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(2022) 09 NCLT CK 0018

In the National Company Law Tribunal

Case No : CA (CAA) No. 108/ KB /2022

Hariom Scrap Private Limited & Ors Vs

Date of Decision : 07-09-2022

Acts Referred:

Companies Act, 2013 — Section 103, 230(1), 230(5), 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2)

Citation : (2022) 09 NCLT CK 0018

Hon'ble Judges : Rohit Kapoor, Member (J);Satya Ranjan Prasad, Member (T)

Bench : Division Bench

Advocate : Arti Vyas

Final Decision : Disposed Of

Judgement

Rohit Kapoor, Member (Judicial):

1. 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 orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation for amalgamation of Hariom Scrap Private Limited being the Applicant No. 1 above named (“Transferor Company No 1" or “Applicant No.1”) and Balmukund Lease- Fin Private Limited being the Applicant No. 2 above named ("Transferor Company No 2" or “Applicant No. 2”) with Balmukund Sponge And Iron Private Limited, being the Applicant No.3 above named ("Transferee Company" or “Applicant No.3”) whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).

2. It is submitted by Learned Authorised Representative appearing for the Applicants that-

(a) Applicant Company No. 2 involved in the Scheme is Non- Banking Financial

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Company.

(b) The valuation report recommending the Swap Ratio has been prepared by Mr. Vikash Goel, Registered Valuer with Regn. No. IBBI/RV/01/2018/10339.

(c) The Applicants have filed affidavit annexing the list of shareholders as on 4th February 2022 and creditors as on 1st February 2022.

(d) The Applicants have the following classes of shareholders and creditors: -

a. APPLICANT NO 1

Number of EQUITY SHAREHOLDERS : 4 as on 4th February, 2022

Number of PREFERENCE SHAREHOLDERS: NIL

Number of SECURED CREDITORS : NIL as on 1st February, 2022

Number of UNSECURED CREDITORS : 1 as on 1st February, 2022

b. APPLICANT NO 2

Number of EQUITY SHAREHOLDERS : 6 as on 4th February, 2022

Number of PREFERENCE SHAREHOLDERS : NIL

Number of SECURED CREDITORS : NIL as on 1st February, 2022

Number of UNSECURED CREDITORS : 8 as on 1st February, 2022

c. APPLICANT NO 3

Number of EQUITY SHAREHOLDERS: 10 as on 4th February, 2022

Number of PREFERENCE SHAREHOLDERS: NIL

Number of SECURED CREDITORS: 4 as on 1st February, 2022

Number of UNSECURED CREDITORS: 227 as on 1st February, 2022

2. It is further submitted that all Equity Shareholders of the Applicant Companies have already given their consent to the Scheme by way of affidavits which are annexed to the application.

3. There are 1 Unsecured Creditor in the Applicant No. 1 and 8 Unsecured Creditors in the Applicant No.2 which is evident from the separate Certificates of the Statutory Auditors of the Applicant Nos. 1 and 2 which are annexed to the application. Each and every Unsecured Creditors of Applicant Company Nos. 1 and 2 have given their consent by way of affidavits which are annexed to the application.

4. There are 227 Unsecured Creditors in the Applicant Company no. 3. The Statutory Auditors of the Applicant Company nos. 3 have given their Certificate certifying the numbers of unsecured creditors in the Applicant Company Nos. 3 which is annexed to the Application.

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5. There are no secured creditors in the Applicant Company nos. 1 & 2. The Statutory Auditors of the Applicant Company nos.1 & 2 have given their respective Certificates confirming that there are no secured creditors in Applicant Company nos.1 & 2 which are annexed to the Application.

6. There are 4 Secured creditors in the Applicant Company no. 3. The Statutory Auditors

of the Applicant Company No.3 has given their Certificate confirming that there are 4 Secured creditors in the Applicant Company No.3 which are annexed to the Application. Each and every Secured Creditors of Applicant Company Nos. 3 have given their consent by way of affidavits which are annexed to the application.

7. Directions are sought accordingly for (a) dispensing with meetings of the Equity Shareholders of the Applicant Nos. 1, 2 & 3 and (b) dispensing with meetings of the Unsecured Creditors of the Applicant Company No. 1 and 2 and (c) dispensing with meetings of the Secured Creditors of the Applicant Company No. 3 who have already given their consent to the Scheme and (d) convening of meetings of the Unsecured Creditors of the Applicant No. 3 for considering the Scheme under section 230(1) of the Act and (d) recording that there are no Secured Creditors in the Applicant Nos. 1 and 2.

8. 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. Meetings dispensed:

(i) Meeting of Equity Shareholders of the Applicant Companies No 1, 2 and 3, for considering the Scheme are dispensed with in view of all shareholders of Applicant Companies having respectively given their consent to the Scheme by way of affidavits.

(ii) Meetings of the Unsecured Creditors of the Applicant Company Nos. 1 and 2 are dispensed with under section 230(1) read with section 232(1) of the Act in view of the fact that all such creditors have already given their consent to the Scheme.

(iii) Meetings of the Secured Creditors of the Applicant Company Nos. 3 are dispensed with under section 230(1) read with section 232(1) of the Act in view of the fact that all such creditors have already given their consent to the Scheme.

b. No requirement of Meetings:

Secured Creditors of Applicant Companies No 1 and 2- NIL Creditors verified by auditor’s certificate.

c. Meetings to be held

Unsecured Creditors of the Applicant no 3 shall be convened and held at the 11 am on 14.10.2022 for the purpose of considering, and, if thought fit, approving

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the said Scheme, with or without modification:-

(i) Mode of meeting: The meeting, as above, shall be held physically at 18 R N

Mukherjee Road, 1st Floor, Kolkata-700001 subject to the orders of the Government with regard to restrictions due to Covid then in force permitting the same.

(ii) Advertisement: At least 30 (thirty) clear days before the meetings to be held, as aforesaid, an advertisement of the notice of meetings be published once each in the 'Financial Express' in English and once in vernacular language as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(iii) Individual Notices: At least 30 (thirty) clear days before the date of the meetings to be held, as aforesaid, notices convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the respective Unsecured Creditors of the Applicant No.3 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by registered post, air mail, courier and electronic mail ("email") or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

(iv) Chairperson: Mr. Anirudhya Dutta, Advocate (Mob. No. 8018736392) is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 75,000/-(Rupees Seventy-five Thousand only) for conducting the aforesaid meetings as Chairperson.

(v) Scrutinizer: Ms. Madhuri Pandey, CS (Mob. 8697530112) is appointed as the Scrutinizer of the meetings) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 60,000 /-(Rupees Sixty Thousand only) for acting as Scrutinizer.

(vi) Quorum and Attendance: The quorum for the said meetings of persons entitled to attend the same shall be determined in accordance with section 103 of the Companies Act, 2013. For the meetings to be held physically, only attendance of such persons physically at the venue shall be counted for quorum. For the meetings to be held in the Virtual Mode, attendance of such persons in Virtual Mode shall be counted for the purpose of quorum. Attendance at such meetings shall be recorded in the minutes of the meetings instead of taking physical attendance slips. As per lists of Unsecured Creditors annexed to the application, the Applicant No.3 has 227 Unsecured Creditors. Accordingly, the quorum for the said meetings shall be the following respectively present in person or by proxy:-

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Meeting of Unsecured Creditors of Applicant No.3:- Quorum of 5 (five).

(vii) Mode of Voting: At the venue of the meeting held physically, voting shall be conducted physically by polling paper.

(viii) Cut-off date: The cut off date for determining the eligibility to vote and value of votes shall be 29th September, 2022 for the meetings of Unsecured Creditors.

(ix) Proxies & Board Resolutions: A person, including a Body Corporate, entitled to attend and vote at a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorising its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the concerned Applicant Company not later than 48 (forty eight) hours before the time for holding such meeting. If the meetings are held in virtual mode, the board resolutions and authorisations may be deposited by the concerned shareholders and creditors within the prescribed time physically at the registered office of the concerned Applicant Company, as aforesaid, or scanned copies thereof may be sent by them by email to the concerned Applicant Company.

(x) That the Chairperson appointed for the said meeting or any person authorised by the Chairperson do issue and send the notices of the aforesaid meetings. Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meetings, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meetings, including an amendment to the Scheme, if any proposed by any persons.

(xi) Scrutinizer's Report/ Declaration of Results: The votes cast shall be Scrutinised by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meetings along with all papers relating to the voting to the Chairperson of the meeting) at the Scrutinizer's earliest convenience and in any case within 3 (Three) days of the conclusion of the meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer. The declaration of results by the Chairperson shall be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

(xii) The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of the respective shareholders and creditors casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under section 230(1) read with section 232(1) of the Companies Act,

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2013

(xiii) The Chairperson to report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

9. 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 :

a. Regional Director, Eastern Region, Ministry of Corporate Affairs,Kolkata;

b. Registrar of Companies with whom the Applicants are registered;

c. Official Liquidator; High Court Patna.

d. Income Tax Department having jurisdiction over the Applicants.

e. Reserve Bank of India.

by sending the same by hand delivery through special messenger, by speed 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 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. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

10. The Applicants to file an affidavit proving service of notices of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the meetings to be held.

11. The Application for confirmation and sanction of the Scheme to be filed within 4 weeks from the date of filing of the Report by the Chairperson.

12. The Company Application being C.A. (CAA)No. 108/KB/2022 is disposed of accordingly.

13. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

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