(2022) 03 NCLT CK 0077

In the National Company Law Tribunal

Case No : CA (CAA) No. 48/Chd/Hry/2021

Hologram Holdings Private Limited APPELLANT

Vs

SRS Real Estate Limited RESPONDENT

Date of Decision : 24-03-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232, 232(3)

Citation : (2022) 03 NCLT CK 0077

Hon'ble Judges : Harnam Singh Thakur, Member J;Subrata Kumar Dash, Member, T

Bench : Division Bench

Advocate : Ravi

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint first motion application filed by Applicant Companies namely; Hologram Holdings Private Limited (Transferor Company No. 1/Transferor Company No. 1), Swen Holdings Private Limited (Transferor Company No. 2/ Transferor Company No. 2) and Sulphar Securities Private Limited (Transferee Company/Applicant Company No. 3) under Sections 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure-5 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Applicant Companies.

3. The Applicant Companies are presently engaged in the business of buy, sell, transfer, pledge, Hypothecate, deal in and dispose of any Shares, stocks, bonds, debentures, whether perpetual, redeemable debenture, Debenture stocks, units,

securities, including securities of any govt. and local Authority, etc.

4. It is submitted that the registered offices of all the applicant companies are at Khasra No. 31/11, MIE Part-1, Mama Chowk, Opp-Metro Pillar No. 772, Behind Shivam Properties, Bahadurgarh, District-Jhajjar, which is situated in the State of Haryana, therefore, the territorial jurisdiction of all the applicant companies fall with this Bench.

5. The rationale of the Scheme is given below:-

i. The Merger will enable the Companies to consolidate their business operations and provide significant impetus to their growth since both Companies are engaged in the same line of business i.e. to buy, sell, transfer, pledge, hypothecate, deal in share and debenture stocks, units, securities, including securities of any government and Local authority.

ii. The Merger will result in reduction of cost of overheads, administrative, managerial and other expenditure, and bring about operational rationalization, efficiency and optimal utilization of various resources.

iii. The Merger will also consolidate the managerial expertise of both the Companies thereby giving additional strength to the operations and management of the Transferee Company.

6. It is stated that the Board of Directors of the Applicant Companies in their meeting held on 01.09.2021 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the board resolutions of the Applicant Companies are part of Annexure 5 of the application.

7. The appointed date of the Scheme is 01.04.2021 as mentioned in the Para 1.2 of Scheme of Amalgamation which is attached as Annexure-5 of the application.

8. It is stated that the Applicant Companies have filed the audited financial statements as on 31.03.2021 as Annexure-10 of the application. The applicant companies have also filed provisional balance sheets as on 24.08.2021 as Annexure-11 of the application. The applicant companies have also filed a provisional financial statements as on 31.12.2021 as Annexures-2, 3 & 4 of the compliance affidavit filed vide Diary No. 01376/3 dated 14.02.2022.

9. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, the Applicant Companies have filed certificates, all dated 24.09.2021 issued by Statutory Auditors of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure-13 of the application.

10. It is further submitted by the counsel for applicant companies that the valuation report has been submitted by Mr. Krishna Kumar Mittal, Registered Valuer having IBBI Registration No. IBBI/RV/05/2019/11463 which is attached as Annexure-9 of the application. As per valuation report, dated 31.08.2021, the

following share exchange ratio has been proposed:-

S.N

Name of Company

For every share

Amalgamated Company

1.

Sulphur Securities Private Limited

10000

Amalgamating Companies

2.

Swen Holdings Private Limited

7992

3.

Hologram Holdings Private Limited

7992

11. It is submitted that the Scheme [Annexure-5 of the application] also takes care of the interests of the staff/workers and employees of the Companies. By virtue of Clause 9-1, it is stated that all employees of the Transferor Company in service on the Effective Date shall be deemed to have become the employees of the Transferee Company, with effect from the Appointed date without any break, discontinuance or interruption in their service and on the basis of continuity of service and on the same terms and conditions of their employment with the Transferor Company, on the Effective Date.

12. It is deposed by the authorized representative of Applicant Companies that there are no inquiry, investigation and prosecution are pending against Applicant Companies under Companies Act, 2013. The aforesaid affidavits have been attached as Annexure A-25 of the application. It is further deposed by the authorized representative of the company that there are no sectoral regulators of the applicant companies and hence, do not require any sectoral regulator approval for the merger. The aforesaid affidavit is filed vide Diary No. 01376/3 dated 14.02.2022.

13. The applicant companies have furnished the following documents:-

i. Proposed Scheme of Amalgamation (Annexure-5 of the application)

ii. List of Secured and Unsecured Creditors of the applicant companies duly certified by the Statutory Auditors (Annexure-7 of the application).

iii. Certificates of Statutory Auditors to the effect that Accounting treatment proposed in the Scheme is inconformity with Section 133 of Companies Act, 2013 (Annexure-13 of the application).

iv. Proposed Share Exchange Ratio (Annexure-9 of the application).

v. Audited Financial Statement as on 31.03.2021 of the applicant companies (Annexure-10 of the application).

vi. Provisional Balance Sheets as on 24.08.2021 of the applicant companies (Annexure-11 of the application).

vii. Provisional financial statements as on 31.12.2021 of the applicant companies (Annexures-2, 3 & 4 of Diary No. 01376/3 dated 14.02.2022).

viii. Affidavit with regard to the Sectoral Regulator (Diary No. 01376/3 dated 14.02.2022).

14. The Transferor Company No. 1/Applicant Company No. 1 i.e. Hologram Holdings Private Limited, CIN: U67120HR2012PTC044991 is a private limited company incorporated under the Companies Act, 1956 on 03.02.2012. The Certificate of Incorporation along with Memorandum and Articles of Association is attached as Annexure-3 of the application. The details of the Share Capital Structure of the Transferor Company No. 1/Applicant Company No. 1 as mentioned in the application is given below:-

Particulars

Amount in Rupees

Authorised Share Capital

31,00,000 Equity shares of Rs.10/- each

Rs. 3,10,00,000

Issued, Subscribed and Paid-up Share Capital

30,10,300 Equity shares of Rs. 10/- each full paid up

Rs. 3,01,03,000

15. The Transferor Company No. 2/Applicant Company No. 2 i.e. Swen Holdings Private Limited, CIN: U93000HR2012PTC044958 is a private limited company incorporated under the Companies Act, 1956 on 01.02.2012. The certificate of incorporation along with Memorandum and Articles of Association is attached as Annexure-3 of the application. The details of the Share Capital Structure of the Transferee Company as mentioned in the application is given below:-

Particulars

Amount in Rupees

Authorised Share Capital

31,00,000 Equity shares of Rs.10/- each

Rs. 3,10,00,000

Issued, Subscribed and Paid-up Share Capital

30,10,300 Equity shares of Rs. 10/- each full paid up

Rs. 3,01,03,000

16. The Transferee Company i.e. Sulphar Securities Private Limited, CIN: U67120HR2012PTC044988 is a public limited company incorporated under the Companies Act, 1956 on 03.02.2012. The certificate of incorporation along with Memorandum and Articles of Association is attached as Annexure-3 of the application. The details of the Share Capital Structure of the Transferee Company as mentioned in the application is given below:-

Particulars

Amount in Rupees

Authorised Share Capital

43,00,000 Equity shares of Rs.10/- each

Rs. 4,30,00,000

Issued, Subscribed and Paid-up Share Capital

42,70,000 Equity shares of Rs. 10/- each full paid up

Rs. 4,27,00,000

17. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors as follow:

Name of the Applicant Companies

Shareholders along with their consent

Creditors along with their consent

Equity Shareholder

Consent submitted on

affidavit

Secured Creditors

Consent submitted on

affidavit

Unsecured Creditors

Consent submitted on

affidavit

Transferor Company No. 1

6 (Six) Equity Shareholders

100% (in value)

NIL

NA

1 (One) Unsecured Creditor

100% (in value)

Transferor Company No. 2

6 (Six) Equity Shareholders

100% (in value)

NIL

NA

1 (One) Unsecured Creditor

100% (in value)

Transferee Company

6 (Six) Equity Shareholders

100% (in value)

NIL

NA

2 (Two)

Unsecured Creditors

100% (in value)

18. It is submitted that the list of Equity Shareholders of Transferor Company No. 1/Applicant Company No. 1 duly certified by the Statutory Auditors is attached as Annexure-4 of application. As per the certificate dated 24.08.2021 issued by Statutory Auditors, there are 6 (six) Equity Shareholders of the Transferor Company No. 1/Applicant Company No. 1 as on 24.08.2021 and all the Equity Shareholders of the Transferor Company No. 1/Applicant Company No. 1 have given their consent by way of affidavits to the proposed scheme which is part of Annexure-6 of the application. The list of Secured and Unsecured Creditors of

Transferor Company No. 1/Applicant Company No. 1 duly certified by the Statutory Auditors is attached as Annexure-7 of the application. As per the certificate dated 24.09.2021 issued by Statutory Auditors, there are Nil Secured Creditors and 1 (One) Unsecured Creditor as on 24.09.2021. The sole unsecured creditor of the Transferor Company No. 1/Applicant Company No. 1 has given their consent by way of affidavit to the proposed scheme and the same is part of Annexure-8 of the application.

19. It is further submitted that the list of Equity Shareholders of Transferor Company No. 2/Applicant Company No. 2 duly certified by the Statutory Auditors is attached as Annexure-4 of application. As per the certificate dated 24.08.2021 issued by Statutory Auditors, there are 6 (Six) Equity Shareholders of the Transferor Company No. 2/Applicant Company No. 2 as on 24.08.2021 and all the Equity Shareholders of the Transferor Company No. 2/Applicant Company No. 2 have given their consent by way of affidavits to the proposed scheme which are part of Annexure-6 of the application. The list of Secured and Unsecured Creditors of Transferor Company No. 2/Applicant Company No. 2 duly certified by the Statutory Auditors is attached as Annexure-7 of the application. As per the certificate dated 24.09.2021 issued by Statutory Auditors, there are Nil Secured Creditors and 1 (One) Unsecured Creditors as on 24.09.2021. The sole unsecured creditor of the Transferor Company No. 2/Applicant Company No. 2 has given their consent by way of affidavit to the proposed scheme and the same is part of Annexure-8 of the application.

20. It is further submitted that the list of Equity Shareholders of Transferee Company/Applicant Company No. 3 duly certified by the Statutory Auditors is attached as Annexure-4 of application. As per the certificate dated 24.08.2021 issued by Statutory Auditors, there are 6 (Six) Equity Shareholders of the Transferee Company/Applicant Company No. 3 as on 24.08.2021 and all the Equity Shareholders of the Transferor Company No. 2/Applicant Company No. 2 have given their consent by way of affidavits to the proposed scheme which is part of Annexure-6 of the application. The list of Secured and Unsecured Creditors of Transferee Company/Applicant Company No. 3 duly certified by the Statutory Auditors is attached as Annexure-7 of the application. As per the certificate dated 24.09.2021 issued by Statutory Auditors, there are Nil Secured Creditors and 2 (Two) Unsecured Creditors as on 24.09.2021. The unsecured creditors of the Transferee Company/Applicant Company No. 3 have given their consent by way of affidavits to the proposed scheme and the same is part of Annexure-8 of the application.

21. This Bench has decided the issue of dispensation of meeting of shareholders in the cases of: CA (CAA) No.2/Chd/Hry/2021 Goibibo Group Private Limited & Ors. dated 23.12.2021; CA No.189/2021 & CA (CAA) No.41/Chd/Pb/2021 G.N.A Transmissions Pvt. Ltd. & Ors. dated 23.12.2021; and CA (CAA) No.35/Chd/Hry/2021 NAM Estates Private Limited dated 23. 12.2021. In the aforementioned orders, after discussing the differing views of coordinate Benches, this Bench has

followed the decisions of the Hon'ble NCLAT in DLF Phase-IV Commercial Developers Limited and Others with DLF Limited, (Company Appeal (AT) No.180 of 2019) dated 19.08.2019 and Alovera Tradelink Pvt. Limited and Others Vs. Ostwal Physchem (India) Limited in Company Appeal (AT) No.178/2019 decided on 06.08.2019 on this issue and has held that "depending on the facts and circumstances of each case, the NCLT has the powers to dispense with the meetings of shareholders and others by using judicial discretion".

22. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Applicant Company No. 1/Transferor Company No. 1:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b. Since, there are Nil Secured Creditors in the Applicant Company No. 1/ Transferor Company No. 1. Therefore, there is no scope for any meeting.

c. The meeting of the Unsecured Creditors of the Applicant Company No. 1/ Transferor Company No. 1 is dispensed with as it has 1 (One) Unsecured Creditor and the consent of sole unsecured creditor has been received by way of affidavit.

II. In relation to the Transferor Company No. 2/Applicant Company No. 2:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b. Since, there are Nil Secured Creditors in the Transferor Company No. 2/ Applicant Company No. 2. Therefore, there is no scope for any meeting.

c. The meeting of the Unsecured Creditors of the Transferor Company No. 2/ Applicant Company No. 2 is dispensed with as it has 1 (One) Unsecured Creditor and the consent of sole unsecured creditor has been received by way of affidavit.

III. In relation to the Transferee Company/Applicant Company No. 3:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b. Since, there are Nil Secured Creditors in the Transferee Company/Applicant Company No. 3. Therefore, there is no scope for any meeting.

c. The meeting of the Unsecured Creditors of the Transferee Company/Applicant Company No. 3 is dispensed with as it has 2 (Two) Unsecured Creditors and the consent of all the unsecured creditors has been received by way of affidavits.

23. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction

that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies, (c) the Official Liquidator and (d) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.

