(2020) 12 NCLT CK 0116

In the National Company Law Tribunal

Case No : Company Application No. (C.A.A.)1091/MB/C-II Of 2020

Kashu Chem Private Limited And Anr. Vs

Date of Decision : 04-12-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8
Companies Act, 2013 — Section 230, 230(1)(b), 230(5), 231, 232

Citation : (2020) 12 NCLT CK 0116

Hon'ble Judges : H.P. Chaturvedi, J;Ravikumar Duraisamy, Member (Technical)

Bench : Division Bench

Advocate : Chandrakant Mhadeshwar

Judgement

1. The Ld. Counsel for the Applicant Companies states that the present Scheme is a Scheme of Amalgamation of KASHU CHEM PRIVATE

LIMITED, Transferor Company and GLENFIN CHEMICALS PRIVATE LIMITED, Transferee Company and their respective Shareholders

(scheme) under the provisions of sections 230 to 232 of the companies Act, 2013

2. The Applicant Companies further submits that in the First Applicant Company there are Five (5) Equity Shareholders. All the Equity Shareholders

have given their respective Affidavits of Consent and approval to the Scheme which are annexed as Annexure â?" â??K-1â?? and â??K-5â?? to

the joint application. In view of the fact that the shareholders of the First Applicant Company have given their consent affidavits, the meeting of the

Equity Shareholders of the First Applicant Company is not required to be convened and dispensed with as prayed for.

3. The Applicant Companies further submits that in the Second Applicant Company there are four (4) Equity Shareholders and all the Equity

Shareholders have given their respective Affidavits of Consent and approval to the Scheme which are annexed as Annexure â?" â??L-1â?? to â??L-

4â?? to the joint application. In view of the fact that the shareholders of the Second Applicant Company have given their consent affidavits, the

meeting of the Equity Shareholders of the Second Applicant Company is not required to be convened and dispensed with as prayed for.

4. The Ld. Counsel for the Applicant Companies further clarifies that the Applicant Companies will file petition and comply with the provisions of

service of notices upon all Regulatory authorities.

5. The Applicant Companies submits that there are no Secured Creditors in First Applicant Company.Therefore the question of convening meeting of

Secured creditors does not arise.

6. The Applicant Companies submit that meeting of the Unsecured creditors of the First Applicant Company is not required to be convened, as the

present scheme is an arrangement between the Applicant Companies and their respective Shareholders as contemplated under the provisions of

Section 230(1)(b) of the Companies Act, 2013. This Bench hereby directs the First Applicant Company to issue notice to all its Unsecured Creditors

by Courier/Registered Post/Speed Post/Hand Delivery or through Email (to those creditors whose email addresses are duly registered with the

Applicant Company for the purpose of receiving such notices by email), at their last known address as per the records of the First Applicant Company

7. The Applicant Company submit that meetings of the Secured and Unsecured Creditors of second Applicant Company is not required to be

convened, as the present scheme is an arrangement between the Applicant Companies and their respective Shareholders as contemplated under the

provisions of Section 230(1)(b) of the Companies Act, 2013. This Bench hereby directs the Second Applicant Company to issue notice to all its

Secured and Unsecured Creditors by Courier/Registered Post/Speed Post/Hand Delivery or through Email (to those creditors whose email addresses

are duly registered with the Applicant Companies for the purpose of receiving such notices by email), at their last known address as per the records of

the Second Applicant Company.

8. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority within whose

jurisdiction the First Applicant Companyâ??s assessments are made (PAN NO. AACK4166E); (ii) the Central Government through the office of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, (iii) Registrar of Companies, Maharashtra, Mumbai and (iv) Official

Liquidator, High Court of Bombay with a direction that they may submit their representations, if any, within a period of thirty days from the date of

receipt of such notice to the Tribunal, failing which it shall be presumed that the authorities have no representation to make in the matter. Copy of such

representations shall simultaneously be served upon the Applicant Companies.

9. That the Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority within

whose jurisdiction the Second Applicant Companyâ??s assessments are made (PAN NO AABCG9298E) (ii) the Central Government through the

office of Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, and (iii) Registrar of Companies, Maharashtra, Mumbai with a

direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice, to the Tribunal, failing

which it shall be presumed that the authorities have no representation to make in the matter. Copy of such representations shall simultaneously be

served upon the Second Applicant Company.

10. That the First Applicant Company is also directed to serve notice along with a copy of scheme upon Official Liquidator, High Court, Bombay

pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal hereby appoints M/s. Mukund Sabale & Co. Chartered Accountants, MIDC,

Dombivli (E) (M) 9320257799 and email id mukund_sable@vsnl.net or alternatively M/s. Dagdulal K. Jain & Co. Chartered Accountants, Thane

(West) (M) 9819241881/9833570788 (T) 25476077 and email id cadkjain.co@gmail.com with remuneration of Rs. 50,000/- excluding all taxes to assist

the Official Liquidator to scrutinise the books of accounts of the said Transferor Company for the last 5 years and submit its representation/ report to

the Tribunal for the same. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of notice, it will

be presumed that Official Liquidator has no objection to the proposed Scheme as per rule 8 of the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016.

11. The Applicant Companies to file Affidavit of service within fifteen days in the

Registry proving dispatch of notices to creditors, regulatory

authorities as stated in Clause 6 to 10 above and to report to this Tribunal that the directions regarding the issue of notices have been duly complied

with.