(2020) 12 NCLT CK 0115

In the National Company Law Tribunal

Case No : Company Application No. (CAA)/1155 Of 2020

Hawa Buildcon Private Limited Vs

Date of Decision : 17-12-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8
Companies Act, 2013 — Section 230, 230(3), 230(5), 231, 232

Citation : (2020) 12 NCLT CK 0115

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah

Judgement

1. The Bench is convened by videoconference today.

2. Learned Counsel for the Transferor Companies and Transferee Company (collectively referred to as â??Applicant Companiesâ??) states that the

present Scheme is a Scheme of Amalgamation of HAWA BUILDCON PRIVATE LIMITED, HAWA REALTY PRIVATE LIMITED, HAWA

INFRA DEVELOPER PRIVATE LIMITED, MATASHREE ENTERPRISE PRIVATE LIMITED, the Amalgamating Companies with GURU

UDYOG PRIVATE LIMITED, the Amalgamated Company under sections 230 to 232 of the Companies Act, 2013 (â??Schemeâ??).

3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Companies and Transferee Company in their

respective meetings conducted on 28th October, 2020 for the Transferor Company and the Transferee Company have approved the Scheme. The

Appointed Date fixed under the Scheme is April 1, 2020.

4. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if

thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of HAWA BUILDCON PRIVATE LIMITED, HAWA

REALTY PRIVATE LIMITED, HAWA INFRA DEVELOPER PRIVATE LIMITED, MATASHREE ENTERPRISE PRIVATE LIMITED, the

Amalgamating Companies with GURU UDYOG PRIVATE LIMITED, the Amalgamated Company is dispensed with in view of the consent

affidavits given by the two Equity Shareholders of the Applicant Company No.1, which are annexed as â??Exhibit T-1 to T-2â?? to the Company

Scheme Application.

5. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if

thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of HAWA BUILDCON PRIVATE LIMITED, HAWA

REALTY PRIVATE LIMITED, HAWA INFRA DEVELOPER PRIVATE LIMITED, MATASHREE ENTERPRISE PRIVATE LIMITED, the

Amalgamating Companies with GURU UDYOG PRIVATE LIMITED, the Amalgamated Company is dispensed with in view of the consent

affidavits given by the two Equity Shareholders of the Applicant Company No.2, which are annexed as â??Exhibit U-1 to U-2â?? to the Company

Scheme Application.

6. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.3 for the purpose of considering and, if

thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of HAWA BUILDCON PRIVATE LIMITED, HAWA

REALTY PRIVATE LIMITED, HAWA INFRA DEVELOPER PRIVATE LIMITED, MATASHREE ENTERPRISE PRIVATE LIMITED, the

Amalgamating Companies with GURU UDYOG PRIVATE LIMITED, the Amalgamated Company is dispensed with in view of the consent

affidavits given by the two Equity Shareholders of the Applicant Company No.3, which are annexed as â??Exhibit V-1 to V-2â?? to the Company

Scheme Application.

7. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.4 for the purpose of considering and, if

thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of HAWA BUILDCON PRIVATE LIMITED, HAWA

REALTY PRIVATE LIMITED, HAWA INFRA DEVELOPER PRIVATE LIMITED, MATASHREE ENTERPRISE PRIVATE LIMITED, the

Amalgamating Companies with GURU UDYOG PRIVATE LIMITED, the Amalgamated Company is dispensed with in view of the consent

affidavits given by the five Equity Shareholders of the Applicant Company No.4, which are annexed as â??Exhibit W-1 to W-5â?? to the Company

Scheme Application.

8. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.5 for the purpose of considering and, if

thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of HAWA BUILDCON PRIVATE LIMITED, HAWA

REALTY PRIVATE LIMITED, HAWA INFRA DEVELOPER PRIVATE LIMITED, MATASHREE ENTERPRISE PRIVATE LIMITED, the

Amalgamating Companies with GURU UDYOG PRIVATE LIMITED, the Amalgamated Company is dispensed with in view of the consent

affidavits given by the four Equity Shareholders of the Applicant Company No.5, which are annexed as â??Exhibit X-1 to X-4â?? to the Company

Scheme Application.

9. That the convening and holding the meeting of the Preference Shareholders of the Applicant Company No.5 for the purpose of considering and, if

thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of HAWA BUILDCON PRIVATE LIMITED, HAWA

REALTY PRIVATE LIMITED, HAWA INFRA DEVELOPER PRIVATE LIMITED, MATASHREE ENTERPRISE PRIVATE LIMITED, the

Amalgamating Companies with GURU UDYOG PRIVATE LIMITED, the Amalgamated Company is dispensed with in view of the consent

affidavits given by the one Preference Shareholder of the Applicant Company No.5, which are annexed as â??Exhibit Y-1â?? to the Company

Scheme Application.

10. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 1 mentioned in Para

41.1 of the Application.

11. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 2 mentioned in Para

41.2 of the Application.

12. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 3 mentioned in Para

41.3 of the Application.

13. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 4 mentioned in Para

41.4 of the Application.

14. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 5 mentioned in Para

41.5 of the Application.

15. That Counsel for the Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant Company No. 1 are concerned most

of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 1 and the Scheme of Amalgamation does not

envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected

by the Scheme of Arrangement. It is further submitted that the Applicant Company No.1 is meeting the amounts payable to its creditors from its

activities and upon the Scheme becoming effective, the Applicant Company No. 1 shall amalgamate as a going concern and shall accordingly continue

to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.1 to

issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their

representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

16. That Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most

of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not

envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected

by the Scheme of Arrangement. It is further submitted that the Applicant Company No.2 is meeting the amounts payable to its creditors from its

activities and upon the Scheme becoming effective, the Applicant Company No. 2 shall amalgamate as a going concern and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs that the convening and holding the

meeting of the Unsecured Creditors of the Applicant Company No.2 be dispensed with continue with its existence and shall accordingly continue to

meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.2 to issue

notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their

representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

17. That Counsel for the Applicant Company No. 3 submits that so far as Unsecured Creditors of the Applicant Company No. 3 are concerned most

of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 3 and the scheme of amalgamation does not

envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 3 and hence they will in no way be affected

by the Scheme of Arrangement. It is further submitted that the Applicant Company No.3 is meeting the amounts payable to its creditors from its

activities and upon the Scheme becoming effective, the Applicant Company No. 3 shall amalgamate as a going concern and shall accordingly continue

to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs that the convening and holding the

meeting of the Unsecured Creditors of the Applicant Company No.3 be dispensed with continue with its existence and shall accordingly continue to

meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.3 to issue

notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their

representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.3.

18. That Counsel for the Applicant Company No. 4 submits that so far as Unsecured Creditors of the Applicant Company No. 4 are concerned most

of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 4 and the scheme of amalgamation does not

envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 4 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.4 is meeting the amounts payable to its creditors from its

activities and upon the Scheme becoming effective, the Applicant Company No. 4 shall amalgamate as a going concern and shall accordingly continue

to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs that the convening and holding the

meeting of the Unsecured Creditors of the Applicant Company No.4 be dispensed withcontinue with its existence and shall accordingly continue to

meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.4 to issue

notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their

representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.4.

19. That Counsel for the Applicant Company No. 5 submits that so far as Unsecured Creditors of the Applicant Company No. 5 are concerned most

of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 5 and the scheme of amalgamation does not

envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 5 and hence they will in no way be affected

by the Scheme of Arrangement. It is further submitted that the Applicant Company No.5 is meeting the amounts payable to its creditors from its

activities and upon the Scheme becoming effective, the Applicant Company No. 5 shall continue with its existence and shall accordingly continue to

meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs that the convening and holding the

meeting of the Unsecured Creditors of the Applicant Company No.2 be dispensed withthis bench hereby directs the Applicant Company No.5 to issue

notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their

representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.5.

20. The Consideration as per the valuation Report is as follows:

i. â??219 (Two Hundred and Nineteen) fully paid Equity shares in the Amalgamated Company/ Guru Udyog Private Limited for every 1000 (One

Thousand) fully paid up Equity shares of Rs 10/- (Rupees Ten Only) each held in Amalgamating Company â?" 1/ Hawa Buildcon Private Limitedâ??

ii. â??1 (One) fully paid Equity share of Rs 10/- (Rupees Ten Only) in the Amalgamated Company/ Guru Udyog Private Limited for 5000 (Five

Thousand) fully paid up Equity shares of Rs 10/- (Rupees Ten Only) each held in Amalgamating Company â?" 2/ Hawa Realty Private Limitedâ??

iii. â??834 (Eight Hundred and Thirty Four) fully paid Equity shares of Rs 10/- (Rupees Ten Only) each in the Amalgamated Company/ Guru Udyog

Private Limited for every 1000 (One Thousand) fully paid up Equity shares of Rs 10/- (Rupees Ten Only) each held in Amalgamating Company â?" 3/

Hawa Infra Developer Private Limitedâ??

iv. â??313 (Three Hundred and Thirteen) fully paid Equity shares of Rs 10/- (Rupees Ten Only) each in the Amalgamated Company / Guru Udyog

Private Limited for every 1000 (One Thousand) fully paid up Equity shares of Rs 10/- (Rupees Ten Only) each held in Amalgamating Company â?" 4/

Matashree Enterprise Private Limitedâ??

21. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra,

pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules,

2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that

Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016

22. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013

as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the

Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the

proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

23. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction, The Applicant Company No. 1

PAN:- AACCH5284Q having his address at The Income Tax Officer, Range Code 86, AO Number 42, Central Circle 7(3), Aayakar Bhawan,

Churchgate, Mumbai-400020. The Applicant Company No. 2 PAN:- AACCH5342K having his address at The Income Tax Officer Range Code 86,

AO Number 42, , Central Circle 7(3), Aayakar Bhawan, Churchgate, Mumbai-400020. The Applicant Company No. 3 PAN:- AACCH5960R having

his address at The Income Tax Officer, Range Code 86, AO Number 42, Central Circle 7(3), Aayakar Bhawan, Churchgate, Mumbai-400020. The

Applicant Company No. 4 PAN:- AAECM9446K having his address at The Income Tax Officer, Range Code 922, AO Number 92, Ward 10(2)(3),

Aayakar Bhawan, Churchgate, Mumbai-400020. The Applicant Company No. 5 PAN:- AADCG3695B having his address at The Income Tax

Officer, Range Code 42, AO Number 3, Ward 10(3), C.R. building, Delhi. The Applicant Companyâ??s assessments are made, pursuant to Section

230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is

received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax

Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

24. The Transferor Companies are also directed to serve intimations of the Scheme upon Official Liquidator, pursuant to section 230(5) of the

Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing

M/s. M/s. Dagdulal K. Jain & Co., Chartered Accountant, to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor

Companies for the last 5 years and submit its representation / report to the Tribunal. The aforesaid Companies to pay fees of Rs. 1,00,000/- for this

purpose. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of

receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

25. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated

above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

26. The Appointed Date is 1st April, 2020.