(2022) 02 NCLT CK 0100

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 2/KB/2022

Kothsons Finance & Consultancy Pvt Ltd Vs

Date of Decision : 28-02-2022

Acts Referred:

Companies Act, 2013 — Section 230(1), 230(5), 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules 2016 — Section 8(2)

Citation : (2022) 02 NCLT CK 0100

Hon'ble Judges : Rohit Kapoor, Member (J);Harish Chander Suri, Member (T)

Bench : Division Bench

Advocate : Gopal Kumar Khetan

Final Decision : Disposed Of

Judgement

Harish Chander Suri, Member (Technical)

1. The instant application has been filed in the first stage of the proceedings under Section 230 (1) read with Section 232 (1) of the Companies Act, 2013 ("Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation of GMB Finvest Private Limited, being the Applicant No. 1 above named ("Transferor Company" or "Applicant No. 1"), Aarkay Tie Up Private Limited, being the Applicant No. 2 above named ("Transferor Company" or "Applicant No. 2"), Seaview Vincom Private Limited, being the Applicant No. 3 above named ("Transferor Company" or "Applicant No. 3") with Kothsons Finance & Consultancy Private Limited, being the Applicant No. 4 above named ("Transferee Company" or "Applicant No. 4") and whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1st day of April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

2. It is submitted by Learned Counsel appearing for the Applicant(s) that the shares of any of the Applicant Companies are not listed. Further, the Applicant(s) have the following classes of shareholders and creditors: -

a) Applicant No. 1:

Number of Equity Shareholders-04(Four) as on 1st October, 2021

Number of Secured Creditor-NIL as on 1st October, 2021

Number of Unsecured Creditor-NIL as on 1st October, 2021

b) Applicant No. 2:

Number of Equity Shareholders-04(Four) as on 1st October, 2021

Number of Secured Creditor-NIL as on 1st October, 2021

Number of Unsecured Creditor-NIL as on 1st October, 2021

c) Applicant No. 3:

Number of Equity Shareholders-04(Four) as on 1st October, 2021

Number of Secured Creditor-NIL as on 1st October, 2021

Number of Unsecured Creditor-NIL as on 1st October, 2021

d) Applicant No. 4:

Number of Equity shareholders-04(Four) as on 1st October, 2021 Number of Secured Creditor-NIL as on 1st October, 2021 Number of Unsecured Creditor-NIL as on 1st October, 2021

3. It is further submitted that all Equity Shareholders of all the Applicant Companies have given their consent to the Scheme by way of affidavits which are annexed to the application.

4. It is further submitted that there is no requirement of consent of secured creditors, unsecured creditors and liability holders of all the Applicant Companies in view of there being NIL Creditors and Liability Holders as verified by the Auditor's certificate annexed to the application.

5. Directions are sought accordingly for dispensing with meetings of the classes of shareholders who have already given their consent to the Scheme.

6. Upon perusing the records and documents in the instant proceedings and considering the submission made on behalf of the Applicants, we allow the instant applicant and make following orders: -

a) Meeting dispensed:

Meeting of all the Equity shareholders of all the Applicant Companies having respectively given their consent to the Scheme by way of affidavits is dispensed with.

b) No Requirement of Meeting:

There are no Secured Creditors, Unsecured Creditors and any other Liability

Holders in any of the Applicant Companies. Therefore, there is no need to obtain consent of the creditors by way of affidavits.

c) Meeting to be held:

No meeting is required to be held.

7. Notice under Section 230 (5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on the:

a) The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

b) The Registrar of Companies, West Bengal;

c) The Official Liquidator, High Court Calcutta;

d) The Income Tax Department having jurisdiction over the Applicant(s); And

e) The Reserve Bank of India

By sending the same by hand delivery through special messenger, by post or by email within three weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorised Representative of the said Applicant(s). If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 (2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

8. The Applicants to file an affidavit proving of service of notices and compliances of all directions contained herein.

9. The application being Company Application (CAA) No. 2/KB/2022 is disposed of accordingly.

10. Urgent certified copy of this order, if applied or, by supplied to the parties, subject to compliance with all requisite formalities.