(2020) 12 NCLT CK 0139

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 1109/MB-IV Of 2020

I-Pay Clearing Services Private Limited And Anr. Vs

Date of Decision : 07-12-2020

Acts Referred:

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

Citation : (2020) 12 NCLT CK 0139

Hon'ble Judges : Suchitra Kanuparthi, J;Rajesh Sharma, Member (Technical)

Bench : Division Bench

Advocate : Shailendera Kishore Singh, Prithu Garg

Judgement

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1. This Court convened through video conference today.,,

2. UPON the application of the Applicant Companies above named by a Company Notice of Admission AND UPON HEARING Mr. Shailendera,,

Kishore Singh a/w Mr. Prithu Garg i/b GnS Legal, Advocates for the Applicant Companies AND UPON READING the Application along with the",,

Notice of Admission dated October 1, 2020 of the Authorized Signatory of the Applicant Companies, in support of Notice of Admission along with",,

Application and Exhibits therein referred to, IT IS ORDERED THAT:",,

3. The Counsel for the Applicant companiesâ?? states that the present Scheme is a Scheme of Amalgamation of I-Pay Clearing Services Private,,

Limited (â??First Applicant Companyâ??/ â??Transferor Companyâ??) with EFKON India Private Limited (â??Second Applicant Companyâ?? /,,

â??Transferee Companyâ??) and their respective Shareholders and Creditors. The First Applicant/ Transferor Company is a wholly owned,,

subsidiary of the Second/Transferee Company.,,

4. The Counsel for Applicant Companies further submits that the Applicant Companies are engaged in the business of Electronic Clearing Payment,",,

Loyalty Card Program, Cross- selling systems and other related software solution systems that ensures convenient and secure electronic payment",,

transaction in various services.,,

5. A copy of the Scheme setting out in detail the terms and conditions of the scheme, inter alia, providing for the proposed Scheme of Arrangement",,

between I-Pay Clearing Services Private Limited (â??First Applicant Companyâ?? / â??Transferor Companyâ??) with Efkon India Private Limited,,

(â??Second Applicant Companyâ?? / â??Transferee Companyâ??) and their respective Shareholders and Creditors has been approved by the,,

Board of Directors of the respective Applicant Companies vide Board Resolution passed at their respective Board Meetings held on September 10,",,

2020.,,

6. The appointed date for the Scheme of Amalgamation between I-Pay Clearing Services Private Limited (â??First Applicant Companyâ?? /,,

â??Transferor Companyâ??) with Efkon India Private Limited (â??Second Applicant Companyâ?? /â??Transferee Companyâ??) and their,,

respective Shareholders and Creditors is April 1, 2020.",,

7. The rationale for the Scheme is as under:,,

i) It will result in a simplified corporate structure and create a consolidated base for future growth of the Amalgamated Company.,,

ii) It will enhance the shareholdersâ?? value accruing from the consolidation of the operations resulting in economies of scale, improving allocation of",,

capital, and optimizing cash flows, thus contributing to the overall growth prospectus of the combined entity.",,

iii) It will ensure optimum utilization of resources due to pooling of management, administrative and marketing skills of various resources of both",,

Companies, better administrative and other common costs.",,

iv) It will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Companies,,

and avoid duplication of administrative functions and eliminate record keeping.,,

v) It will create a larger asset base and aggregation of facilities and technical capabilities of both Companies, which are in the business of providing",, similar services, along with the access to better financial resources for the Applicant/ Amalgamated Company.",,

8. The Counsel for the First Applicant Company states that all (100%) Equity Shareholders of the First Applicant Company have given their consent,,

on affidavit to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the First Applicant Company, the meeting",,

of the Equity Shareholders of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or",,

without modification(s) are hereby dispensed with.,,

9. The Counsel for the Second Applicant Company states that all (100%) Equity Shareholders of the Second Applicant Company have given their,,

consent on affidavit to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the Second Applicant Company,",,

the meeting of the Equity Shareholders of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed",,

Scheme with or without modification(s) are hereby dispensed with.,,

10. The Counsel for the First Applicant Company submits that there are no Secured Creditors of the First Applicant Company. He further states that,,

there is one Unsecured Creditor of the First Applicant Company which has given its consent on affidavit to the proposed Scheme. In view of the fact,,

that there are no Secured Creditors, and one Unsecured Creditor which has given its consent to the proposed Scheme, the meeting of the creditors of",,

the First Applicant Company for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is",,

hereby dispensed with.,,

11. The Counsel for the Second Applicant Company submits that there are no Secured Creditors of Second Applicant Company. He further states,,

that as on 10.09.2020 there are 166 (One Hundred and Sixty-six) Unsecured Creditors of the Second Applicant/Transferee Company, of which 9",,

(Nine) Unsecured Creditors constituting over 90% in value of the total debt of the Second Applicant Company have given their consent on affidavit to,,

the proposed Scheme. In view of the fact that Unsecured Creditors constituting over 90% in value of the debt have given their consent to the,,

proposed Scheme, the meeting of the creditors of the Second Applicant Company for the purpose of considering and, if thought fit, approving the",, proposed Scheme with or without modification(s) is hereby dispensed with.,,

12. The Counsel for the Applicant Companies respectfully submits that being a merger of a wholly owned subsidiary company into its holding,,

company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of the members of the Transferee",,

Company are not affected since no shares will be issued pursuant to the Scheme and there will be no change in the equity share capital of the,,

Transferee Company. He further submits that the net-worth of the Transferee Company, post amalgamation will remain highly positive.",,

13. The Applicant Companies to serve the notice upon the Central Government through the office of the concerned Regional Director (Western,,

Region), Ministry of Corporate Affairs, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies",,

(Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Regional Director within thirty",,

(30) days of the date of receipt of the notice it will be presumed that Regional Director has no objection to the proposed Scheme as per Rule 8 of the,,

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

Name of the

Applicant Company",PAN,Address

I-Pay Clearing

Services Private

Limited",AABCI0280L,"Circle 15(2)(1)-Mumbai, Maharishi

Karve Road, Churchgate, Mumbai,

Maharashtra- 400020

Efkon India Private

Limited",AAACI9818F,"Circle 14(1)(2)-Mumbai, Maharishi

Karve Road, Churchgate, Mumbai,

Maharashtra- 400020