
(2021) 11 NCLT CK 0041

In the National Company Law Tribunal

Case No : C.A(CAA)/222/MB-V/2021

KKR Capital Markets India Private Limited Vs

Date of Decision : 10-11-2021

Acts Referred:

Companies Act, 2013 — Section 66, 103, 230, 230(1)(b), 230(3), 230(5), 231, 232, 234
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8, 12, 14

Citation : (2021) 11 NCLT CK 0041

Hon'ble Judges : Suchitra Kanuparthi, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah & Co

Judgement

Anuradha Sanjay Bhatia Member (Technical)

1. The Bench is convened by videoconference today.
2. Learned Counsel for the Applicant Companies states that the present Scheme is a Composite Scheme of Amalgamation and Arrangement among Bee Finance Limited ("Transferor Company"), and KKR Capital Markets India Private Limited ("Transferee Company"/ "Applicant Company 1"), and InCred Financial Services Limited ("Demerged Company" / "Applicant Company 2"), and KKR India Financial Services Limited ("Resulting Company"/ "Applicant Company 3") and their respective shareholders, under Sections 230 to 232 of the Companies Act, 2013 read with Sections 66 and 234 of the Companies Act, 2013("Scheme").
3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company, Transferee Company, Demerged Company and Resulting Company in their respective meetings conducted on September 3, 2021, September 9, 2021, September 3, 2021 and September 9, 2021 respectively have approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2022.
4. The rationale for the proposed Scheme is as under:

A. Demerger of the InCred Financial Services Limited (Demerged Undertaking) into the Applicant Company No. 3

(i) To consolidate the non-banking financing business related to retail and SME lending and ancillary financing activities undertaken by the Demerged Company, with the non-banking financing business of the Resulting Company, to achieve

greater economies of scale, operational rationalization and organizational efficiency, wider market reach and customer base, pooling of knowledge and expertise, and to reduce redundant costs.

(ii) To aid in future growth of the InCred Financial Services Limited (Demerged Undertaking) by leveraging on the strength and capabilities of the Resulting Company.

(iii) To allow the Demerged Company to focus on the Remaining Business and grow these businesses independently.

(iv) To aim towards creation of a single unified entity with a wider and stronger capital and asset base, having greater capacity for conducting its operations more efficiently and competitively.

(v) To enable access to business relationships and other intangible benefits that the Transferee Company and the Resulting Company have built over decades.

(vi) The InCred Financial Services Limited (Demerged Undertaking) and the non-banking financing business of the Resulting Company have significant complementarities and the consolidation of the businesses carried on by them is strategic in nature and will generate significant business synergies thereby enhancing stakeholders' value.

(vii) To allow the shareholders of the Demerged Company to own and participate in the merchant banking and investment advisory, investment management as well as finance arrangement services business of Transferee Company and to grow this business in future.

B. Merger of the Transferor Company with the Applicant Company No.1

(viii) The merger of the Transferor Company, a major shareholder in the Applicant Company No.2, with the Applicant Company No.1 is proposed to streamline the post Scheme shareholding structure of the Applicant Company No.1 by reducing the number of layers of shareholding, and thereby optimising value to the shareholders.

5. That the meeting of the Equity Shareholders of the Applicant Company No. 1 be convened and held on Wednesday, December 15, 2021 at 1:00 p.m. IST for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in Circular No.14/2020 dated 8 April 2020 read with Circular No.17/2020 dated 13 April

2020, Circular No.22/2020 dated 15 June 2020, Circular No.33/2020 dated 28 September 2020, Circular No.39/2020 dated December 31, 2020 and Circular No. 10/2021 dated June 23, 2021 issued by the Ministry of Corporate Affairs ("MCA Circulars"), with necessary modifications as stated herein or as may be required, and not in physical presence of shareholders, as the same in the current COVID-19 environment related social distancing norms shall not be possible.

6. That the meeting of the Equity Shareholders of the Applicant Company No.2 be convened and held on Wednesday, December 15, 2021 at 2:00 p.m. IST for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in the MCA Circulars with necessary modifications as stated herein or as may be required, and not in physical presence of shareholders, as the same in the current COVID-19 environment related social distancing norms shall not be possible.

7. That the meeting of the Equity Shareholders of the Applicant Company No.3 be convened and held on Wednesday, December 15, 2021 at 2:00 p.m. IST for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in the MCA Circulars, with necessary modifications as stated herein or as may be required, and not in physical presence of shareholders, as the same in the current COVID-19 environment related social distancing norms shall not be possible.

8. That the meeting of the Preference Shareholders of the Applicant Company No.2 be convened and held on Wednesday, December 15, 2021 at 3:30 p.m. IST for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in the MCA Circulars, with necessary modifications as stated herein or as may be required, and not in physical presence of shareholders, as the same in the current COVID-19 environment related social distancing norms shall not be possible.

9. That the meeting of the Secured Creditors of the Applicant Company No.2 be convened and held on Wednesday, December 15, 2021 at 4:30 p.m. IST for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in the MCA Circulars with necessary modifications as stated herein or as may be required, and not in physical presence of such creditors, as the same in the current COVID-19 environment related social distancing norms shall not be possible.

10. At least 30 clear days before the said meeting of the Equity Shareholders of all the Applicant Companies and Preference Shareholders and Secured Creditors of the Applicant Company No.2 to be held as aforesaid, a notice convening the

respective Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Notice & Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery or email to each of the Equity Shareholders of the respective Applicant Companies and Preference Shareholders and Secured Creditors of the Applicant Company No.2 at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders of the respective Companies and Preference Shareholders and Secured Creditors of the Applicant Company No.2 as per the records of all the Applicant Companies or can be obtained free of charge at the registered office of the Applicant Companies as aforesaid. The Applicant Companies shall publish the notice convening the meeting of Equity Shareholders in 'Free Press Journal' in English and 'Navshakti' in Marathi having circulation in Mumbai. Additionally, Applicant Company No. 2 shall also publish the notice convening the meeting of its Preference Shareholders and Secured Creditors, in 'Free Press Journal' in English and 'Navshakti' in Marathi having circulation in Mumbai.

11. The Applicant Companies undertake to:

- i. Issue notice convening meeting of the Equity Shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- ii. issue statement containing all the particulars as per Section 230 of the Companies Act, 2013; and
- iii. advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

12. Additionally, the Applicant Company No. 2 undertakes to:

- i. Issue notice convening meeting of the Preference Shareholders and Secured Creditors as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- ii. issue statement containing all the particulars as per Section 230 of the Companies Act, 2013; and
- iii. advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

13. That Mr. Anil Nagu, Whole Time Director and the Chief Financial Officer of Applicant Company No.1 shall be the Chairperson of the meeting of Equity Shareholders of the Applicant Company No.1 and failing him, Mr. Brian Dillard - Non-Executive Director of Applicant Company No.1, shall be the alternate Chairperson of the said meeting. The Scrutinizer for the meeting of the Applicant Company No.1 shall be Mr. Nilesh Shah, a Practicing Company Secretary having Membership Number: FCS - 4554 and CP - 2631, of M/s Nilesh Shah &

Associates, and failing him, Ms. Deepti Joshi, Practicing Company Secretary having Membership Number: FCS - 9139 and CP - 10768, of M/s. Joshi Pahade & Associates.

14. That Mr. Bhupinder Singh, Whole Time Director and Chief Executive Officer of the Applicant Company No.2, shall be the Chairperson of the meetings of Equity Shareholders and the Preference Shareholders and Secured Creditors of the Applicant Company No.2 and failing him, Mr. Vivek Bansal, Whole Time Director and Chief Financial Officer of the Applicant Company No.2, shall be the alternate Chairperson of the said meetings. The Scrutinizer for the meetings of the Equity Shareholders and Preference Shareholders and Secured Creditors of the Applicant Company No.2 shall be Ms. Deepti Joshi, a Practicing Company Secretary having Membership Number: FCS - 9139 and CP - 10768 of M/s. Joshi Pahade & Associates, and failing her, Mr. Nilesh Shah, a Practicing Company Secretary having Membership Number: FCS - 4554 and CP - 2631, of M/s Nilesh Shah & Associates.

15. That Mr. Jigar Shah, Whole Time Director of Applicant Company No.3 shall be the Chairperson of the meeting of Equity Shareholders of the Applicant Company No.3 and failing him, Mr. Anil Nagu, Executive Director and Chief Financial Officer of Applicant Company No. 3 shall be the alternate Chairperson of the said meeting. The Scrutinizer for the meeting of the Applicant Company No.3 shall be Mr. Nilesh Shah, a Practicing Company Secretary having Membership Number: FCS - 4554 and CP - 2631, of M/s Nilesh Shah & Associates, and failing him, Ms. Deepti Joshi, Practicing Company Secretary having Membership Number: FCS - 9139 and CP - 10768.

16. The Chairpersons appointed for the aforesaid meeting of the Equity Shareholders of the Applicant Company Nos. 1, 2 and 3 and the meeting of Preference Shareholder and Secured Creditors of the Applicant Company No.2 to issue the notices of the meeting referred to above. The said Chairpersons shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

17. The quorum for the aforesaid meeting of the Equity Shareholders of the Applicant Companies and the meeting of Preference Shareholders of the Applicant Company No.2 shall be as prescribed under Section 103 of the Companies Act, 2013. The quorum for the aforesaid meeting of the Secured Creditors of the Applicant Companies is 5 (five) in numbers as prescribed under Section 103 of the Companies Act, 2013 for the members.

18. The voting by authorized representative in case of body corporate be permitted, provided that an authorization duly signed by the person entitled to attend and vote at the meetings of Equity Shareholders of the Applicant

Companies and the meeting of Preference Shareholder and Secured Creditors of the Applicant Company No.2, is filed with the respective Applicant Companies at their respective Registered Office not later than, 48 hours before the aforesaid Equity Shareholders or Preference Shareholders' or Secured Creditors meetings, as the case may be, as required under the provisions of the Companies Act, 2013.

19. The value and number of the shares of each member shall be in accordance with the books/ register of the respective Applicant Companies, or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the respective meetings shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final. The value and number of the Secured Creditors of the Applicant Company No.2 shall be in accordance with the books of account of Applicant Company No.2 as on August 31, 2021.

20. The Chairperson, or the respective Applicant Companies, to file an affidavit not less than seven days before the date fixed for the holding of the respective meetings and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within thirty working days of the conclusion of the meeting, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

22. That Counsel for all the Applicant Companies submits that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders, only a meeting of the Equity Shareholders and the Preference Shareholders, as applicable, is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013.

23. That the Counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 1 mentioned in Para 29 of the Application and that there are 2 (two) unsecured creditors and the total amount due and payable by Applicant Company No.1 to the aforementioned unsecured creditors is INR 1,58,903/- (Rupees One Lakh Fifty-Eight Thousand Nine Hundred Three) as 31st August 2021. That Counsel for the Applicant Company No. 1 submits that the Scheme is an arrangement between the Applicant Company No.1 and their respective shareholders in accordance with the provisions of the Companies Act, 2013. Further, Counsel for the Applicant Company No. 1 submits that that the net-worth of the Applicant Company No.1 as on August 31, 2021 is INR 1313,62,73,000 (One Thousand Three Hundred Thirteen Crores Sixty-Two Lakhs Seventy-Three Thousand) annexed to the Application. It is further submitted that the aggregate post Scheme assets of Applicant Company No.1 will be more than sufficient to meet all their aggregate external liabilities of Applicant Company No.1 and Transferor Company, and the Scheme will not adversely affect the rights and interest of any of its unsecured creditors in any manner. In

view of the above, the Counsel submits that the convening and holding of the meeting of the unsecured creditors of the Applicant Company No. 1 is not required. Accordingly, this bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

24. That there are 11 (Eleven) unsecured creditors and the total amount due and payable by Applicant Company No.2 to the aforementioned unsecured creditors is INR 119,46,67,664 (Rupees One Hundred Nineteen Crores Forty-Six Lakhs Sixty-Seven Thousand Six Hundred Sixty Four) as on 31st August, 2021. That Counsel for the Applicant Company No. 2 submits that the Scheme is an arrangement between the Applicant Company No.2 and their respective shareholders in accordance with the provisions of the Companies Act, 2013. Further, Counsel for the Applicant Companies submits that the net-worth of the Applicant Company No.2 as on March 31, 2021 is INR 104584,78,06,532 (Rupees One Lakh Four Thousand Five Hundred Eighty-Four Crores Seventy-Eight Lakhs Six Thousand Five Hundred Thirty-Two). It is submitted that the assets of Applicant Company No.2 are in excess of and are more than sufficient to meet all its external liabilities and the Scheme will not adversely affect the rights and interest of any of its Unsecured Creditors in any manner whatsoever. In view of the above, the Counsel submits that the convening and holding of the meeting of the Unsecured Creditors of the Applicant Company No. 2 is not required. Accordingly, this bench hereby directs the Applicant Company No.2 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

25. That there are 7 (Seven) secured creditors and the total amount due and payable by Applicant Company No.3 to the aforementioned secured creditors is INR 1080,93,35,744 (Rupees One Thousand Eighty Crores Ninety-Three Lakhs Thirty-Five Thousand Seven Hundred Forty-Four) as on 31st August 2021. Counsel for Applicant Companies submits that they will be obtaining the consent by way of an email/ letter and/ or consent affidavits from secured creditors as on 31st August 2021 and having value of more than 90% in value of the outstanding secured debt, on or before the date of final hearing of the matter. That there are 5 (five) unsecured creditors and the total amount due and payable by Applicant Company No.3 to the aforementioned unsecured creditors is INR 74,78,697 (Rupees Seventy-Four Lakhs Seventy-Eight Thousand Six Hundred Ninety-Seven). That the Counsel for the Applicant Company No. 3 submits that the Scheme is an arrangement between the Applicant Company No.3 and their respective shareholders in accordance with the provisions of the Companies Act, 2013. Further, Counsel for the Applicant Company No. 3 submits that the net-worth of the Applicant Company No.3 as on August 31, 2021 is INR

1033,38,20,000 (Rupees One Thousand Thirty-Three Thirty-Eight Lakhs Twenty Thousand). It is submitted that the assets of Applicant Company No.3 are in excess of and are more than sufficient to meet all its external liabilities and the Scheme will not adversely affect the rights and interest of any of its Unsecured Creditors in any manner whatsoever. In view of the above, the Counsel submits that the convening and holding of the meetings of the Unsecured Creditors of the Applicant Company No. 3 is not required. Accordingly, this bench hereby directs the Applicant Company No.3 to issue notice to all the Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.3.

26. The Applicant Company No.1 submits that in view of the above, in compliance with Section 230(5) of the Act, Applicant Company No.1 shall give notice of filing the Scheme before this Hon'ble Tribunal, and passing of an order in the present Company Scheme Application to (i) the Central Government of India (through the Regional Director, Western Region, Ministry of Corporate Affairs); (ii) concerned Income Tax Authority, being Assistant Commissioner of Income Tax, Circle 6(1)(2), Mumbai and having its address at Room No-506, 5th Floor, Aayakar Bhawan, Maharishi Karve Road, Mumbai - 400020, Maharashtra; (iii) the Registrar of Companies, Mumbai; (iv) Securities and Exchange Board of India, and (iv) Reserve Bank of India. With a direction that they may, if they so wish, submit their representations, if any, within a period of thirty days (30) from the date of receipt of the notice to the Tribunal with a copy of such representations being simultaneously served upon the Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme. The Counsel for the Applicant Companies submits that Applicant Company No.1 has filed an application seeking approval from the Securities Exchange Board of India and is awaiting approval.

27. The Applicant Company No.2 submits that in view of the above, and in compliance of Section 230(5) of the Act, the Applicant Company No.2 shall give notice of filing the Scheme before this Hon'ble Tribunal, and passing of an order in the present Company Scheme Application to: (i) the Central Government of India (through the Regional Director, Western Region, Ministry of Corporate Affairs); (ii) concerned Income Tax Authority, being Deputy Commissioner of Income Tax, Circle 10(1), Delhi and having its address at C.R. Building, I.P. Estate, New Delhi - 110002; (iii) the Registrar of Companies, Mumbai; (iv) BSE Limited; (v) Securities and Exchange Board of India, and (v) Reserve Bank of India. If no response is received by the Tribunal from aforesaid authorities within 30 days of the date of receipt of the notice it will be presumed that aforesaid authorities has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Counsel for the Applicant Companies submits that the Applicant Company No.2 has filed an application for seeking approval from the Reserve Bank of India and is awaiting approval.

28. The Applicant Company No.3 submits that Applicant Company No.3 shall give notice under Section 230(5) of the Act, to: (i) the Central Government of India (through the Regional Director, Western Region, Ministry of Corporate Affairs); (ii) concerned Income Tax Authority being Deputy Commissioner of Income Tax, Corp. Circle 4(1), Chennai, having its address at Room No-430, 4th Floor, Chennai Main Building No -121, Mahatma Gandhi Road, Nungambakkam, Chennai - 600034, Tamil Nadu; and (iii) the Registrar of Companies, Mumbai, and (iv) Reserve Bank of India. If no response is received by the Tribunal from aforesaid authorities within 30 days of the date of receipt of the notice it will be presumed that aforesaid authorities has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Counsel for the Applicant Companies submits that the Applicant Company No.3 has filed an application seeking approval from the Reserve Bank of India and is awaiting approval.

29. The Appointed Date is 1st April 2022

30. Ordered Accordingly.