(2020) 07 NCLT CK 0023

In the National Company Law Appellate Tribunal

Case No : Company Application No. Company Application (CAA) No. 170(ND) Of 2019

Gsj Envo Limited APPELLANT

Vs

Goodwill Apartments Private Limited RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 14
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2020) 07 NCLT CK 0023

Hon'ble Judges : Dr. Deepti Mukesh, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Amrita Sarkar, Tania Sharma

Final Decision : Allowed

Judgement

Hemant Kumar Sarangi, Member (T)

1. This application has been jointly filed by the Applicant Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of the Applicant Companies, seeking appropriate orders/directions for dispensing with the requirement of convening the meeting of Secured Creditor of the Applicant Company 1 and direction be issued to the Secured Creditor to provide either consent / objection, in connection with the proposed Scheme of Arrangement as contemplated between the applicant companies. The said Scheme of Arrangement (hereinafter referred to as the "Scheme") has been placed on record along with the joint application.

2. It is represented that the registered offices of all the applicant companies are situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Bench.

3. An affidavit in support of the above application sworn by and on behalf of all the Applicant No. 1 / Demerged Company by Mr. Gurcharan Singh Jolly with Applicant No. 2 / Resulting Company by Mr. Inderdeep Singh Jolly, the authorised persons has been filed. The corresponding Board resolutions of authorization by all companies have also been placed on record.

4. M/s. GSJ ENVO Limited (Demerged Company) was incorporated on 01.08.1995, under the provisions of the Companies Act, 1956 with the Registrar of Companies Delhi & Haryana. The present Authorized Share Capital of the Transferee Company is Rs. 1,00,00,000/- divided into Rs. 10,00,000/- Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each as on 31.03.2019. The registered office of the Company is situated at 51, Hemkunt Colony, New Delhi-110048.

5. It is submitted that the Demerged Company has Eight (8) Equity Shareholders and all the equity shareholders have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record.

6. It is further stated that the demerged company has sole secured creditor representing 100% of the total value of Equity Shares of the company have given their consent affidavit in favour of the Scheme. There are 105 unsecured Creditors constituting 93.97% in Value of the total outstanding balance of the unsecured Creditors. Certificate from Statutory Auditors certifying list of shareholders as well as creditors are annexed. In relation to the shareholders and unsecured creditors, the demerged company seeks dispensation from convening and holding of their respective meetings on the ground that the same have given their consent affidavits in favour of the Scheme.

7. M/s. Goodwill Apartments Private Limited Applicant / Resulting Company No. 2 was incorporated on 2nd day of May 1988 under the Companies Act, 1956, with the Registrar of Companies Delhi & Haryana. The present Authorized Share Capital of the Resulting Company is Rs. 2,00,00,000/- divided into Rs. 2,00,000/- Equity Shares of Rs. 100/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 1,89,72,200/- divided into 1,89,722/- Equity Shares of Rs. 100/- each as on 31.03.2019. The registered office of the Company is situated at E-82, Greater Kailash, Part-1, New Delhi-110046.

8. It is submitted that the Applicant No. 2 / Resulting Company has 'Four' Equity Shareholders and all the equity shareholders have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the Applicant / Resulting Company has no secured creditor and 6 Unsecured Creditors representing 100% of the total value of Equity Shares of the company have given their consent affidavit in favour of the Scheme. The

consent affidavits of all the members have been placed on record. The certificates of chartered accountant in respect of creditors have also been placed on record. In relation to the shareholders and creditors, the Transferor Company seeks dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

9. We have perused the joint application and the connected documents / papers filed with the application including the Scheme of Arrangement as contemplated between the Applicant companies.

10. The Board of Directors of all the Applicant Companies vide Board Resolution passed on 22.07.2019 have unanimously approved the proposed Scheme of Arrangement. Copies of such board resolutions passed by the board of directors have been placed on record by the companies.

11. All the Applicant Companies have filed their Memorandum and Articles of Association as well as the applicants have also filed their respective latest audited financial statements for the year ending 31.03.2019.

12. It is submitted that the proposed demerger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the same if sanctioned by this Tribunal, the appointed date as provided in the Scheme shall be April 1st, 2019.

13. All the applicant companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 is pending against any of the applicant companies.

14. The certificates of respective statutory auditors of all the applicant companies have been placed on record confirming that the accounting treatment in the scheme is in conformity with Section 133 of the Companies Act, 2013.

15. Further, it has been stated in the application that the Scheme will be beneficial to all the applicant companies and their respective shareholders, employees, creditors and other stake holders.

16. Taking into consideration the application filed jointly by all the Applicant Companies the following directions are issued:

A) In relation to the Demerged Company: -

i. The meeting of Equity Shareholders is dispensed with as there are only 8 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.

ii. The meeting of secured creditors is directed to be held at the registered office situated at 51, Hemkunt Colony, New Delhi 110048, on 12.09.2020 at 4:00 p.m.

iii. The meeting of unsecured creditors is also dispensed with as there are 105 unsecured creditors in the company and 93.97% in Value of the total outstanding balance of the unsecured Creditors have given their consent in favour of the scheme, therefore, the requirement of convening meeting of secured creditors does not arise.

B) In relation to the Resulting Company No. 1:-

i. The meeting of Equity Shareholders is dispensed with as there are only 4 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.

ii. The requirement of the meeting of secured creditors is obviated as there are no secured creditors in the company.

iii. The meeting of unsecured creditors is also dispensed with as there are 6 Unsecured Creditors representing 100% of the total value of Equity Shares of the company have given their consent affidavit in favour of the Scheme and therefore, the requirement of convening meeting of secured creditors does not arise.

C) Mr. Rakesh Kumar, Advocate (Mobile No. 9891239100) is appointed as the Chairperson, Mr. G. Sai Krishna Kumar, Advocate (Mobile No. +91-9582185888) is appointed as Alternate Chairman and Mr. Mahendra Jain, Practicing Company Secretary (Mobile No. 9953921510) as Scrutinizer for the meetings of the shareholders of the transferee Company in terms of the direction issued herein.

D. In case the quorum as noted above for the aforesaid meeting is not present at the meeting, then the meeting shall be adjourned by half an hour, thereafter the persons present and voting shall be deemed to constitute the quorum. The Chairperson and alternate Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy Registers are properly maintained.

E. The Fees of the Chairperson for the aforesaid meetings shall be Rs. 1,00,000/-, The Fees of the Alternate Chairperson Shall be Rs. 75,000/- and the Fees of the Scrutinizer shall be Rs. 75,000/- in addition to meeting their incidental expenses. The Chairperson will file its report within a week from the date of holding of the aforesaid meeting. The fees of Chairperson, Alternate Chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses shall be borne by the Applicant Companies. A copy of this order shall be supplied to the learned counsels for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer.

E. Individual notice shall be sent to the shareholder as above by the Applicant Companies through email or through registered post or speed post or courier services, as available considering the present circumstances due to the CoVID-19 pandemic and the consequent restrictions/ lockdowns imposed by the Central and State Government, 30 days in advance before the scheduled date of meeting, indicating the day, date, the place fixed for and time of meeting as aforesaid, together with a copy of Scheme and copy of explanatory statement as required under the Companies Act, 2013 and the Rules, along with the proxy forms and any other documents as may be prescribed under the Act, be provided free of cost.

F. The Applicant Companies shall publish an advertisement at least 30 clear days before the aforesaid meetings, indicating the day, date and the place fixed and time of meetings as aforesaid, to be published in "Financial Express" (English) and "Jansatta" (Hindi), both Delhi NCR edition, with the option of publication in its electronic version considering the present circumstances due to the CoVID-19 pandemic and the consequent restrictions/ lockdowns imposed by the Central and State Government. The Applicant Companies shall also publish the notice on their websites, if any.

G. The Chairperson shall be responsible to report the results of the meetings to the Tribunal in Form No. CAA 4, as per Rule 14 of the Rules within 7 (seven) days of the conclusion of the meetings. The Chairperson shall be assisted by the authorized representative / Company Secretary of the Applicant Companies and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the reports.

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 meeting of Shareholders of Transferee Company in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

I. Notice of the application shall also be served on the, Regional Director, Northern Region, Ministry of Corporate affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, New Delhi-110003, Registrar of Companies, NCT of Delhi at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110019, the official Liquidator, Lok Nayak Bhawan, 8th Floor, Khan Market, New Delhi-110001, the office of the Income Tax Department, Income Tax officer, Ward- 18 (3), Central Revenue Building, IP Estate, New Delhi-110002 and office of the Income Tax Department, Income Tax officer, Additional Commissioner of Income Tax, Special Range-4, Central Revenue Building, IP Estate, New Delhi-110002, the Notices to Income Tax authorities shall disclose sufficient details like PAN Card numbers, ward Numbers and assessing officers so that timely and proper reply may be filled.

J. The Applicant Companies further shall furnish a copy of the Scheme (together with the explanatory statement), free of charge, within 1 day of any requisition for the Scheme made by every creditor or member of the Applicant Companies entitled to attend the meetings as aforesaid.

K. The authorized representative of the Applicant Companies shall furnish affidavits stating that the directions of this Tribunal in relation to service of notice of meetings and publication of advertisement has been complied with at least one week before the proposed meetings.

L. All the aforesaid directions are to be complied with in accordance with the applicable law, including forms and formats contained in the Rules as well as the provisions of the Act by the Applicant Companies and as directed by this Tribunal.

The application stands allowed in the aforesaid terms.

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

