicial)

1. This Court is convened through hybrid mode.

2. Heard the Learned Counsels for both the parties.

3. 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 dispensation of meetings of shareholders and creditors in connection with the Scheme of Amalgamation of Goenka-Leasing & Finance Private Limited being the "Transferor Company No 1" or "Applicant No.1", Shankar Estates Private Limited being the "Transferor Company No 2" or "Applicant No.2" with Kanu Holdings Private Limited, being the "Transferee Company" or "Applicant No.3" whereby and where under the Transferor Companies is proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April, 2023 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

4. The Board of Directors of the Applicant Companies at their Board Meetings, held on 9th October 2023 approved and resolved to carry out the said Scheme of Amalgamation. The copies of the resolution passed by the applicant companies

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are annexed with the Company Application being Annexure- G at Page No. 222-224.

5. It is submitted by Learned Authorized Representative appearing for the Applicants that Applicant Company no 3 involved in the Scheme is a NBFC Company.

6. It is further submitted by the Learned Authorised Representative appearing for the Applicants that the shares of all the Applicants are not listed on the stock exchanges. Further, the applicants have the following classes of shareholders and creditors:

SL.

No.

Name of the Applicant

Companies

Equity Shareholders

Secured

Creditors

Un Secured

Creditors

1

Goenka-Leasing &

Finance Private Limited

4

NIL

NIL

2

Shankar Estates Private

Limited

4

NIL

NIL

3

Kanu Holdings Private

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Limited

4

NIL

NIL

7. Ld. Authorised Representative appearing for the Applicants submits that the Equity Shareholders of Applicant Company No. 1, 2 and 3 have given their consent in writing via affidavits for the approval of the proposed Scheme of Amalgamation which is annexed with the Company Application being Annexure- L at Page No. 272-298.

8. Ld. Authorised Representative appearing for the Applicants further submits that none of the Applicant Companies have any creditors, so the need of their consent does not arise in our case, the certificate by the Chartered Accountant in respect of NIL creditors of the applicant companies is annexed with the Company Application being Annexure- M at Page No. 299-301.

9. The certificate by the Chartered Accountant in respect of the Transferee Company verifying conformity with Accounting Standard under Section133 of the Companies Act 2013 is annexed with the Company Application being- Annexure- J at Page No. 267-268.

10. The Ld. Authorised Representative further submits that the Applicants now seek admission of the instant petition presented by them for sanction of the Scheme. Dispensation of such meetings to consider the Scheme has been sought accordingly.

11. The Ld. Authorised Representative for the Applicants further submits that the present Scheme is an arrangement between the Applicant Companies and none of the members, shareholders, and creditors will be affected by the Scheme.

12. Heard the Ld. Authorised Representative for the Applicants 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 orders: -

a) In view of the consents given through affidavit by all the equity shareholders of the Applicant Companies, the meeting of equity shareholders is hereby dispensed with.

b) The applicants 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 following authorities:

i) The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata.

ii) The Registrar of Companies West Bengal, Kolkata with whom the Applicants

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are registered.

iii) The Official Liquidator; High Court Calcutta.

iv) The Income Tax Department having jurisdiction over the Applicants.

v) The Reserve Bank of India, Kolkata.

These notices shall be sent by hand delivery through 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 Counsel of the said 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 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. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

c) The Applicants shall file an affidavit proving service of notices and compliance of all directions contained herein.

13. The application being Company Application CA(CAA) No.214/KB/2023 is disposed of accordingly.

14. Certified copy of the order may be issued, if applied for with the registry of this Adjudicating Authority, be supplied to parties upon compliance with all the requisite formalities.

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