(2022) 07 NCLT CK 0053

In the National Company Law Tribunal

Case No : C.A.(CAA)/107/2022

Hinduja Estates Private Limited Vs

Date of Decision : 15-07-2022

Acts Referred:

Companies Act, 2013 — Section 103, 230, 230(3), 230(5), 231, 232
Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 — Rule 6, 7, 8, 10
Companies (Management and Administration) Rules, 2014 — Rule 19

Citation : (2022) 07 NCLT CK 0053

Hon'ble Judges : P.N. Deshmukh, Member (J);Shyam Babu Gautam Member (T)

Bench : Division Bench

Advocate : Parita Dave

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member (Technical)

1. The Court is convened through Videoconferencing.

2. The Transfer Company and the Transferee Company states that the present Scheme is a Scheme of Merger by Absorption of Hinduja Estates Private Limited ("Transferor Company" or "Applicant Company - 1") into Hinduja Healthcare Limited ("Transferee Company" or "Applicant Company - 2") and their respective shareholders under the provisions of Sections 230 to 232 of the Companies Act, 2013.

3. The Applicant Company -1 submits that, the Transferor Company is engaged in the business of property development.

4. The Applicant Company -2 submits that, the Transferee Company is engaged in the business of healthcare services.

5. The Applicant Companies submits that the respective Board of Directors had approved the Scheme of Merger by Absorption with Appointed Date as 1st day of April, 2021 vide Board Resolution dated 9th day of February, 2022. The Board Resolution approving the Scheme for the Demerged Company is annexed as

Exhibit H and Exhibit I to the Company Scheme Application.

6. This Scheme inter-alia provides for the transfer and vesting of whole business undertaking of the Transferor Company to the Transferee Company.

7. The Advocate for the Applicant Companies submits that the Rationale for the Scheme is as under:

The Transferor Company and the Transferee Company are under the same control and management of the Hinduja Group and are subsidiaries of "Hinduja Realty Ventures Limited". As the Transferor Company and the Transferee Company are under common control, management and are in the business of infrastructure development, it is proposed to amalgamate Transferor Company with the Transferee Company pursuant to a Scheme under Sections 230 to 232 of the Act (hereinafter defined) read with applicable Rules of Companies (Compromises, Arrangements and Amalgamations), Rules 2016 and other relevant provisions of the Act.

The proposed corporate restructuring mechanism by way of a scheme of amalgamation is beneficial, advantageous and not prejudicial to the interest of the shareholders, creditors and other stakeholders. The proposed amalgamation of Transferor Company into Transferee Company is in consonance with the global corporate restructuring practices which intends and seeks to achieve flexibility and integration of size, scale and financial strength. The Transferor Company and the Transferee Company believe that the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Transferor Company and the Transferee Company pooled in the merged entity, will lead to increased competitive strength, cost reduction and efficiencies, productivity gains, and logistic advantages, thereby significantly contributing to future growth. Therefore, the management of the Transferor Company and the Transferee Company believe that this Scheme shall benefit the respective companies and other stakeholders of respective companies, inter-alia, on account of the following reasons:

a) Integration of business operations and enable the Transferee Company to consolidate its business operations and provide significant impetus to its growth;

b) Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities;

c) Garner the benefits arising out of economies of large scale and lower operating costs;

d) Pooling and rationalization of talents in terms of manpower, management, administration etc. to result in savings of costs;

e) Avoidance of duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances and cost;

f) Integrated operational and marketing strategies, inter-transfer of resources / costs will result in optimum utilization of assets;

g) Merger will result in increase in net worth of Transferee Company, which will facilitate effective and fast mobilization of financial resources for meeting increased capital expenditure;

h) Merger shall result in efficient and focused management control and system.

There is no adverse effect of Scheme on the directors, key management personnel, shareholders, creditors and employees of Transferor Company and Transferee Company. However, the Board of the Transferor Company upon amalgamation shall stand dissolved. The Scheme would be in the best interest of all stakeholders Due to the aforesaid rationale, it is considered desirable and expedient to enter into this Scheme for amalgamation by absorption of Transferor Company with the Transferee Company, and in consideration thereof issue equity shares of the Transferee Company to the shareholders of Transferor Company in accordance with this Scheme

8. The Advocate for the Applicant Companies further submits that upon merger of the Transferor Company with the Transferee Company, the following consideration shall be discharged by the Transferee Company for the merger by absorption to the Transferor Company under the Scheme:

“9012 equity shares of the face value Rs.10/- each of HHL shall be issued and allotted as fully paid up for every 100 equity shares of the face value of Rs. 10/- each fully paid up held in HEPL”

9. The Advocate for the Applicant Company - 1 submits that meeting of Equity Shareholders of the Applicant Company - 1 be convened and held at Hinduja House, 171, Dr. Annie Besant Road, Worli, Mumbai – 400018 on Tuesday, June 07, 2022 at 11:30 a.m. for the purpose of considering and if thought fit, approving, with or without modification(s) the proposed Scheme of Merger by Absorption between Hinduja Estates Private Limited and Hinduja Healthcare Limited and their respective shareholders.

10. The Advocate for the Applicant Company – 2 submits that meeting of Equity Shareholders of the Applicant Company – 2 be convened and held at Hinduja House, 171, Dr. Annie Besant Road, Worli, Mumbai – 400018 on Tuesday, June 07, 2022 at 12:30 p.m. for the purpose of considering and if thought fit, approving, with or without modification(s) the proposed Scheme of Merger by Absorption between Hinduja Estates Private Limited and Hinduja Healthcare Limited and their respective shareholders

11. That at least 30 days before the said meetings of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the Scheme of Merger by Absorption, a copy of the Explanatory statement required to be sent under Section 230(3) of the Companies Act, 2013 read with Rule 6 of

the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 and the prescribed Form of Proxy, shall be sent by courier/ registered post/ speed post or through E-mail or by hand delivery to each of the Equity Shareholders of both the Applicant Companies at their respective registered or last known addresses or, by email to the registered email addresses of the Equity Shareholders as per the records of the Applicant Companies.

12. That at least 30 days before the meetings of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meetings as aforesaid, be published as per (13) below stating that the copies of the Scheme of Merger by Absorption and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy can be obtained free of charge at the Registered offices of the Applicant Companies as aforesaid.

13. That the Notice of the Meetings of the Applicant Companies shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai not less than 30 days before the date fixed for the meeting.

14. The Applicant Companies undertakes to:

i. Issue Notices convening the meetings of the equity shareholders as per Form No. CAA.2 (Rule 6 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016;

ii. Issue Statements containing all particulars as per Section 230 of the Companies Act, 2013;

iii. Issue Forms of Proxy as per Form No. MGT-11 (Rule 19 of the Companies (Management and Administration) Rules, 2014; and

iv. Advertise the Notices convening the meeting as per Form No. CAA.2 (Rule 7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016

The undertaking is accepted.

15. That Hitesh Shah, Chartered Accountant, having address at 212-A/203, Rewa Chambers, Sir Vithaldas Thackeray Marg, New Marine Lines, Behind Aaykar Bhawan, Mumbai – 400020, Mobile No. :- 9769963242 shall be the Chairperson of the above-mentioned meeting of the Equity Shareholders of the Applicant Company 1 to be held at Hinduja House, 171, Dr. Annie Besant Road, Worli, Mumbai – 400018 on Tuesday, 16.08.2022 at 11:30 a.m. or any adjournment or adjournments thereof. The chairman shall be paid Rs. Three Lakh and Fifty Thousand plus applicable Taxes fee for conducting and convening the aforesaid meetings.

16. That the Chairperson of the above-mentioned meeting of the Equity

Shareholders of the Applicant Company - 2 to be held at Hinduja House, 171, Dr. Annie Besant Road, Worli, Mumbai – 400018 on Tuesday, 16.08.2022 at 12:30 p.m. or any adjournment or adjournments thereof.

17. That Mr. Manish Lal Chandra Ghia, Company Secretary, having Address at 4, Chandan Niwas (old) M.V. Road, Andheri East, Mumbai – 400069, mobile No. 9821133118 is hereby appointed as Scrutinizer of the meeting of the Equity Shareholders of the Applicant Company -1 to be held at Hinduja House, 171, Dr. Annie Besant Road, Worli, Mumbai – 400018 on Tuesday, 16.08.2022 at 11:30 a.m. and Applicant Company – 2 to be held at Hinduja House, 171, Dr. Annie Besant Road, Worli, Mumbai – 400018 on Tuesday, 16.08.2022 at 12:30 p.m. The Scrutinizer shall be paid a fee of Rs. Two Lakhs for conducting the aforementioned meetings.

18. That the quorum for the aforesaid meetings of the Equity Shareholders of the above-mentioned Applicant Companies shall be as prescribed under Section 103 of Companies Act, 2013.

19. That the voting by proxy/ authorized representative in case of body corporate is permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company – 1 at its registered office at Hinduja House, 171, Dr. Annie Besant Road, Worli, Mumbai – 400018 not later than 48 hours before the meeting, as provided in Rule 10 of Companies (Compromise, Arrangements & Amalgamations) Rules, 2016.

20. That the voting by proxy/ authorized representative in case of body corporate is permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company – 2 at its registered office at Hinduja House, 171, Dr. Annie Besant Road, Worli, Mumbai – 400018 not later than 48 hours before the meeting, as provided in Rule 10 of Companies (Compromise, Arrangements & Amalgamations) Rules, 2016.

21. That value and number of the shares of each Equity Shareholder shall be in accordance with the books/register of the Applicant Companies and do report this Tribunal that the direction regarding the issue of notices has been duly complied with.

22. The Advocate for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company – 1. Therefore, the question of convening and holding of the meeting of the Secured Creditors of the Applicant Company– 1 does not arise.

23. The Advocate for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company – 2. Therefore, the question of convening and holding of the meeting of the Secured Creditors of the Applicant Company – 2 does not arise.

24. The Advocate for the Applicant Companies submits that there are no Unsecured Creditors in the Applicant Company – 1. Therefore, the question of convening and holding of the meeting of the Unsecured Creditors of the Applicant Company – 1 does not arise.

25. The Advocate for the Applicant Companies submits that there are no Unsecured Creditors in the Applicant Company – 2. Therefore, the question of convening and holding of the meeting of the Unsecured Creditors of the Applicant Company – 2 does not arise.

26. The Applicant Company – 1 is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority for the Demerged Company having PAN No. AAKCS6552Q within the jurisdiction of Circle 7(1)(1), Mumbai (ii) the Central Government through the office of Regional Director, Western region, Mumbai (iii) Registrar of Companies pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and applicable Sectoral Regulators or Authorities with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company – 1 failing which, it shall be presumed that the authorities have no representations to make on the proposals.

27. The Applicant Company – 1 is also directed to serve notice along with the copy of scheme upon the Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013. If no response is received by the Tribunal from the Official Liquidator within thirty days of the date of receipt of notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

28. The Applicant Company – 2 is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority for the Demerged Company having PAN No. AADCA8297M within the jurisdiction of Circle 7(1)(1), Mumbai (ii) the Central Government through the office of Regional Director, Western region, Mumbai (iii) Registrar of Companies pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and applicable Sectoral Regulators or Authorities with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company – 2 failing which, it shall be presumed that the authorities have no representations to make on the proposals.

29. The Applicant Companies to file an affidavit of service in the Registry proving dispatch of notices to the Equity Shareholders, advertisements and service of notice to 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.

30. Present Company Application is allowed, and stand disposed.

