(2022) 11 NCLT CK 0073

In the National Company Law Tribunal

Case No : Company Application CA (CAA) No. 144 / KB /2022

Jagmata Commotrade Private Limited Vs

Date of Decision : 23-11-2022

Acts Referred:

Companies Act, 2013 — Section 103, 133, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules 2016 — Rule 6, 7, 8(2)

Citation : (2022) 11 NCLT CK 0073

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Manju Bhuteria, N. Gurumurthy, Madan Kumar Maroti, Aisha Amin

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

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 meetings of shareholders and creditors in connection with the Scheme of Amalgamation of JAGMATA COMMOTRADE PRIVATE LIMITED being the Applicant No. 1 above named ("Transferor Company No 1 " or "Applicant No.1") and KRIPANIDHI CONCERN PRIVATE LIMITED being the Applicant No. 2 above named ("Transferor Company No 2 " or "Applicant No.2") and PINNACLE COMMOSALEPRIVATE LIMTIED being the Applicant No. 3 above named ("Transferor Company No 3 " or "Applicant No. 3 ") with SHREE NIWAS TEXTILESPRIVATE LIMITED being the Applicant No.4 above named ("Transferee Company" or "Applicant No.4 ") whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April,2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). A copy of the said Scheme is annexed to the Company Application marked – ANNEXURE – I in VOL II at Page No 248 to 279.

2. It is submitted by Ld. counsel appearing for the Applicant(s) that the

Appointed Date as per the Scheme is 01st April,2022.

3. It is submitted by Ld. counsel appearing for the Applicant(s) that the Board of Directors of the Applicant Companies have at their respective meeting held on 15TH September,2022 have passed resolution adopting the proposed Scheme of Amalgamation . A copy of the Board Resolution is annexed to the Company Application marked – ANNEXURE – J in VOL II at Page No 280 to 283.

4. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation Report dated 14-09-2022 recommending the Swap Ratio has been prepared by CA MUKESH BANKA, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked – ANNEXURE – K in VOL II at Page No 284 to 298.

5. It is submitted by Ld. counsel appearing for the Applicant(s) that the none of the Applicant Companies involved in the Scheme are NBFC Company.

6. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Applicant(s) have the following classes of shareholders and creditors:-

PARTICULARS

AS ON 31ST AUGUST ,2021

EQUITY

PREFERENCE

SECURED

UNSECURED

SHARE

SHARE

CREDITORS

CREDITORS

HOLDERS

HOLDERS

APPLICANT

2

NIL

NIL

NIL

NO 1

APPLICANT

2

NIL

NIL

NIL

NO 2

APPLICANT

4

NIL

NIL

NIL

NO 3

APPLICANT

7

NIL

2

736

NO 4

7. It is submitted by Ld. counsel appearing for the Applicant(s) that the Equity Shareholders of Applicant No 1 representing 100% in value of shares have already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – L in VOL – II at Page No 299 to 307.

8. It is submitted by Ld. counsel appearing for the Applicant(s) that the Equity Shareholders of Applicant No 2 representing 100% in value of shares have already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – M in VOL – II at Page No 308 to 316.

9. It is submitted by Ld. counsel appearing for the Applicant(s) that the Equity Shareholders of Applicant No 3 representing 100% in value of shares have

already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – N in VOL – III at Page No 317 to 337.

10. It is submitted by Ld. counsel appearing for the Applicant(s) that the Equity Shareholders of Applicant No 4 representing 100% in value of shares have already given their consent to the Scheme all of which are annexed to the Company Application. The list of equity shareholders as on 31-08-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – O in VOL – III at Page No 338 to 370.

11. It is submitted by Ld. counsel appearing for the Applicant(s) that there is no requirement of meeting of Secured Creditors of Applicant No 1 , Applicant No 2 and Applicant No 3 in view of NIL Creditors evidenced by the statutory auditor's certificate of the Company all of which are annexed to the Company Application marked – ANNEXURE – P in VOL – III at Page No 371, ANNEXURE – Q in VOL – III at Page No 372 and ANNEXURE – R in VOL – III at Page No 373.

12. It is submitted by Ld. counsel appearing for the Applicant(s) that Applicant No 4 have 2 Secured Creditors as on 31-08-2022 which is duly certified by statutory auditors of the Company and annexed to the Company Application marked – ANNEXURE – S in VOL – III at Page No 374.

The said Secured Creditors representing 100% in value of the Secured Creditors have given their consent to the Scheme by way of affidavits all of which are annexed to the supplementary affidavits marked – ANNEXURE – AI and A2 at Page 8 to 18.

13. It is submitted by Ld. counsel appearing for the Applicant(s) that there is no requirement of meeting of Unsecured Creditors of Applicant No 1 , Applicant No 2 and Applicant No 3 in view of NIL Creditors evidenced by the statutory auditor's certificate of the Company all of which are annexed to the Company Application marked – ANNEXURE – P in VOL – III at Page No 371, ANNEXURE – Q in VOL – III at Page No 372 and ANNEXURE – R in VOL – III at Page No 373.

14. It is submitted by Ld. counsel appearing for the Applicant(s) that Applicant No 4 have 736 Unsecured Creditors as on 31-08-2022 which is duly certified by statutory auditors of the Company and annexed to the Company Application marked – ANNEXURE – S in VOL – III at Page No 374 to 374P. Directions are sought to convene and hold separate meeting of the Unsecured Creditors of Applicant No 4 .

15. It is submitted by Ld. counsel appearing for the Applicant(s) that the statutory auditor of the Applicant Companies have by their certificate all dated 16TH September,2022 confirmed that the accounting treatment proposed in the

Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act , 2013 and Rules made there under. Copy of the said certificate is annexed to the Company Application marked – ANNEXURE – T in VOL III at Page No 375 to 382.

16. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

a. Meetings dispensed:

EQUITY SHAREHOLDERS

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of shareholder representing 100% in value of shares of Applicant Companies having respectively given their consent to the Scheme by way of affidavits.

SECURED CREDITORS

Meeting of Secured Creditors of the Applicant No 4 for considering the Scheme are dispensed with in view of Secured Creditors representing 100% in value of Secured Debts of Applicant No 4 having respectively given their consent to the Scheme by way of affidavits annexed to the supplementary affidavit .

b. No requirement of Meetings

SECURED CREDITORS

Secured Creditors of Applicant No 1 , Applicant No 2 and Applicant No 3 - NIL Creditors verified by auditors certificate .

UNSECURED CREDITORS

Unsecured Creditors of Applicant No 1 , Applicant No 2 and Applicant No 3 - NIL Creditors verified by auditors certificate .

c. Meetings to be held

Unsecured Creditors

Unsecured Creditors of Applicant No 4

d. Meetings date and time

UNSECURED CREDITORS

Unsecured Creditors of Transferee Company / Applicant No 4 to be convened and held Physical on Saturday 07th January,2023 at 2.00 P.M , for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation.

e. Mode of Meetings:

The Meetings of Unsecured Creditors of Transferee Company / Applicant No 4 will be held Physically.

f. Venue of Meetings:

The meeting directed by this Tribunal will be convened and held at the AUDITORIUM OF BENGAL NATIONAL CHAMBER OF COMMERCE AND INDUSTRY AT 01ST FLOOR , 23 SIR R.N. MUKHERJEE ROAD , KOLKATA – 700001.

g. Advertisement:

At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in the FINANCIAL EXPRESS in English and Bengali translation thereof in AAJKAL as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

h. Individual Notices:

At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to all Unsecured Creditors of Transferee Company / Applicant No 4 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be posted on the websites of the Applicant(s), if any.

i. Chairperson :

Sh. Ishan Saha, Advocate is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs.75000/- for conducting the aforesaid meeting(s) as Chairperson.

j. Scrutinizer:

Ms. Aditi Jhunjhunwala PCS is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs.60000/- for acting as Scrutinizer .

k. Quorum and Attendance:

The quorum for the said meeting (s) shall be as laid down in Section 103 of the Companies Act , 2013.

UNSECURED CREDITORS

i. In the event no quorum is present at the said meeting(s) within 30 minutes from commencement of meeting then in such event the Creditors physically present at the venue of such meeting shall constitute the quorum.

ii. The attendance of such persons shall be recorded in the minutes of the meetings.

l. Mode of Voting:

Voting on the resolution shall be through Ballot Paper at the venue of the meeting and the Transferee Company / Applicant No 4 shall make necessary arrangement for voting accordingly .

m. Voting procedure:

Subject to the directions and matters dealt with herein, the procedure for voting by polling paper/ ballot paper and conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 ("the said Rules"), and the forms there under shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

n. Cut-off date:

The cut-off date for determining the eligibility to vote and value of votes of the Unsecured Creditors of Transferee Company /

Applicant No 4 shall be as on 31ST October,2022. Notices will be sent to all those Unsecured Creditors of Transferee Company / Applicant No 4 as on 31ST October,2022.

o. Proxies & Board Resolutions:

Voting shall be allowed on the proposed Scheme by proxy at the meeting of the Unsecured Creditors of Applicant Transferee Company / Applicant No 4 provided that the proxies are in the prescribed form duly signed by the persons(s) entitled to attend and vote at the meeting is filed with the Transferee Company / Applicant No 4 at its Registered Office not later than forty-eight hours before the meeting. In case of a Body Corporate, being a Unsecured Creditors of Applicant No 4 opting to attend and vote at the meeting, as aforesaid, through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at the meeting on its behalf is deposited at the registered office of the Transferee Company / Applicant No 4 not later than forty-eight hours before the time for holding the meeting.

p. That the Chairperson appointed for the said meeting(s) or any person authorized by the Chairperson do issue and send the notices of the aforesaid meeting(s).

q. The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meeting(s) along with all papers relating to the voting to the Chairperson of the meeting(s) within 3 days from the conclusion of the meeting(s). The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer.

r. The value of each Unsecured Creditors shall be in accordance with the books and records of the Transferee Company / Applicant No 4 as on as on 31ST October,2022 and, where entries in the books are disputed, the chairperson shall determine the value for purposes of the said meeting(s).

s. The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of the Unsecured Creditors casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

t. The Chairperson do report to this Tribunal the results of the said meeting(s) within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

17. 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 also be served on the :

a. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

b. Registrar of Companies , West Bengal ,Kolkata

c. Official Liquidator; High Court Calcutta

d. Income Tax Department having jurisdiction over the Applicant(s)

by sending the same by hand delivery through special messenger or by 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 Authorized 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 Amalgamation. 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.

18. The Applicant(s) to file an affidavit proving service of notice and compliance of all directions contained herein at least a week before the meeting(s) to be held.

19. The application being Company Application (CAA) No. 144 / KB / 2022 is disposed of accordingly.

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