(2020) 05 NCLT CK 0035

In the National Company Law Appellate Tribunal

Case No : Company Application No. CA (CAA) 22/PB Of 2020

Infogain India BPO Private Limited And Ors. APPELLANT

Vs

Infogain India Private Limited RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:

Companies Act, 2013 — Section 230, 230(2), 231, 232
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 3(2)

Citation : (2020) 05 NCLT CK 0035

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Umesh Singhal, Akshit Gupta

Final Decision : Allowed

Judgement

B.S.V. Prakash Kumar, J

1. This is an application filed by the applicant companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'The Rules') in relation to the Scheme (for brevity the "SCHEME") proposed between the applicants.

2. An affidavit in support of the application sworn for and on behalf of all Transferor Companies has been filed by one Sushil Kumar Nanda and on behalf of the Transferee Company by one Mi". Kulesh Bansal, being the Authorized Signatory of the respective Companies.

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. Learned Counsel has taken us through the averments made in the application as well as the typed set of documents annexed there with.

It is further represented that the application filed by the applicants is maintainable in view of Rule 3(2) of the Rules. Learned Counsel also submits that the registered offices of the Applicant Companies are situated within the territorial jurisdiction of this tribunal and fall within the territorial jurisdiction of the Registrar of Companies, NCT, New Delhi.

4. In relation to the Applicant Company No. 1, in the scheme, it is submitted that the Company has 2 Shareholders. It is further represented that the Applicant Company No. 1 has no secured Creditor and unsecured creditors amounting to Rs. 96,83,383/-only.

5. In relation to the Applicant Company No. 2, it is submitted that the Company has 2 Equity Shareholders. It is further represented that the company has no secured creditors and unsecured creditors amounting to Rs. 11,82,07,287/-only.

6. In relation to the Applicant Company No. 3, it is submitted that the Company has 2 Equity Shareholders. It is further represented that the company has no secured creditors and unsecured creditors amounting to Rs. 72,096/- only.

7. In relation to the Applicant Company No. 4, it is submitted that the Company has 2 Equity Shareholders. It is further represented that the company has no secured creditors and unsecured creditors amounting to Rs. 19,26,57,702/-only.

8. The above application has been placed before us and this Tribunal proceeds to entertain the same. We have perused the application and the connected documents filed along with the Scheme contemplated amongst the Applicant Companies.

9. Applicant Company No. 1 was incorporated on 05.09.2003 under the provisions of the Companies Act, 1956 under the name "INFOGAIN INDIA BPO PRIVATE LIMITED". The authorised share capital of the Company is Rs. One Crore and issued, subscribed and paid-up share capital of the Applicant Company-1 is Rs. One Crore only.

10. Applicant Company No. 2 was incorporated under the provisions of Companies Act, 1956 on 18.09.2000 under the name "INFOGAIN SYSTEMS PRIVATE LIMITED ". The authorised share capital is Rs. Fifty Lacs and the issued, subscribed and paid-up share capital of the Applicant Company-2 is Rs. 9,50,000/-.

11. Applicant Company No. 3 was incorporated under the provisions of Companies Act, 1956 on 16.08.1989 under the name "JOBCURRY SYSTEMS PRIVATE LIMITED". The authorised share capital is Rs. Five Crores and the issued, subscribed, and paid-up share capital of the Company is Rs. 71,13,000/-.

12. Applicant Company No. 4 was incorporated under the provisions of Companies Act, 1956 on 14.09.1991 under the name "INFOGAIN INDIA PRIVATE LIMITED ". The authorised share capital is Rs. Five Crores and the issued, subscribed, and paid-up share capital of the Company is Rs. 2,59,38,000/-.

13.The Board of Directors of the Applicant Companies vide separate meetings have unanimously passed resolutions and approved the proposed Scheme of Arrangement as contemplated above and copies of resolutions have also been placed on record by the Companies.

14. Taking into consideration the application and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same which are as follows:-

A. In relation to the Applicant No. 1:

i. With respect to Shareholders:

There is a total of 2 shareholders in the Company. Meeting to held on 18.07.2020 at 11.00 A.M. at a venue to be decided by the parties or by any online mode including video conferencing. The quorum of the meeting shall be 2 present in person.

ii. With respect to Secured Creditors:

Since it is represented by the Company that there are no Secured Creditors, the necessity of convening and holding a meeting is obviated.

iii. With respect to Unsecured Creditors:

Meeting to held on 18.07.2020 at 02.00 P.M. at the venue to be decided by the parties or by any online mode including video conferencing. The quorum of the meeting shall be creditors holding not less than 75% of the total value present in person.

B. In relation to the Applicant No. 2:

i. With respect to Shareholders:

It is represented by the Company that the company has 2 shareholders. Meeting to be held on 18.07.2020 at 11.30 A.M. at the venue to be decided by the parties or online. The Quorum of the meeting shall be 2 present in person.

ii. With respect to Secured Creditors:

Since it is represented by the Company that there are no Secured Creditors, the necessity of convening and holding a meeting is obviated.

iii. With respect to Unsecured Creditors:

Meeting to held on 18.07.2020 at 02.30 P.M. at the venue to be decided by the parties or by any online mode including video conferencing. The quorum of the meeting shall be creditors holding not less than 75% of the total value present in person.

C. In relation to the Applicant No. 3:

i. With respect to Shareholders:

There is a total of 2 shareholders in the Company. Meeting to held on 18.07.2020 at 12 Noon at a venue to be decided by the parties or by any online mode including video conferencing. The quorum of the meeting shall be 2 present in person.

ii. With respect to Secured Creditors:

Since it is represented by the Company that there are no Secured Creditors, the necessity of convening and holding a meeting is obviated.

iii. With respect to Unsecured Creditors:

Meeting to held on 18.07.2020 at 03.00 P.M. at the venue to be decided by the parties or by any online mode including video conferencing. The quorum of the meeting shall be creditors holding not less than 75% of the total value present in person.

D. In relation to the Applicant No. 4:

i. With respect to Shareholders:

There is a total of 2 shareholders in the Company. Meeting to held on 18.07.2020 at 12.30 P.M. at a venue to be decided by the parties or by any online mode including video conferencing. The quorum of the meeting shall be 2 present in person.

ii. With respect to Secured Creditors:

Since it is represented by the Company that there are no Secured Creditors, the necessity of convening and holding a meeting is obviated.

iii. With respect to Unsecured Creditors:

Meeting to held on 18.07.2020 at 03.30 P.M. at the venue to be decided by the parties or by any online mode including video conferencing. The quorum of the meeting shall be creditors holding not less than 75% of the total value present in person.

E. In case the Quorum as noted above for the above meetings of the applicant companies is not present, in the meetings, then the meetings shall be adjourned for half an hour, and thereafter, the person present shall be deemed to constitute the quorum. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

F. Dr. Mrs. Santosh Kumar (9814435192) is appointed as the Chairperson and Mr. Shashank Shekhar, Advocate (8109540985) appointed as Alternative Chairperson for the meetings of Applicant Companies as has been directed to be convened by this Tribunal or in case of any adjournment thereof.

G. The fee for the Chairperson for the aforesaid meetings shall be INR 1,50,000/- and the fee for the Alternate Chairperson shall be INR 1,25,000/- in addition to meeting their incidental expenses. Mr. Nitin Aggarwal, CA (9999451339) is appointed as a Scrutinizer for Applicant Companies and would be entitled to fee of INR 1,25,000/- for his services in addition to meeting his incidental expenses. The Chairperson will file their reports within two weeks from the date of holding of the above said meeting.

H. The individual notices of the said meetings shall be sent as required and prescribed by the Companies Act, 2013 through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, place or mode and time as aforesaid, together with a copy of scheme of arrangement, a copy of explanatory statement. The prescribed form of proxy shall be sent along with and in addition to the above documents, any other documents as may be prescribed under the Act may also be duly sent with the notice.

I. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the English Daily 'Statesman' and Hindi Daily 'Veer Arjun' stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

J. Voting shall be allowed on the proposed Scheme by voting in person or by proxy, as may be applicable to the'respective companies under the Act and rules framed there under. The Chairperson shall be responsible to report the result of the meeting to this Tribunal within two weeks of the conclusion of the meeting with regard to the proposed scheme.

K. The Companies shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator, Income Tax Department and any sectoral regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

L. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed in the aforesaid terms.