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(2020) 05 NCLT CK 0015

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application (CAA) No. 42/(ND) Of 2020

Kalyankari Suppliers Private Limited And Ors — APPELLANT

Vs

Shiv Coal Benification And Power Private Limited — RESPONDENT

Date of Decision : 22-05-2020

Acts Referred:

National Company Law Tribunal Rules, 2016 — Rule 3(2)
Companies Act, 2013 — Section 133, 230, 230(2), 231, 232

Citation : (2020) 05 NCLT CK 0015

Hon'ble Judges : Dr. P.S.N. Prasad, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Palash Agarwal

Final Decision : Allowed

Judgement

Sumita Purkayastha, Member (T)

1. This is an Application filed by the Applicant Companies under Section 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 Scheme of Amalgamation (For brevity "Scheme") proposed between the Applicants.

2. Affidavit in support of the Application sworn for and on behalf of the Applicant Companies have been filed Wazir Sigh Sihag being the Authorized Representative.

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that the Application filed by the applicants is maintainable in view of Rule 3(2) of the Rules and it is also represented that the registered office of the applicants company are situated within the territorial jurisdiction of this Tribunal and falls within domain of Registrar of Companies, NCT, New Delhi.

4. The applicants have furnished the details of the Shareholders, Secured

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Creditors and Unsecured Creditors in the Scheme, of the Applicant Companies as on date, which are as follows;

S No.

Name of the Company

No. of Equity Share Holders

No. of Preference Share Holders

No. of secured Creditors

No. of Un secured Creditors

1

Kalyankari Suppliers Private Limited (Transferor Company No. 1)

5

Nil

Nil

Nil

2

Geetanjali Vintrade Private Limited (Transferor Company No. 2)

4

Nil

Nil

Nil

3

Bhavtarini Tradelink Private Limited (Transferor Company No. 3)

3

Nil

Nil

Nil

4

Anamika Dealcomm Private Limited (Transferor Company No. 4)

3

Nil

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Nil

1

5

Antratma Vincom Private Limited (Transferor Company No. 5)

5

Nil

Nil

Nil

6

Wellbuild Marketing Private Limited (Transferor Company No. 6)

2

Nil

Nil

1

7

Ekdant Dealtrade Private Limited (Transferor Company No. 7)

4

Nil

Nil

Nil

8

Matarani Commodeal Private Limited (Transferor Company No. 8)

2

Nil

Nil

Nil

9

Shiv Coal Benification And Power Private Limited (Transferee Company)

6

6

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Nil

1

The Applicants contend that all the Equity Shareholders of all the Applicant Companies have given their consent for the Scheme and necessary affidavits have been filed and seek dispensation from convening and conducting the meetings of the Shareholders. The Applicant Company No. 9 contends that all the Preference Shareholders have given their consent for the Scheme and necessary affidavits have been filed. The Applicants plead that there is no need to conduct meetings of the Secured Creditors as all the Transferor Companies and the Transferee Company have 'Nil' Secured Creditors. The Transferor Companies 4 and 6 and the Transferee Company has 1 Unsecured Creditor each all of which have given their consent in favor of the Scheme, therefore there is no need to conduct their meetings.

5. The above Application has been placed before us and this Tribunal proceeds to entertain the same. The registered office of all the Applicant Companies are situated within New Delhi which are subject to the territorial jurisdiction of Registrar of Companies, NCT, Delhi as well as that of this Tribunal.

6. We have perused the Application and the connected documents filed along with the Scheme of Amalgamation contemplated between the Companies and the details of the capital structure of the Applicant Companies which are given as follows:

S. No.

Name of the Applicant Company

Date of incorporation under the Companies Act 1956

Authorized Share Capital

The issued, paid up and subscribed share capital

CIN No.

1

Kalyankari Suppliers Private Limited (Transferor Company No. 1)

11.05.2010

Rs. 2,00,000/- divided into 20,000 Equity Shares of Rs. 10/- each.

Rs. 1,40,000/- divided into 14,000 Equity Shares of Rs. 10/- each.

U51909DL2010PTC322209

2

Geetanjali Vintrade Private Limited (Transferor Company No. 2)

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13.05.2010

Rs. 5,00,000/- divided into 50,000 Equity Shares of Rs. 10/- each.

Rs. 29,00,000/- divided into 2,90,000 Equity Shares of Rs. 10/- each.

U51909DL2010PTC322194

3

Bhavtarini Tradelink Private Limited (Transferor Company No. 3)

04.05.2010

Rs. 23,00,000/- divided into 2,30,000 Equity Shares of Rs. 10/- each.

Rs. 23,00,000/- divided into 2,30,000 Equity Shares of Rs. 10/- each.

U51909DL2010PTC318096

4

Anamika Dealcomm Private Limited (Transferor Company No. 4)

11.05.2010

Rs. 1,03,00,000/- divided into 1,03,00,000 Equity Shares of Rs. 1/- each.

Rs. 1,03,00,000/- divided into 1,03,00,000 Equity Shares of Rs. 1/- each.

U51909DL2010PTC325175

5

Antratma Vincom Private Limited (Transferor Company No. 5)

05.05.2007

Rs. 2,00,000/- divided into 20,000 Equity Shares of Rs. 10/- each.

Rs. 1,40,000/- divided into 14,000 Equity Shares of Rs. 10/- each.

U51101DL2010PTC317266

6

Wellbuild Marketing Private Limited (Transferor Company No. 6)

14.12.2009

Rs. 73,00,000/- divided into 7,30,000 Equity Shares of Rs. 10/- each.

Rs. 73,00,000/- divided into 7,30,000 Equity Shares of Rs. 10/- each.

U51909DL2009PTC326087

7

Ekdant Dealtrade Private Limited (Transferor Company No. 7)

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13.05.2010

Rs. 53,00,000/- divided into 5,30,000 Equity Shares of Rs. 10/- each.

Rs. 53,00,000/- divided into 5,30,000 Equity-Shares of Rs. 10/- each.

U51909DL2010PTC318109

8

Matarani Commodeal Private Limited (Transferor Company No. S)

13.05.2010

Rs. 53,00,000/- divided into 5,30,000 Equity Shares of Rs. 10/- each.

Rs. 53,00,000/- divided into 5,30,000 Equity Shares of Rs. 10/- each.

U51909DL2010PTC322195

9

Shiv Coal Benification And Power Private Limited (Transferee Company No. 9)

13.05.2010

Rs. 50,75,00,000/- divided into 3,52,50,000 Equity Shares of Rs. 10/- each and 1,55,00,000 Preference Shares of Rs. 10/- each.

Rs. 50,30,00,000/- divided into 3,52,50,000 Equity Shares of Rs. 10/- each fully paid up and 1,50,50,000 Preference Shares of Rs. 10/- each

U40100DL2010PTC335989

7. It is seen that the board of directors of all Applicant Companies vide meeting dated 01.12.2019 have unanimously approved the Scheme of Amalgamation. Copies of such resolutions passed have been placed on record by the Applicant Companies.

8. The Appointed date for the Scheme of Amalgamation is 01.04.2019. The counsel for the Applicants has submitted that the proposed Scheme will result into achieving business and Administrative synergies, cost savings due to reduction in overhead and other expenses, consolidation and simplification of the group structure and simplification of business processes and avoiding duplication of costs of administration, distribution, selling and marketing and reduction in legal and regulatory compliances.

9. The share exchange ratio as per the Scheme are-

? 368 (Three Hundred And Sixty Eight) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each in Transferee Company for every 100 (One Hundred) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each of Transferor Company No. 1

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? 76 (Seventy Six) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each in Transferee Company for every 100 (One Hundred) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each of Transferor-Company No. 2

? 83 (Eighty Three) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each in Transferee Company for every 100 (One Hundred) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each of Transferor Company No. 3

? 59 (Fifty Nine) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each in Transferee Company for every 100 (One Hundred) Equity Shares of face value of Rs. l/- (Rupees One Only) each of Transferor Company No. 4

? 355 (Three Hundred Fifty Five) Equity Shares of face value of Rs. 10/-(Rupees Ten Only) each in Transferee Company for every 100 (One Hundred) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each of Transferor Company No. 5

? 2573 (Two Thousand And Seventy Five) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each in Transferee Company for every 100 (One Hundred) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each of Transferor Company No. 6

? 464 (Four Hundred And Sixty Four) Equity Shares of face value of Rs. 1 Of- (Rupees Ten Only) each in Transferee Company for every 100 (One Hundred) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each of Transferor Company No. 7

? 469 (Four Hundred And Sixty Nine) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each in Transferee Company for every 100 (One Hundred) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each of Transferor Company No. 8

10. The Applicant Companies have filed the Audited Financial Statements for the Financial Year ended 31st March, 2019.

11. 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. The Appointed Date as provided in the Scheme shall be 01.04.2019.

12. The Applicant Companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of Companies Act, 1956 are pending against any of the Applicant Companies.

13. Certificates of respective statutory auditors of the Applicant Companies have been placed on record confirming that the accounting treatment in the Scheme is in conformity with Section 133 of the Companies Act, 2013.

14. In the light of facts and taking into consideration the Application filed by the Applicant Companies the following directions are issued:-

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A. In relation to the Applicant Company No. 1:

i. With respect to Equity Shareholders

It is represented by the Applicants that all the equity shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting of Equity Shareholders is obviated.

ii. With respect to Preference Shareholders

The meeting of Preference Shareholders is also dispensed with because there are no Preference Shareholders in the Company and therefore, the requirement of convening meeting of Preference Shareholders does not arise.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no secured creditors in the Company and therefore, the requirement of convening meeting of Secured Creditors does not arise.

iv. With respect to Unsecured Creditors

The meeting of Unsecured Creditors is also dispensed with because there are no unsecured creditors in the Company and therefore, the requirement of convening meeting of Unsecured Creditors does not arise.

B. In relation to the Applicant Company No. 2:

i. With respect to Equity Shareholders

It is represented by the Applicants that all the Equity Shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting of Equity Shareholders is obviated.

ii. With respect to Preference Shareholders

The meeting of Preference Shareholders is also dispensed with because there are no Preference Shareholders in the Company and therefore, the requirement of convening meeting of Preference Shareholders does not arise.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no secured creditors in the Company and therefore, the requirement of convening meeting of Secured Creditors does not arise.

iv. With respect to Unsecured Creditors

The meeting of Unsecured Creditors is also dispensed with because there are no unsecured creditors in the Company and therefore, the requirement of convening meeting of Unsecured Creditors does not arise.

C. In relation to the Applicant Company No. 3:

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i. With respect to Equity Shareholders

It is represented by the Applicants that all the Equity Shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting of equity shareholders is obviated.

ii. With respect to Preference Shareholders

The meeting of Preference Shareholders is also dispensed with because there are no Preference Shareholders in the Company and therefore, the requirement of convening meeting of Preference Shareholders does not arise.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no secured creditors in the Company and therefore, the requirement of convening meeting of Secured Creditors does not arise.

iv. With respect to Unsecured Creditors

The meeting of Unsecured Creditors is also dispensed with because there are no unsecured creditors in the Company and therefore, the requirement of convening meeting of unsecured creditors does not arise.

D. In relation to the Applicant Company No. 4:

i. With respect to Equity Shareholders

It is represented by the Applicants that all the Equity Shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting of Equity Shareholders is obviated.

ii. With respect to Preference Shareholders

The meeting of Preference Shareholders is also dispensed with because there are no Preference Shareholders in the Company and therefore, the requirement of convening meeting of Preference Shareholders does not arise.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no secured creditors in the Company and therefore, the requirement of convening meeting of Secured Creditors does not arise.

iv. With respect to Unsecured Creditors

It is represented by the Applicant that the sole Unsecured Creditor has already placed its consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is obviated.

E. In relation to the Applicant Company No. 5:

i. With respect to Equity Shareholders

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It is represented by the Applicants that all the equity shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting of Equity Shareholders is obviated.

ii. With respect to Preference Shareholders

The meeting of Preference Shareholders is also dispensed with because there are no Preference Shareholders in the Company and therefore, the requirement of convening meeting of Preference Shareholders does not arise.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no secured creditors in the Company and therefore, the requirement of convening meeting of Secured Creditors does not arise.

iv. With respect to Unsecured Creditors

The meeting of Unsecured Creditors is also dispensed with because there are no unsecured creditors in the Company and therefore, the requirement of convening meeting of Unsecured Creditors does not arise.

F. In relation to the Applicant Company No. 6:

i. With respect to Equity Shareholders

It is represented by the Applicants that all the Equity Shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting of Equity Shareholders is obviated.

ii. With respect to Preference Shareholders

The meeting of Preference Shareholders is also dispensed with because there are no Preference Shareholders in the Company and therefore, the requirement of convening meeting of Preference Shareholders does not arise.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no secured creditors in the Company and therefore, the requirement of convening meeting of Secured Creditors does not arise.

iv. With respect to Unsecured Creditors

It is represented by the Applicant that the sole Unsecured Creditor has already placed its consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is obviated.

G. In relation to the Applicant Company No. 7:

i. With respect to Equity Shareholders

It is represented by the Applicants that all the Equity Shareholders have already

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placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting of Equity Shareholders is obviated.

ii. With respect to Preference Shareholders

The meeting of Preference Shareholders is also dispensed with because there are no Preference Shareholders in the Company and therefore, the requirement of convening meeting of Preference Shareholders does not arise.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no Secured Creditors in the Company and therefore, the requirement of convening meeting of Secured Creditors does not arise.

iv. With respect to Unsecured Creditors

The meeting of Unsecured Creditors is also dispensed with because there are no unsecured creditors in the Company and therefore, the requirement of convening meeting of unsecured creditors does not arise.

H. In relation to the Applicant Company No. 8:

i. With respect to Equity Shareholders

It is represented by the Applicants that all the Equity Shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting of Equity Shareholders is obviated.

ii. With respect to Preference Shareholders

The meeting of Preference Shareholders is also dispensed with because there are no Preference Shareholders in the Company and therefore, the requirement of convening meeting of Preference Shareholders does not arise.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no secured creditors in the Company and therefore, the requirement of convening meeting of secured creditors does not arise.

iv. With respect to Unsecured Creditors

The meeting of Unsecured Creditors is also dispensed with because there are no unsecured Creditors in the Company and therefore, the requirement of convening meeting of unsecured creditors does not arise.

I. In relation to the Applicant Company No. 9:

i. With respect to Equity Shareholders

It is represented by the Applicants that all the Equity Shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening

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and holding a meeting is obviated.

ii. With respect to Preference Shareholders

It is represented by the Applicants that all the Preference Shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is obviated.

iii. With respect to Secured Creditors

The meeting of Secured Creditors is also dispensed with because there are no Secured Creditors in the Company and therefore, the requirement of convening meeting of secured creditors does not arise.

iv. With respect to Unsecured Creditors

It is represented by the Applicant that the sole Unsecured Creditor has already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is obviated.

15. The Application stands allowed on the aforesaid terms. Let the Application for approval of the Scheme of Amalgamation be filed within a period of seven days from the date of this order.

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