

(2020) 05 NCLT CK 0024

In the National Company Law Appellate Tribunal

Case No : Company Petition No. CA (CAA)-81 (PB) 2019

Jachana Estate Private Limited And Ors

APPELLANT

Vs

Kohli One Housing And Development Private Limited

RESPONDENT

Date of Decision : 15-05-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2020) 05 NCLT CK 0024

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

Bench : Division Bench

Advocate : Ajit Kumar

Final Decision : Allowed

Judgement

B.S.V. Prakash Kumar, J

1. This application has been jointly filed by the Applicant Companies under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of the Applicant Companies, for seeking appropriate directions for convening of the meetings of shareholders and creditors of both the Applicant companies for approval of the proposed Scheme of Amalgamation as contemplated between the applicant companies. The said Scheme of Amalgamation (hereinafter referred to as the "Scheme") has been placed on record along with the joint application.

2. It is represented that the registered office of all the applicant companies is situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Bench.

3. The transferor No. 1 Company was incorporated under the Companies Act, 1956 on 16th October 1997 in the name and style of "Jachana Estate Private Limited" in the office of Registrar of Companies, NCT of Delhi and Haryana, under

the Corporate Identification No. is U70109DL1997PTC090241. Its authorized share capital is Rs. 10,00,000/- while its issued, subscribed and paid up capital is Rs. 1,01,000/- divided into 1,010 equity shares of Rs. 100/-.

4. It is submitted that the transferor Company No. 1 has 3 Equity Shareholders. It is further represented by the counsel for Applicants that the transferor company No. 1 has no secured creditor and 1 unsecured creditor. The certificates of chartered accountant in respect of creditors has also been placed on record. In respect of shareholders and unsecured creditors, prayer has been made for issuance of directions for convening and holding of their respective meetings.

5. Transferor Company No. 2 was incorporated under the Companies Act, 1956 on 4th December 1997 in the name and style of "Monstera Estate Private Limited" in the office of Registrar of Companies, NCT of Delhi and Haryana, under the Corporate Identification No. is U45201DL1997PTC090995. Its present authorized share capital is Rs. 10,00,000/-, while its issued, subscribed and paid up capital Rs. 1,02,000/-divided into 1,020 equity shares of Rs. 100/- each.

6. It is submitted that the transferor Company No. 2 has 2 Equity Shareholders. It is further represented by the counsel for Applicants that the transferor company No. 1 has no secured creditor and 2 unsecured creditors. The certificates of chartered accountant in respect of creditors has also been placed on record. In respect of shareholders and unsecured creditors, prayer has been made for issuance of directions for convening and holding of their respective meetings.

7. Transferor Company No. 3 was incorporated under the Companies Act, 1956 on 17th August, 2005 in the name and style of "Palmvalley Estates Private Limited" in the office of Registrar of Companies, NCT of Delhi and Haryana, under the Corporate Identification No. is U45201DL2005PTC139703. Its present authorized share capital is Rs. 1,00,000/-, while its issued, subscribed and paid up capital Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each.

8. It is submitted that the transferor Company No. 3 has 2 Equity Shareholders. It is further represented by the counsel for Applicants that the transferor company No. 1 has no secured creditor and 2 unsecured creditors. The certificates of chartered accountant in respect of creditors has also been placed on record. In respect of shareholders and unsecured creditors, prayer has been made for issuance of directions for convening and holding of their respective meetings.

9. Transferor Company No. 4 was incorporated under the Companies Act, 1956 on 14th September 2005 in the name and style of "Palmvalley Realtors Private Limited" in the office of Registrar of Companies, NCT of Delhi and Haryana, under the Corporate Identification No. is U70101DL2005PTC140705. Its present authorized share capital is Rs. 1,00,000/-, while its issued, subscribed and paid up capital Rs. 1,00,000/-divided into 10,000 equity shares of Rs. 10/-each.

10. It is submitted that the transferor Company No. 4 has 2 Equity Shareholders. It is further represented by the counsel for Applicants that the transferor company No. 1 has no secured creditor and 2 unsecured creditors. The certificates of chartered accountant in respect of creditors has also been placed on record. In respect of shareholders and unsecured creditors, prayer has been made for issuance of directions for convening and holding of their respective meetings.

11. The Transferee Company was incorporated under the Companies Act, 1956 on 23rd April 1999 in the name and style of "Kohli Malibu Developers Private Limited" in the office of Registrar of Companies, NCT of Delhi and Haryana, under the Corporate Identification No. is U45201DL1999PTC099448. That with effect from 11.10.1999 the name of the Applicant/Transferee Company got changed from Kohli Malibu Developers Private Limited to Kohli Housing and Development Private Limited and subsequently on 01.09.2007 the name of the Applicant/Transferee Company got changed from Kohli Housing and Development Private Limited to Kohli One Housing & Development Private Limited. Its present authorized share capital is Rs. 50,00,000/-, while its issued, subscribed and paid up capital Rs. 41,59,500/-divided into 41,595 equity shares of Rs. 100/- each.

12. It is submitted that the transferee Company has 4 Equity Shareholders. It is further represented by the counsel for Applicants that the transferor company No. 1 has 1 secured creditor and 4 unsecured creditors. The certificates of chartered accountant in respect of creditors has also been placed on record. In respect of shareholders, secured creditor and unsecured creditors, prayer has been made for issuance of directions for convening and holding of their respective meetings.

13. We have perused the joint applications and the connected documents/papers filed herewith including the Scheme of Amalgamation contemplated between the Applicant companies.

14. It is further submitted that the board of directors of all the applicant companies vide separate meetings, held on 08.03.2019 respectively have unanimously approved the proposed Scheme of Amalgamation and copies of such board resolutions passed thereat have been placed on record by the companies.

15. All the applicants have filed their respective Memorandum and Articles of Associations. The applicants have also filed their audited financial statements for the year ending 31.03.2019.

16. It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013, and the same if sanctioned by this Tribunal the appointed date as provided in the Scheme shall be April 1st, 2017.

17. All the companies have submitted that no investigation proceedings are

pending under the provisions of the Companies Act against any of the applicant company.

18. Further, it has been stated in the application that the Scheme is not prejudicial to the interests of the shareholders, and creditors of the applicant companies. The Scheme will be beneficial to both the applicant companies and their respective shareholders, and creditors.

19. The certificates of statutory auditors of all the applicant companies confirming that the accounting treatment in the scheme is in compliance of and in conformity with Section 133 of the Companies Act, 2013 have been placed on record.

20. Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued: -

A. In relation to transferor company No. 1 i. With respect to Equity Shareholders:

Meeting of the shareholders is directed to be held at on 27.06.2020 at around 9:30 am at Registered office of the transferor company No. 1 subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

ii. With respect to secured creditors:

As there is no secured creditor in the company the requirement of convening meeting of secured creditors does not arise.

iii. With respect to unsecured creditors:

Meeting of the unsecured creditors is directed to be held on 27.06.2020 at around 10:30 am at Registered office of the transferor company No. 1 subject to the notice of the meeting being issued. The quorum of the meeting shall be 1 in number in person.

B. In relation to transferor company No. 2 iv. With respect to Equity Shareholders:

Meeting of the shareholders is directed to be held at on 27.06.2020 at around 11:30 am at Registered office of the transferor company No. 2 subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

v. With respect to secured creditors:

As there is no secured creditor in the company the requirement of convening meeting of secured creditors does not arise.

vi. With respect to unsecured creditors:

Meeting of the unsecured creditors is directed to be held on 27.06.2020 at around 1:00 pm at Registered office of the transferor company No. 2 subject to

the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

C. In relation to transferor company No. 3 vii. With respect to Equity Shareholders:

Meeting of the shareholders is directed to be held at on 27.06.2020 at around 2:00 pm at Registered office of the transferor company No. 3 subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

viii. With respect to secured creditors:

As there is no secured creditor in the company the requirement of convening meeting of secured creditors does not arise.

ix. With respect to unsecured creditors:

Meeting of the unsecured creditors is directed to be held on 27.06.2020 at around 3:00 pm at Registered office of the transferor company No. 3 subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

D. In relation to transferor company No. 4

x. With respect to Equity Shareholders:

Meeting of the shareholders is directed to be held at on 27.06.2020 at around 04:00 pm at Registered office of the transferor company No. 4 subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

xi. With respect to secured creditors:

As there is no secured creditor in the company the requirement of convening meeting of secured creditors does not arise.

xii. With respect to unsecured creditors:

Meeting of the unsecured creditors is directed to be held on 28.06.2020 at around 10:00 am at Registered office of the transferor company No. 4 subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

E. In relation to transferee company

xiii. With respect to Equity Shareholders:

Meeting of the shareholders is directed to be held at on 28.06.2020 at around 11:30 am at Registered office of the transferee company subject to the notice of the meeting being issued. The quorum of the meeting shall be 3 in number in person.

xiv. With respect to secured creditors:

Meeting of the secured creditors is directed to be held on 28.06.2020 at around 12:30 pm at Registered office of the transferee company subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

xv. With respect to unsecured creditors:

Meeting of the unsecured creditors is directed to be held on 28.06.2020 at around 2:30 pm at Registered office of the transferee company subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number in person.

F. Ms. Eshna Kumar, Advocate (Mobile No. 9717313618) & Email id - eshna@eshnakumar.com is appointed as the Chairperson and Ms. Cipica Sharma, Advocate (Mobile No. 9855272697) and Email id-Sharma.cipica@gmail.com is appointed as the Alternate Chairperson and Mr. Somansh Babbar (Mobile No. 9149079551) is appointed as Scrutinizer for the aforementioned meetings as may have been directed to be convened by this Tribunal. G. In case the quorum as noted above for the above meetings are not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the Applicant Companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with scrutinizer shall ensure that the proxy registers are properly maintained.

H. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/- and the fee of the Alternate Chairperson shall be Rs. 1,25,000/- the fee of the Scrutinizer shall be Rs. 1,25,000/- in addition to meeting their incidental expenses. The Chairpersons will file their reports within a week from the date of holding of the above said meetings.

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

J. That the Applicant Companies shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi editions of 'Business

Standard' both English and Hindi 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 Company-II/Transferee Company.

K. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of the Applicant Companies under the Companies Act, 2013 and rules framed there under.

L. The companies shall individually send notice to Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana, Official Liquidator along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

M. The Applicant Companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor of the Applicant Company-II/Transferee Company entitled to attend the meetings as aforesaid.

N. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

O. 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.

Let the copy of the order be served to the parties.