(2020) 05 NCLT CK 0026

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application (CAA) No. 43(PB) Of 2020

Green Line Chemicals Private Limited	APPELLANT
Vs	
Green Line Laminates Private Limited	RESPONDENT

Date of Decision : 13-05-2020

Acts Referred:
National Company Law Tribunal Rules, 2016 — Rule 3, 6, 14, 18
Companies Act, 2013 — Section 103(1)(b), 230, 230(3), 230(5), 231, 232

Citation : (2020) 05 NCLT CK 0026

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Kangan Jain

Final Decision : Allowed

Judgement

1. Under consideration is the Joint Company application No. CA (CAA)-43(PB)/2020 filed under Sections 230 to 232 of the Companies Act, 2013 (hereinafter referred as "Act, 2013") r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred as "Rules"). The present petition has been filed by the Applicant Companies named above for the purpose of the approval of the Scheme of Amalgamation, as contemplated between the Companies and its Shareholders by way of Amalgamation of Transferor Company with the Transferee Company.

2. As per the Scheme of Amalgamation (hereinafter referred as "Scheme") the Transferor Company viz., Green Line Chemicals Private Limited (hereinafter referred as "Transferor Company") is proposed to get merged with Green Line Laminates Private Limited (hereinafter referred to as the "Transferee Company") as going concern.

3. The Transferor Company is a Private Limited company incorporated on 14th August, 2003 under the provisions of Companies Act, 1956 (hereinafter referred

as "Act 1956") in the name and style of Green Line Chemicals Private Limited' and in the National Capital Territory of Delhi under the Company Identification Number (hereinafter referred as "CIN") U52390DL2013PTC261796. The Transferor Company is engaged in the business of Coated Textile Fabric. The main objects of the Transferor Company are set out in Clause III (A) of the Memorandum of Association (hereinafter referred as "MoA"). The Authorized share capital of the Transferor Company as on March 31, 2019 is Rs. 10,000,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each and the issued, subscribed and paid up share capital as on March 31, 2019 is Rs. 97,40,000/- divided into 9,74,000 equity shares of Rs. 10/-each.

4. The Transferee Company is a Private Limited company incorporated on 9th December, 2013 under the provisions of the Act, 1956 in the name and style of 'Green Line Laminates Private Limited' and in the National Capital Territory of Delhi under the CIN U51496DL2003PTC12 1790. The Transferee Company is engaged in the business of Coated Textile Fabric. The main objects of the Transferee Company are set out in Clause III (A) of the MoA. The Authorized share capital of the Transferee Company as on March 31, 2019 is Rs. 17,000,000/- divided into 17,00,000 equity shares of Rs. 10/- each and the issued, subscribed and paid up share capital as on March 31, 2019 is Rs. 16,000,000/-divided into 16,00,000 equity shares of Rs. 10/- each.

5. The Applicant companies have sought an Order from this Tribunal for dispensing the requirement of calling, convening, holding the meetings of equity shareholders, secured and unsecured creditors, to direct service of notice of this application through the office of (a) the Regional Director, Ministry of corporate Affairs, (b) Registrar of Companies NCT, Delhi, (c) the official liquidator, Ministry of Corporate Affairs, New Delhi, and (d) Income Tax Department, New Delhi and pass such other/further Orders.

6. It is represented that the joint application is maintainable in view of Rule 3 and Rule 18 of the Rules and it is also represented that the registered office of the applicant Companies are situated within the territorial jurisdiction of this tribunal and fall within the domain of Registrar of Companies Northern Region, NCT, Delhi.

7. It is submitted that the Applicant Companies are closely held private limited companies, under common shareholding, management and control. In relation to the Transferor Company it has been represented that there are 7 (seven) Equity Shareholders, Nil Secured creditors, 2 (two) unsecured Creditors. All the equity shareholders, unsecured creditors have filed their written consents by way of affidavits. It is stated that as on 31st March 2019 there are no secured creditors of Transferor Company.

8. In relation to the Transferee Company it has been represented that there are 8 (eight) Equity shareholders, 4 (four) Secured Creditors, 111(one hundred eleven) Unsecured creditors. All the equity shareholders have filed their written

consents by way of affidavits. It is stated that 3 (three) secured creditors have given their written consents by way of affidavits and 1 (one) has been closed during the year. The letter from the secured creditor and certificate from Chartered Accountant attached are placed on record. Further, 101 (one hundred and one) unsecured creditors have given their written consents by way of affidavits and 10 (ten) have been paid during the year and the payment confirmation along with certificate from Chartered Accountant are placed on record.

9. The Board of Directors of the Transferor and transferee Company vide separate meeting held on 18th July, 2020, have unanimously passed resolutions and approved the proposed Scheme as contemplated above and copies of the resolutions have been placed on record.

10. Taking into consideration the Application and documents filed therewith we propose to issue the following directions with respect to calling, convening, holding of meetings of the Shareholders, Secured and unsecured creditors or dispensing with the same which are as follows:-

10.1. In relation to the Transferor Company:

A. It is directed that meeting of equity shareholders of the Transferor Company to be held at 10:00 AM on 3rd July 2020 at the Registered office situated at C-9/30, Sector-8, Rohini, New Delhi -110085, (hereinafter referred as "Registered Office of the Transferor Company") for the purpose of considering and if thought fit approving, with or without modifications the proposed Scheme.

B. It is directed that meeting of Unsecured Creditors of the Transferor Company to be held at 12:00 PM on 3rd July 2020 at the Registered Office of the Transferor Company for the purpose of considering and if thought fit approving, with or without modifications the proposed Scheme.

C. It is represented by the Transferor Company that as on 31st March 2019 there are no Secured Creditors, therefore necessity of convening, holding the meeting of secured creditors is obviated.

10.2. In relation to the Transferee Company:

A. It is directed that meeting of equity shareholders of the Meeting of equity shareholders of the transferee Company to be convened at the registered office situated at 206, Agarwal Plaza, Plot No-H-7, Netaji Subhash Place, Pitampura, Delhi- 110034, (hereinafter referred as "Registered Office of the Transferee Company") on 3rd July, 2020 at 02:00 PM or any adjourned dates thereof for the purpose of considering and if thought fit approving, with or without modifications the proposed Scheme.

B. It is directed that meeting of Secured Creditors of the Transferee Company to be convened at the Registered Office of the Transferee Company on 3rd July 2020 at 12:00 PM or soon thereafter after the conclusion of the meeting of the equity shareholders of the Transferor Company, or any adjourned dates thereof for the purpose of considering and if thought fit approving, with or without modifications the proposed Scheme.

C. It is directed that meeting of Unsecured Creditors of the Transferor Company to be convened at the Registered Office of the Transferee Company, on 3rd July 2020 at 2:00 PM or any adjourned dates thereof for the purpose of considering and if thought fit approving, with or without modifications the proposed Scheme.

11. Further, it is directed that Mrs. Charu Sharma [CP: 21675; Membership No. 57099; Mobile: 8826617868], an Independent Practicing Company Secretary, to act as chairperson/chairman of the respective meetings of the Applicant Companies, who has agreed to act as Chairperson for the meetings at a consolidated amount of Rs. 30,000/-(Rupees thirty thousand Only) (exclusive of GST and out of pocket expenses) and Mr. Dishant Khatter, Practising Chartered Accountant [Membership No. 540382; Mobile: 8700237992], to act as scrutinizer of the respective meetings of the Applicant Companies, who has agreed to act as Scrutinizer at a consolidated amount of Rs. 20,000/- (Rupees twenty Thousand Only) (exclusive of GST and out of pocket expenses);

12. The Chairperson appointed by the Tribunal for the meetings of the equity shareholders, Secured and unsecured creditors of the Applicant companies is hereby directed to issue notice of the respective meetings to the equity shareholders, Secured and Unsecured Creditors and publication of the date of notices of respective meetings in newspapers. The Chairpersons should have all the powers as per the Articles of Association also under the Act 2013 and Rules in relation to the conduct of the meetings, including for deciding procedural questions that may arise thereafter at any adjourned dates thereof or any other matter including an amendment to the Scheme or the resolution if any proposed at the meeting by any person (s).

13. The Quorum of the aforesaid meetings shall be as provided under Section 103 (1) (b) of the Act, 2013 and the persons present at the meeting of the equity shareholders shall adjourn the meeting by half an hour where the requisite quorum is not present to form 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 respective Applicant. Companies at least 48 hours before the meetings.

14. It is directed that at least 30 days clear notice to be sent before the said meeting of the equity shareholders, Secured and Unsecured Creditors of the Applicant Companies to be held. A copy of statement disclosing all material facts as required under Section 230 (3) of the Act, 2013 read with Rule 6 of the Rules and prescribed Form of Proxy shall be sent by Registered Post or Speed Post or courier or through hand delivery or through E-mail (to those whose E-mail addresses are duly registered with the Transferor Company).

15. That the Applicant Companies shall publish on their respective websites and 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. The publication in the newspapers shall be done in Delhi editions of the newspaper "Financial Express" (English language) and in Hindi newspaper "Jansatta" (Hindi language), stating the copies of Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Act 2013 readwith Rules and the Form of proxy shall be obtained free of charge at the Registered office of the respective Applicant Companies convening meeting of equity shareholders.

16. The Chairperson of the meetings to file an affidavit not less than 7 (seven) days before the date fixed for holding of the meetings of the equity shareholders, Secured and Unsecured Creditors and report to this Tribunal that the directions regarding issue of notices and advertisements have been duly complied with.

17. The Chairperson of the meetings to report to this tribunal the result of the respective meetings of the equity shareholders, Secures and unsecured creditors and the said report shall be verified by his/her affidavit as per Rule 14 of the Rules.

18. The Applicant Companies to serve notice of the meetings of the equity shareholders, Secures and unsecured creditors upon the Central government through the office of Regional Director, Ministry of corporate Affair, under section 230(5) of the Act, 2013 at B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, New Delhi - 110003 having E-mail Id rd.north@mca.gov.in. If no response is received by the Tribunal from the Regional Director within 30 days of the date of receipt of the said notice, it will be presumed that the Regional Director has no objection to the proposed Scheme.

19. The Applicant Companies to serve notice of the meetings of the equity shareholders, Secures and unsecured creditors upon the Registrar of Companies, Northern Region, at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi -110019. If no response is received by the Tribunal from the Registrar of companies within 30 days of the date of receipt of the said notice, it will be presumed that the Registrar of Companies has no objection to the proposed Scheme.

20. The Applicant Companies to serve notice of the meetings of the equity shareholders, Secures and unsecured creditors upon the Official Liquidator, at 8th floor, Lok Nayak Bhawan Khan Market, New Delhi. If no response is received by the Tribunal from the Official Liquidator within 30 days of the date of receipt of the said notice, it will be presumed that the Official Liquidator has no objection to the proposed Scheme.

21. The Applicant Companies to serve notice of the meetings of the equity shareholders, Secures and unsecured creditors upon the concerned Income tax authority. The Applicant companies shall disclose sufficient details like PAN card number, ward number and assessing officer so that timely and proper reply can be filed. If no response is received by the Tribunal from the concerned Income

tax authority within 30 days of the date of receipt of the said notice, it will be presumed that the concerned Income tax authority has no objection to the proposed Scheme.

22. The Applicant Companies shall comply the aforesaid directions strictly in accordance with the applicable law including Forms and Formats contained in the Rules as well as the provisions of the Act, 2013.

23. The Application CA (CAA)-43(PB)/2020 stands allowed in the aforesaid terms.

