(2022) 11 NCLT CK 0076

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 139/KB of 2022

Jayantika Investment & Finance Ltd Vs

Date of Decision : 25-11-2022

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 230(7), 232

Citation : (2022) 11 NCLT CK 0076

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

Bench : Division Bench

Advocate : Rajeev K Goel, Kartikeya Goel, Rohit Kumar Keshri

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

1. The Court convened through hybrid mode.

2. The sanction of this Tribunal is sought under sections 230 and 232 and other relevant provisions of the Companies Act, 2013 and the rules framed thereunder for the Scheme of Amalgamation of Jayantika Investment & Finance Ltd (hereinafter referred as the Transferor Company) with Jayashree Finvest Pvt Ltd (hereinafter referred as the Transferee Company) and their respective shareholders and creditors.

3. Learned Counsel for the Applicant Companies submits that the said Scheme of Amalgamation has been approved by the Board of Directors of the

Applicant Companies in their respective meetings held on 19th September, 2022. The aforesaid Resolutions are annexed to the Company Application as Annexure: A-1/5, A-2/5, respectively.

4. Learned Counsel for the Applicant Companies submits that the Transferor Company is engaged in investment in securities of other Group Companies and other related activities.

5. Learned Counsel for the Applicant Companies submits that the Transferee

Company is engaged in securities investments and lending business; and other related activities. The Transferee Company is registered with the Reserve Bank of India (RBI) as a non-deposit accepting Non-Banking Finance Company (NBFC).

6. The authorized, issued and paid-up share capital of Jayantika Investment & Finance Ltd as on 31st August, 2022 is under:

SHARE CAPITAL

AMOUNT IN RS.

Authorized Share Capital

30,00,000

Equity Shares of ☐ 10 each

3,00,00,000

21,50,000

Preference Shares of ☐ 100 each

21,50,00,000

TOTAL

24,50,00,000

Issued, Subscribed and Paid-up Share Capital

29,95,000

Equity Shares of ☐ 10 each

2,99,50,000

21,00,000

10% Non-Cumulative Preference Shares of

21,00,00,000

☐ 100 each

TOTAL

23,99,50,000

7. The authorized, issued and paid-up share capital of Jayashree Finvest Pvt Ltd as on 31st August, 2022 is under:

SHARE CAPITAL

AMOUNT IN RS.

Authorized Share Capital

15,50,000 Equity Shares of ☐ 10 each

1,55,00,000

TOTAL

1,55,00,000

Issued, Subscribed and Paid-up Share Capital

15,14,900 Equity Shares of ☐ 10 each

1,51,49,000

TOTAL

1,51,49,000

8. The object of this Application is to ultimately obtain the sanction of this Tribunal for the Scheme of Amalgamation between the Transferor Company and the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, being Annexure: A-4 to the Application.

9. Learned Counsel for the Applicant Companies also submits that the circumstances which justify and/or necessitate the proposed Scheme of Amalgamation of Jayantika Investment & Finance Ltd with Jayashree Finvest Pvt Ltd are, inter alia, as follows:

I. The Transferor Company and the Transferee Company are closely held Group Companies under common management and control. Both the Companies are engaged in similar business activities. The proposed amalgamation of the Transferor Company with the Transferee Company would result in consolidation of both these Companies and pooling of their resources into a single entity.

II. The proposed Amalgamation would result in optimizing and leveraging existing resources of these Companies for the most beneficial utilization of these factors in the combined entity. It would be advantageous to combine the activities and operations of these Companies in a single entity and building strong capability to effectively meet future challenges in competitive business environment.

III. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.

IV. The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferor Companies and the Transferee Company.

V. The proposed amalgamation will provide greater efficiency in fund management and unfettered access to fund flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities. The proposed amalgamation would enhance the shareholders' value of the

VI. The proposed Scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

10. Ld. Counsel for the Applicant Companies further submits that the Appointed Date for the amalgamation is 1st April, 2023.

11. Learned Counsel for the Applicant Companies submits that the Directors of the Applicant Companies have no material interest in the said Scheme save and except as such Director, KMP or Shareholder.

12. Learned Counsel for the Applicant Companies submits that the proposed Scheme is not within the purview of the Competition Act, 2002, and that there are no proceedings pending under section 210 to 227 of the Companies Act, 2013 against any of the Applicant Companies; and that no investigation under the Companies Act, 2013 is pending against the Applicant Companies.

13. Learned Counsel for the Applicant Companies submits that in compliance of proviso to Section 230(7) of the Act, the statutory Auditors of the Applicant Companies have certified the accounting treatment proposed in the Scheme is in conformity with the Accounting Standards prescribed under section 133 of the Companies Act, 2013.

14. Learned Counsel for the Applicant Companies submits that the details of Shareholders, Secured Creditors and Un-secured Creditors of all the companies are as per the following detail:

The Transferor Company:

i. The Transferor Company has 7 (seven) Equity Shareholders, and all have given their consents by way of deposing individual affidavits which are annexed to the Application as Annexure: A-1/7.

ii. The Transferor Company has 1 (one) Preference Shareholders, and the said Shareholder has given its consent by way of deposing individual affidavit which has been filed along with Additional Affidavit of the Transferor Company.

iii. The Transferor Company has no Secured Creditors.

iv. The Transferor Company has no Un-secured Creditors.

i. The Transferee Company has 2 (two) Equity Shareholders, and both have given their consents by way of deposing individual affidavits which are annexed to the

Application as Annexure: A-2/7.

ii. The Transferee Company has no Secured Creditors.

iii. The Transferee Company has 1 (one) Un-secured Creditor and the said Un-secured Creditor has given its consent by way of deposing individual affidavit which are annexed to the Application as Annexure: A-2/10.

15. Learned Counsel, appearing for the Applicants, made the following contentions with respect to the dispensation of the requirement of convening meetings of the following persons:

a) All the Equity Shareholders of the Transferor Company and the Transferee Company have given their written consents by way of affidavits. Therefore, the requirement of convening meetings of the Equity Shareholders of the Transferor Company and the Transferee Company may be dispensed with.

b) The sole Preference Shareholder of the Transferor Company has given its written consent by way of affidavit. Therefore, the requirement of convening meeting of the Preference Shareholder of the Transferor Company may be dispensed with.

c) There is no Secured Creditor in the Transferor Company and the Transferee Company. Therefore, there is no need to convene meetings of Secured Creditors of the Transferor Company and the Transferee Company.

d) There is no Un-secured Creditor in the Transferor Company. Therefore, there is no need to convene meetings of Un-secured Creditors of the Transferor Company.

e) The sole Un-secured Creditor of the Transferee Company has given its written consent by way of affidavit. Therefore, the requirement of convening meeting of the Un-secured Creditor of the Transferee Company may be dispensed with.

16. The present Scheme is an amalgamation between Transferor Company and the Transferee Company and their shareholders as contemplated under section 230 and 232 of the Companies Act, 2013.

17. We have perused the documents annexed to the Application and have heard the submissions made on behalf of the Applicants and accordingly pass the following orders:

a. In view of the consent affidavits given by the Equity Shareholders of the Transferor Company and the Transferee Company, the requirement of convening meetings of the Equity Shareholders of the Transferor Company and the Transferee Company, for the purpose of considering and if thought fit, approving the proposed Scheme of Amalgamation, are dispensed with.

b. In view of the consent affidavit given by the Preference Shareholder of the Transferor Company, the requirement of convening meeting of the Preference Shareholders of the Transferor Company, for the purpose of considering and if thought fit, approving the proposed Scheme of Amalgamation, is dispensed with.

c. As stated, there is no Secured Creditor in the Transferor Company and the Transferee Company, accordingly, the requirement of convening the meetings of Secured Creditors of the Transferor Company and the Transferee Company, for the purpose of considering and if thought fit approving the proposed Scheme of Amalgamation, does not arise at all.

d. As stated, there is no Un-secured Creditor in the Transferor Company, accordingly, the requirement of convening the meeting of Un-secured Creditors of the Transferor Company, for the purpose of considering and if thought fit approving the proposed Scheme of Amalgamation, does not arise at all.

e. In view of the consent affidavit given by Un-secured Creditor of the Transferee Company, the requirement of convening the meeting of Un-secured Creditors of the Transferee Company for the purpose of considering and if thought fit, approving the proposed Scheme of Amalgamation, is dispensed with.

f. The Applicant Companies are directed to serve the notice along with a copy of the Scheme upon: (a) the Central Government through the office of the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; (b) the Registrar of Companies, West Bengal, Kolkata; (c) the Official Liquidator, West Bengal, Kolkata; (d) the Income Tax Department; (e) the Reserve Bank of India, DNBS, Kolkata with a direction that they may submit their representation(s), if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal and a copy(s) of such representation(s) shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the authorities have no representation(s) to make on the Scheme of Amalgamation as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

g. The Application being C.A. (CAA) No. 139/KB/2022 is disposed of accordingly.

h. The Registry is directed to send an e-mail copy of the order forthwith to all the parties inclusive of the Counsel.

i. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

