(2020) 05 NCLT CK 0039

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

Case No : Company Application (CAA) No. 94(PB) Of 2019

Guruansh Realtech Private Limited — APPELLANT

Vs

Vedvaan Infrastructure Private Limited — RESPONDENT

Date of Decision : 13-05-2020

Acts Referred:

Companies Act, 2013 — Section 103(1)(b), 133, 230, 230(3), 230(5), 231, 232
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 3, 6, 14, 18

Citation : (2020) 05 NCLT CK 0039

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

Bench : Division Bench

Advocate : Venket Rao

Final Decision : Allowed

Judgement

B.S.V. Prakash Kumar, J

1. Under consideration is the Joint Company application No. CA (CAA)-94(PB)/2019 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 Application 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. The Applicant companies have sought an Order from this Tribunal for dispensing the requirement of calling, convening, holding the meetings of equity shareholders,. creditors, and pass such other/further Orders.

2. As per the Scheme of Amalgamation (hereinafter referred as "Scheme") the Transferor Company viz., Guruansh Realtech Private Limited (hereinafter referred

as "Transferor Company") is proposed to get merged with Vedvaan Infrastructure Private Limited (hereinafter referred to as the "Transferee Company") as going concern.

3. The Transferor Company is a Private Limited company incorporated on 7th October, 2011 under the provisions of Companies Act, 1956 (hereinafter referred as "Act 1956") in the name and style of 'Gwuansh Realtech Private Limited' and in the National Capital Territory of Delhi under the Company Identification Number (hereinafter referred as "CIN") U70109DL2011PTC225953. The Transferor Company is engaged in the business to undertake development of infrastructure work like roads, bridges, highways, railways, waterways, theme parks, technology parks, gas lines, pipelines, airport etc. The main objects of the Transferor Company are set out in the Memorandum of Association (hereinafter referred as "MoA"). The Authorized share capital of the Transferor Company as on March 31, 2019 is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each and the issued, subscribed and paid up share capital as on March 31, 2019 is Rs. 1,00,000 divided into 10,000 equity shares of Rs. 10/-each.

4. The Transferee Company is a Private Limited company incorporated on 10th October, 2011 under the provisions of the Act, 1956 in the name and style of 'Vedvaan Infrastructure Private Limited' and in the National Capital Territory of Delhi under the CIN U70101DL2011PTC226032. The Transferee Company is engaged in the business to undertake development of infrastructure work like roads, bridges, highways, railways, waterways, theme parks, technology parks, gas lines, pipelines, airport etc. 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. 1,00,000/- divided into 10,000 equity shares of Rs. 10/-each and the issued, subscribed and paid up share capital as on March 31, 2019 is Rs. 1,00,000 divided into 10,000 equity shares of Rs. 10/-each.

5. 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 &Haryana.

6. 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 is submitted that there are 2 (two) equity Shareholders, and 2 (two) creditors. It is further submitted that 90% by value of the creditors and all the equity shareholders have filed their written consents by way of affidavits to dispense the requirement of holding meeting. In relation to the Transferee Company it is submitted that there are 2 (two) equity Shareholders, and 3 (three) creditors of which, 90% by value of the creditors and all the equity shareholders have filed their written consents by way of affidavits to dispense the requirement of holding meeting.

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 is submitted that all the equity shareholders and 90% by value of the creditors have filed their written consents by way of affidavits. It is stated that as on 31st March 2019. In relation to the Transferee Company it is submitted that all the equity shareholders and 90% of creditors have filed their written consents by way of affidavits. It is stated that as on 31st March 2019.

8. The Board of Directors of the Transferor and Transferee Company vide separate meeting held on 31st January, 2019, have unanimously passed resolutions and approved the proposed Scheme as contemplated above and copies of the resolutions have been placed on record. It is submitted that if the Scheme if sanctioned by this tribunal the Appointed date as provided in the scheme shall be 1st April, 2019.

9. It is submitted that are no proceedings or investigations pending under the provisions of the Act, 2013/Act, 1956 against any of the Applicant companies.

10. It is pertinent to state here that the Applicant Companies have obtained certificates from their respective Auditors to the effect that the Accounting treatment proposed under the scheme, is in conformity with the Accounting Standards prescribed under Section 133 of the Act, 2013. It is further submitted that the aggregate assets of Transferor and Transferee company is sufficient to meet the liabilities of both the Transferor and Transferee company and the said scheme will not adversely affect the rights of any creditors of the Companies, in any manner whatsoever.

11. Further it is stated that both the Companies are carrying the same business, and the scheme of amalgamation is proposed to amalgamate the Transferor and Transferee company for the purpose of better, efficient and economic management, control and running of the undertaking concerned or administrative convenience, and to obtain advantages of economies of scale.

12. Taking into consideration the Application and documents filed, we propose to issue the following directions with respect to calling, convening, holding of meetings of the Shareholders, 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. The necessity of convening, holding the meeting of creditors is dispensed with because 90% by value of the creditors have filed their written consents by way of affidavits.

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 5948, Room No. 3, Basti Harphool Singh, Sadar Bazar, Delhi-110006, India. (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. The quorum for shareholders meeting shall be 2 (two) shareholders present in person.

B. It is represented by the Transferee Company that 90% by value of the creditors have filed their written consents by way of affidavits. Therefore, the necessity of convening, holding the meeting of creditors is obviated.

11. Further, it is directed that Mr. Gaurav Rana (Advocate) [Mobile: 8588999046] is hereby appointed as Chairperson/Chairman of the meetings of the Applicant Companies. He will act as Chairperson for the meetings at a consolidated amount of Rs. 75,000/- (Rupees Seventy-Five thousand only) (exclusive of GST and out of pocket expenses). Mr. Amit Kumar Yadav (Advocate) 8750408625 is hereby appointed as an alternate Chairperson/Chairman of the meetings of the Applicant Companies. He will act as alternate Chairperson for the meetings at a consolidated amount of Rs. 50,000/- (Rupees Fifty thousand Only) (exclusive of GST and out of pocket expenses).

12. That Mr. Gopal Prasad Aggarwal, a Practising Company Secretary, [Mobile: 8700237992], is hereby appointed as Scrutinizer of the meetings of the Applicant Companies, He will act as a Scrutinizer at a consolidated amount of Rs. 40,000/- (Rupees Forty Thousand Only) (exclusive of GST and out of pocket expenses).

13. The Chairperson appointed by the Tribunal for the meetings of the equity shareholders, of the Applicant companies is hereby directed to issue notice of the meeting to the equity shareholders and to publish the date of notices of the meeting in newspapers. The Chairperson 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).

14. 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, filed with the registered office of the respective Applicant Companies at least 48 hours before the meetings. The Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy registers are properly maintained.

15. It is directed that at least 30 days clear notice to be sent before the said meeting of the equity shareholders 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). 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 in terms of the provisions of the Act, 2013 and Rules framed there under.

16. That the Applicant Companies shall publish on their respective websites and publish advertisement with a gap of at least 30 days before the aforesaid meeting, indicating the day, date and the place and time as aforesaid. The publication in the newspapers shall be done in Delhi editions of the newspapers having wide circulation in the area of the last known address of the equity shareholders, stating the copies of Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Act 2013 read with 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.

17. The Chairperson/Authorised representative to file an affidavit not less than 7 (seven) days before the date fixed for holding of the meeting of the equity shareholders and report to this Tribunal that the directions regarding issue of notices and advertisements have been duly complied with.

18. The Chairperson/Authorised representative shall report to this Tribunal the result of the meeting of the equity shareholders and the said report shall be verified by his/her affidavit as per Rule 14 of the Rules.

19. The Applicant Companies shall individually send to 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.

20. The Applicant Companies to serve notice of the meeting of the equity shareholders 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.

21. The Applicant Companies to serve notice of the meeting of the equity shareholders 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.

22. The Applicant Companies to serve notice of the meeting of the equity shareholders 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.

23. All the aforesaid directions are to be complied strictly in accordance with the applicable law including Forms and Formats contained in the Rules as well as the provisions of the Act, 2013.

24. The Application CA (CAA)-94(PB)/2019 stands allowed in the aforesaid terms.