(2023) 04 NCLT CK 0060

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 14/(KB)/2023

Howrah Composite Limited Vs

Date of Decision : 26-04-2023

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) 04 NCLT CK 0060

Hon'ble Judges : Bidisha Banerjee, Member (J);Rahul Bhatnagar, Member (T)

Bench : Division Bench

Advocate : Shashi Agarwal

Final Decision : Disposed Of

Judgement

Bidisha Banerjee, 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 dispensation of meeting of shareholders and creditors as applicable,

in connection with the Scheme of Arrangement/ Demerger between Howrah Composite Limited, being the Applicant No. 1 abovenamed ("Resulting Company"/ "Transferee Company" or "Composite") and Howrah Ferrous Limited, being the Applicant No. 2 abovenamed ("Transferor Company and/or Demerged Company" or "Ferrous" whereby and whereunder de-merger of Fibre Reinforced plastic (FRP) unit at Liluah ("Demerged Undertaking") of Howrah Ferrous Limited ("Demerged Company"/"Transferor Company"), with and into Howrah Composite Limited ("Resulting Company"/"Transferee Company") on a going-concern basis from the Appointed Date, viz 1st Day of April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Arrangement/ Demerger ("Scheme").(Page No. 189-216 of Application).

2. It is submitted by Ld. counsel appearing for the Applicants that the shares of the Applicant No. 1, and 2 are not listed in any stock exchanges. Further, the

Applicants have the following classes of shareholders and creditors:-

Sl No

Name of Applicant Companies

Equity Shareholders

Preference Shareholders

Secured Creditors

Unsecured Creditors

1

Howrah Composite Limited

7 Nos

NOC Page No. 232-252

Noc-100%

Nil

Nil

1 Nos

NOC Page No. 304-306

Noc-100%

2

Howrah Ferrous Limited

9 Nos

NOC Page No.253-282

Noc-100%

Nil

1 Nos

NOC Page No.300- 303

Noc-100%

40 Nos

NOC Page No.307-433

Noc-90%

3. The Scheme was approved unanimously by the respective Board of Directors

of the Applicant Companies at their meetings held on 30/06/2022 respectively. (Page No. 217-218 of Application).

4. The Statutory Auditors of respective Applicant Companies have by their certificates dated 03/01/2023 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.(Page No. 434-436 of Application).

5. The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of SKA Business Advisory Services Private Limited, Valuer. (Page No. 219-231 of Application)

6. It is further submitted that all Shareholders of Applicant No. 1, and 2 have already given their consent to the Scheme by way of affidavits which are annexed to the application. Applicant No. 2 has secured creditor, Applicant No. 1 and 2 has unsecured creditor and the said creditors being more than 90% in value has given NOC in the form of affidavit which is annexed to the application.

7. Directions are sought accordingly for dispensing with meetings of the equity shareholders and meeting of creditor of Applicant No. 1, and 2 as applicable, who have already given their consent to the Scheme to consider the Scheme under Section 230(1) read with Section 232(1) of the Act.

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:-

Meetings dispensed: Meetings of the Equity Shareholders, of the Applicant No. 1, and 2 are dispensed-with under Section 230(1) read with Section 232(1) of the Act. Further, meeting of secured creditor of Applicant No. 2 and meeting of unsecured creditor of Applicant No. 1 and 2 are dispensed-with under Section 230(1) read with Section 232(1) of the Act.

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 be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies with whom the Applicant(s) are registered; Official Liquidator, High Court, Kolkata; Income Tax Department having jurisdiction over the Applicant(s) and Reserve Bank of India; by sending the same by hand delivery through special messenger or by Sped 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 Advocates / Authorised Representative of the said Applicant(s). 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 Arrangement/ Demerger. 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 application being Company Application (CAA) No. 14/(KB)/2023 is disposed of accordingly.

11. The applicants to file an affidavit proving service of notices to all statutory / sectoral authorities and compliance of all the directions contained.

12. Connected Company Petition should be filed within a period of four weeks from the date of issue of this order.

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