

(2023) 06 NCLT CK 0073

In the National Company Law Tribunal

Case No : CA (CAA) No. 19/Chd/Hry of 2023 (1st Motion)

JBM Corporate Services Private Limited Vs??(1??st Motion)

Date of Decision : 14-06-2023

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, 232(3)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2023) 06 NCLT CK 0073

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Rajeev K Goel, Kartikeya Goel

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint First Motion Application filed by Applicant Companies namely; JBM Corporate Services Private Limited and HN Properties Private Limited (for short hereinafter referred to as Applicant Company No. 1 & 2 /Transferor Companies No. 1 & 2, respectively) with K R Chawla Consulting Private Limited, (for short hereinafter referred to as Applicant Company No. 3/Transferee Company) under Sections 230 & 232 of the Companies Act, 2013, (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure A-5 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of convening the meetings of the Equity Shareholders of the Transferor Companies No. 1 & 2 and the Transferee Company; Preference Shareholders of the Transferor Company No. 1; Secured Creditors of the Transferee Company; and Unsecured Creditors of the Transferor Companies No. 1 & 2. None of the

Applicant Companies have any Secured Creditor. The Transferee Company does not have any Unsecured Creditor.

3. The Applicant Company No. 1/Transferor Company No. 1 was incorporated to provide corporate, management and other advisory services. The Company has made investments in other Group Companies and earning dividend income. The Company is a Core Investment Company (CIC) in the terms of the RBI Regulations.

4. The Applicant Company No. 2/Transferor Company No. 2 is engaged in providing consultancy services. The Company has made investments in other Group Companies and earning dividend income. The Company is a Core Investment Company (CIC) in the terms of the RBI Regulations.

5. The Applicant Company No. 3/Transferee Company is engaged in real estate leasing/rental business and other related activities.

6. It is submitted that the respective registered office of all the Applicant/Transferor Companies No. 1 & 2 and the Transferee Company are situated in the State of Haryana and hence are under the territorial jurisdiction of this Bench.

7. The rationale of the Scheme is given below:

a. All the Transferor Companies and the Transferee Company are closely held Group Companies under common management and control. The proposed amalgamation of the Transferor Companies with the Transferee Company would result in consolidation of Group Companies and pooling of their resources into a single entity.

b. The proposed Amalgamation would result in pooling of physical, financial and human resource of these Companies for the optimal utilization of these factors in the combined entity.

c. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of redundancies, reduction of overheads, optimal utilization of financial, human and other resources and enhancement of overall business efficiency. The proposed amalgamation 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.

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

e. The proposed Scheme of Amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.

f. 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.

8. It is stated that the Board of Directors of the Transferor Companies No. 1 & 2 and of the Transferee Company in their respective meetings held on 19.12.2022, considered and unanimously approved the proposed Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of the Applicant Companies are attached as Annexure A-1/5, A-2/5 and A-3/5 respectively, with the application.

9. The appointed date of the Scheme for the purpose of the Amalgamation shall be with effect from 1st April, 2022 as mentioned in Clause 6.4 of Part-I of Scheme of Amalgamation which is attached as Annexure: A-5 of the application.

10. It is stated that the Applicant Transferor Companies No. 1 & 2 and the Transferee Company filed their respective Audited Financial Statements for the year ended 31st March, 2022 which are attached as Annexure A-1/2, A-2/2 and A-3/2 respectively of the Application. The Applicant Companies have also filed their Un-audited Financial Statements (provisional) for the period ended 31st December, 2022 which are attached as Annexure A-1/3, A-2/3 and A-3/3 respectively of the Application.

11. It is submitted that no corporate debt restructuring is envisaged in the proposed Scheme of Amalgamation.

12. It is further submitted that in pursuance of the proviso to Section 230(7) and Section 232(3) of the Act, the Transferor Companies No. 1 & 2 and the Transferee Company have filed certificates dated 9.02.2023 issued by their respective Statutory Auditors certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure: A-6 with the application.

13. It is further submitted by the counsel for the Applicant Companies that as per Valuation Report/Share Entitlement Ratio Report dated 1st December, 2022 submitted by M/s AlphaValue Consulting Valuation LLP, the Registered Valuer Entity in respect of Securities or Financial Assets, registered with the Insolvency and Bankruptcy Board of India (IBBI) vide Registration No. IBBI/RV-E/05/2021/151 is attached as Annexure A-4. The Share Entitlement Ratio is given below:

a. "Equity Shareholders of the Transferor Company No. 1: The Transferee Company will issue 100 (one hundred) 1% Redeemable Non-cumulative Preference Shares of ₹ 10 each, credited as fully paid-up, to the Equity Shareholders of the Transferor Company No. 1 for every 100 (one hundred) Equity Shares of ₹ 10 each held in the Transferor Company No. 1-JBM Corporate Services Private Limited.

b. Preference Shareholders of the Transferor Company No. 1: The Transferee Company will issue 1,087 (one thousand and eighty seven) 1% Redeemable Non-cumulative Preference Shares of ₹ 10 each, credited as fully paid-up, to the Preference Shareholders holding 1% Optionally Convertible Non-cumulative

Redeemable Preference Shares ("OCRPS") of the Transferor Company No. 1 for every 100 (one hundred) OCRPS of ₹ 10 each held in the Transferor Company No. 1-JBM Corporate Services Private Limited.

14. It is further submitted in the report of Registered valuer that at present, the Transferor Company No. 2 is a wholly owned subsidiary of the Transferor Company No. 1. On amalgamation of the Transferor Company No. 1 with the Transferee Company, the Transferor Company No. 2 will become a wholly owned subsidiary of the Transferee Company. Accordingly, no new share is required to be issued by the Transferee Company on amalgamation of the Transferor Company No. 2 with the Transferee Company.

15. It is submitted by the learned counsel that the Scheme (Annexure A-5) also takes care of the interest of the staff/workers and employees of the Applicant Companies by virtue of Clause 14 of the Scheme.

16. It is deposed by the authorised representative of Applicant Companies that there are no material investigations or legal proceedings pending against any of the Applicant Companies under Section 210 to 227 of the Companies Act, 2013 and Section 235 to 251 of the Companies Act, 1956 or any other applicable law. Moreover, there are no proceedings pending under the Companies Act, 2013 before the jurisdictional Adjudicating Authority.

17. It is deposed by the Applicant Companies that there are no sectoral regulator in the Applicant Companies whose approval may be required for the sanction of the Scheme of Amalgamation except the statutory authorities i.e. (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, NCT of Delhi and Haryana, New Delhi; (c) the Official Liquidator, Haryana, Chandigarh; (d) the Income Tax Department. It is also deposed that the proposed Scheme of Amalgamation will not attract the provisions of the Competition Act, 2002. Hence, no intimation to/approval from the Competition Commission of India (CCI) is required for the present Scheme of Amalgamation. There are no legal proceedings, inquiry, inspection, investigation, prosecution, litigation pending before any court of law or Tribunal against the Applicant Companies.

18. The Applicant Companies have furnished the following documents:

- i. Proposed Scheme of Amalgamation (Annexure A-5 of the application).
- ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexure A-1/1, A-2/1 and A-3/1 respectively, of the application).
- iii. List of Equity Shareholders of the Applicant Companies as on 31st December, 2022 along with consent affidavits (Annexure A-1/6, A-2/6 and A-3/6, respectively of the application).
- iv. List of Preference Shareholders of the Transferor Company No. 1, as on 31st

- December, 2022 along with consent affidavits (Annexure A-1/7 of the application)
- v. List of Secured Creditors of the Transferor Companies No. 1 & 2 as on 31st December, 2022 duly certified by Chartered Accountants stating that there are NIL unsecured Creditors (Annexure A-1/8 and A-2/7 respectively of the application).
 - vi. List of Secured Creditors of the Transferee Company as on 31st December, 2022 duly certified by Chartered Accountants along with consent affidavits (Annexure A-3/7 of the application).
 - vii. List of Un-secured Creditors of the Applicant Companies No. 1 & 2 as on 31st December, 2022 duly certified by Chartered Accountants along with consent affidavits (Annexure A-1/9 and A-2/8 respectively of the application).
 - viii. list of Un-secured Creditors of the Transferee Company as on 31st December, 2022 duly certified by Chartered Accountants stating that there are NIL unsecured Creditors (Annexure A-3/8 of the application).
 - ix. Certificates of Statutory Auditors to the effect that the Accounting treatment proposed in the Scheme is in conformity with Section 133 of the Companies Act, 2013 (Annexure A-6 of the application).
 - x. Audited Financial Statements as on 31st March, 2022 of the Applicant Companies (Annexure A-1/2, A-2/2 and A-3/2 respectively of the application).
 - xi. Un-audited Financial Statements (provisional) for the period ended on 31st December, 2022 of the Applicant Companies (Annexure A-1/3, A-2/3 and A-3/3 respectively of the application).
 - xii. Report on Valuation of Shares & Share Entitlement Ratio (Annexure A-4 of the application).
19. The Applicant Companies have furnished the details of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors as follows:
- | Name of the Applicant Companies | Shareholders along with their consent on affidavits | Creditors along with their consent on affidavits | Equity Shareholder (A) | Consent of (A) with % age | Preference Shareholder (B) |
|---------------------------------|---|--|------------------------|---------------------------|----------------------------|
| | | | | | |

Consent of

(B) with % age

Secured

Creditors (C)

Consent of (C)

Unsecured creditors

(D)

Consent of (D)

Applicant Company No.1

2

100%

09

100%

Nil

NA

1

100%

Applicant

Company No.2

2

100%

Nil

NA

Nil

NA

1

100%

Applicant Company No.3

4

100%

Nil

NA

1

100%

Nil

NA

20. Accordingly, the directions of this Bench in the present case are as under:

I. In relation to Applicant Company No. 1/Transferor Company No. 1:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consents by way of affidavits have been received;

b. The meeting of the Preference Shareholders of Applicant Company No. 1/Transferor Company No. 1 is dispensed herewith, keeping in view that all the Preference Shareholders have given their consents by way of affidavits;

c. Since, there are no Secured Creditors in the Applicant Company No. 1/Transferor Company No. 1, the requirement of convening the meeting of Secured Creditors does not arise;

d. The meeting of the Unsecured Creditors of Applicant Company No. 1/Transferor Company No. 1 is dispensed herewith, keeping in view that the Consent of sole Unsecured Creditor has been received.

II. In relation to Applicant Company No. 2/Transferor Company No. 2:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consents by way of affidavits have been received;

b. Since, there are no Secured Creditors in the Applicant Company No. 2/Transferor Company No. 2, the requirement of convening the meeting of Secured Creditors does not arise;

c. The meeting of the Unsecured Creditors of Applicant Company No. 2/Transferor Company No. 2 is dispensed herewith, keeping in view that the Consent of sole Unsecured Creditors has been received.

III. In relation to Applicant Company No. 3/Transferee Company:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consents by way of affidavits have been received;

b. The meeting of the Secured Creditors of Applicant Company No. 3/Transferee

Company is dispensed herewith, keeping in view that the sole Secured Creditor has given its consent by way of affidavit;

c. Since, there are no Unsecured Creditors in the Applicant Company No. 3/ Transferee Company, the requirement of convening the meeting of Unsecured Creditors does not arise.

21. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi (b) the Concerned Registrar of Companies (c) the Official Liquidator, (d) the Income Tax Department by disclosing the PAN of the Applicant Company in the title of the Second Motion Petition.