(2023) 10 NCLT CK 0042

In the National Company Law Tribunal

Case No : C. A. (CAA) No. 180/KB/2023

H M Tie Up Private Limited Vs

Date of Decision : 16-10-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230(1), 230(5), 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8(2)

Citation : (2023) 10 NCLT CK 0042

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

Bench : Division Bench

Advocate : Neha Somani

Final Decision : Disposed Of

Judgement

Arvind Devanathan, Member (Technical)

1. The Court convened through hybrid mode today.

2. 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 the following Transferor Companies:

Serial Number

Name of the Companies

Transferor Company No. 1

H M Tie-Up Private Limited

Transferor Company No. 2

Neat & Clean Holdings Pvt. Ltd.

with Prompt Vincon Pvt Ltd, being the Applicant Company No. 3 above named (“Transferee Company”) whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date. i.e. 1st April, 2023 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). The Copy of the said Scheme of Amalgamation is annexed to the Company Application in Annexure E in Volume II at Page No. 190-225.

3. The Board of Directors of the Applicant Companies at their Board Meetings, held on the following dates:

Name of the Companies

Date of the Board Meetings

H M Tie-Up Private Limited

25th July, 2023

Neat & Clean Holdings Pvt. Ltd.

25th July, 2023

Prompt Vincon Pvt Ltd

25th July, 2023

4. It is further submitted by the Ld. Authorised Representative appearing for the Applicants that the shares of all the Applicant Companies are not listed on any stock exchange. Further, the Applicants have the following classes of shareholders and creditors:-

Applicant No.

Number of Equity Shareholders as on 31st March, 2023

Number of Secured Creditors as on 31st March, 2023

Number of Unsecured Creditors as on 31st March, 2023

Applicant No. 1

3

NIL

1

Applicant No. 2

3

NIL

6

Applicant No. 3

7

NIL

2

5. The Ld. Authorised Representative appearing for the Applicant Companies submits that the Valuation Report regarding recommendation of equity share exchange ratio for the proposed merger of H M Tie-Up Private Limited and Neat & Clean Holdings Pvt. Ltd. with Prompt Vincon Pvt. Ltd. dated 24.07.2023 has been prepared by CA Ritesh Kumar Gupta, Registered Valuer having Registration No. IBBI/RV/06/2019/11473 which is annexed with the Company Application being Annexure F in Volume II at Page No. 226 – 235.

6. The Ld. Authorised Representative appearing for the Applicant Companies submits that 100% of the Equity Shareholders and 100% Unsecured Creditors of the Applicant Company No.1 and Applicant Company no. 3 and 95.28% of Applicant Company No. 2 have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Amalgamation which is annexed with the Company Application being Annexure I in Volume II at Page No. 260-297 and Annexure G in Volume II at Page No. 236 – 256A respectively.

7. The certificate by the Chartered Accountant in respect of the Transferee Company verifying conformity with Accounting Standard under Section 133 of the Companies Act, 2013 is annexed with the Company Application in Annexure K in Volume II at Page No. 301-302.

8. The Ld. Authorised Representative appearing for the Applicant Companies further submits that there are no Secured Creditors in the Applicant Companies.

9. Directions are sought accordingly for dispensing meetings of Equity Shareholders and Unsecured Creditors of the Applicant Companies.

10. Heard the Ld. Authorised Representative for the Applicant Companies and 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 and Unsecured Creditors of all the Applicant Companies are dispensed with under Section 230(1) read with Section 232(1) of the Act.

b) The Applicant Companies 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 Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

The Registrar of Companies, Kolkata, West Bengal with whom the Applicants are registered;

The Official Liquidator, High Court, Calcutta;

The Income Tax Department having jurisdiction over the Applicants

These notices shall be sent through hand delivery against a stamped receipt or by speed post and also 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 Authorised Representative 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. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

c) The Applicant Companies shall file an affidavit of service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.

11. The application being Company Application (CAA) No. 180/KB/2023 is disposed of accordingly.

12. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.