(2019) 08 NCLT CK 0102

In the National Company Law Appellate Tribunal

Case No : Company Application No. (CAA)-192(ND) Of 2019

Kungposh Financial Advisors Pvt. Ltd. And Ors.	APPELLANT
Vs	
Hari Parvat Financial Advisors And Consultants Pvt.	RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Companies (Compromises, Arrangements, And Amalgamations) Rules, 2016 — Rule 3(2)

Companies Act, 2013 — Section 133, 210, 230, 230(7), 231, 232, 232(3)

Citation : (2019) 08 NCLT CK 0102

Hon'ble Judges : R. Varadharajan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. NO.,Name of the Company,"No. of

Equity Share

Holders","No. of

Preference

Share

Holders","No. of

Secured

Creditors","No. of

Unsecured

Creditors

1.,"Kungposh Financial

Advisors Private Limited

(Transferor Company No.

1)",03,02,Nil,Nil

2.,"Mair Securities Private

Limited (Transferor

Company No.2)",08,04,Nil,Nil

3.,"Hari Parvat Financial

Advisors And Consultants

Private Limited (Transferee

Company)",04,04,01,02

1.,"Kungposh Financial

Advisors Private Limited

(Transferor Company No.

1)",08.04.2009,"Rs. 31,50,000/-

divided into

1,30,000 Equity

Shares of Rs.

10/- each and

1,85,000

Preference

Shares of Rs.

10 /-each.","Rs.30,30,120/-

divided into

1,19,000

Equity Shares

of Rs. 10/-

each and

1,84,012

Preference

Shares of Rs.

10 /-each.","U65910D

L2009PT

C189222

2.,"Mair Securities Private

Limited (Transferor

Company No.2)",06.09.2007,"Rs. 69,00,000/-

divided into

5,00,000 Equity

Shares of Rs.

10/- each and

1,90,000

Preference

Shares of Rs.

10 /- each.","Rs.65,77,340/-

divided into

4,68,400/-

Equity Shares

of Rs. 10/-

each and

1,89,334

Preference

Shares of Rs.

10/- each.","U74120D

L2007PT

C167806

3.,"Hari Parvat Financial

Advisors And Consultants

Private Limited (Transferee

Company)",29.04.2002,"Rs.2,79,90,000/-

divided into

18,32,000

Equity Shares

of Rs. 10/-

each and

9,67,000

Preference

Sharps of Rs.

10/- each.","Rs.75,34,730/-

divided into

83,430 Equity

Shares of Rs.

10 /- each and

6,70,043

Preference

Shares of Rs.

10/- each.","U74140D

L2002PT

C115145

(iv) With respect to Unsecured Creditors:,,,,,

Since it is represented by the Transferor Company that there are no Unsecured Creditors, whose consents have not been obtained, therefore the",,,,,

necessity of convening a meeting does not arise.,,,,,

B) In relation to the Transferor Company No.2 :,,,,,

(i) With respect to Equity Shareholders:,,,,,

Since it is observed that even though the consents have been obtained by the way of Consent affidavit but however are not backed by the board trust,,,,,

resolution of the corporate / such entities, therefore meeting of the Equity Shareholders of the Transferor Company no.2 is directed to be held at 12.00",,,,,

PM on 16th September, 2019 at The registered office of the Transferor Company No.1, or if not convenient at a suitable place as may be chosen by",,,,,

the Applicants of which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of,,,,, notices convening the meeting as directed herein. The quorum for the meeting shall be 4 in number.,,,,,

(ii) With respect to Preference Shareholders:,,,,,

Similarly it is observed that even though the consents have been obtained by the way of Consent affidavit but however are not backed by the board,,,,,

resolution of the corporate / such entities, therefore meeting of the Preference Shareholders of the Transferor Company no.1 is directed to be held at",,,,,

01.00 PM on 16th September, 2019 at the registered office of the Transferor Company No.1, or if not convenient at a suitable place as may be chosen",,,,,

by the Applicants of which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue,,,,,

of notices. The quorum for the meeting shall be 2 in number.,,,,,

(iii) With respect to Secured Creditor:,,,,,

Since it is represented by the Transferor Company No.1 that there are no Secured Creditor in the Company, therefore the necessity of convening a",,,,,

meeting does not arise.,,,,,

(iv) With respect to Unsecured Creditors:,,,,,

Since it is represented by the Transferor Company that there are no Unsecured Creditors, whose consents have not been obtained, therefore the",,,,,

necessity of convening a meeting does not arise.,,,,,

C) In relation to Transferee Company:,,,,,

(i) With respect to Equity Shareholders:,,,,,

Since it is observed that even though the consents have been obtained by the way of Consent affidavit but however are not backed by the board,,,,,

resolution of the entities, therefore meeting of the Equity Shareholders of the Transferee Company is directed to be held at 03.00 PM on 16th",,,,,

September, 2019 at the registered office of the Transferor Company No.1, or if not convenient at a suitable place as may be chosen by the Applicants",,,,,

of which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices. The,,,,,

quorum for the meeting shall be 2 in number.,,,,,

(ii) With respect to Preference Shareholders:,,,,,

Similarly it is observed that even though the consents have been obtained by the way of Consent affidavit but however, are not backed by the board",,,,, resolution of the entities, therefore meeting of the Preference Shareholders of the Transferee Company is directed to be held at 04.00 PM on 16th",,,,,

September, 2019 at the registered office of the Transferor Company No.1 , or if not convenient at a suitable place as may be chosen by the",,,,,

Applicants of which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of,,,,,

notices. The quorum for the meeting shall be 2 in number.,,,,,

(iii) With respect to secured creditors:,,,,,

Since it is represented by the Transferee Company there is 1 Secured Creditor in the Company whose consent has been obtained by way of affidavit,,,,,

and is placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is",,,,,

dispensed with.,,,,,

(iv) With respect to unsecured creditors:,,,,,

Since it is represented by the Transferee Company there are 2 Unsecured Creditors in the Company whose consents have been obtained by way of,,,,,

affidavit and is placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme",,,,,

is dispensed with.,,,,,

17. The quorum for the meetings directed to be convened shall be as specified under each of the meetings directed to be convened as above.,,,,,

i) For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person",,,,,

entitled to attend and vote at the meeting, is filed with the registered office of the Applicant Companies at least 48 hours before the meetings. The",,,,,

Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However,",,,,,

every endeavor should be made by the applicant companies to attain at least the quorum fixed, if not more in relation to approval of the scheme.",,,,,

ii) Mr. Ashutosh Gupta, Advocate (Mobile: 9871433339) is appointed as the Chairperson and Ms. Madhuri Jain, Advocate (Mobile: 9999814492) is",,,,,

appointed as the Alternate Chairperson for the meeting of equity Shareholders and Preference shareholders as may have been directed to be,,,,,

convened by this Tribunal as above of the Applicant Companies.,,,,,

iii) The fee of the Chairperson for the aforesaid meetings shall be Rs. 50,000/- and the fee of the Alternate Chairperson shall be Rs. 30,000/- in",,,,,

addition to meeting their incidental expenses. Mr. Shobhit Vasisht, Company Secretary (Mobile: 9953259389) is appointed as a Scrutinizer and would",,,,,

be entitled to fee of Rs.30, 000/ - for services in addition to meeting incidental expenses. The Chairpersons will file their reports within a week from",,,,,

the date of holding of the above said meetings.,,,,,

iv) That individual notices of the above said meetings shall be sent by the Applicant Companies through registered post or speed post or through,,,,,

courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid,",,,,,

together with a copy of Scheme of Amalgamation, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the",,,,,

prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may,,,,,

also be duly sent with the notice.,,,,,

v) That the Applicant Companies shall publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date",,,,,

and the place and time as aforesaid, to be published in the English Daily ""Financial Express"" in English, and ""Jansatta"" in Vernacular stating the copies",,,,,

of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of",,,,,

proxy shall be provided free of charge at the registered office of Applicant Companies.,,,,,

vi) Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be",,,,,

applicable to the respective companies under the Act and rules framed there under. The Chairperson shall as aforestated be responsible to report the,,,,,

result of the meeting within one week of the conclusion of the meeting with details of voting on the proposed scheme.,,,,,

vii) The companies shall individually send notice to Central Government, the Income Tax Authorities, Registrar of Companies NCT Delhi & Haryana,",,,,,

Official Liquidator and Regional Director, RBI if either of the companies is /are registered as an NBFC, or required to be registered as one as well as",,,,, other sectoral regulators who may have significant bearing on the operation of the applicant companies or the Scheme per se along with copy of,,,,,

required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements,",,,,,

Amalgamations) Rules, 2016.",,,,,

viii) The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every,,,,,

creditor or member of all the companies entitled to attend the meetings as aforesaid.,,,,,

ix) The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of,,,,,

advertisement and compliance of all directions contained herein at least a week before the proposed meetings.,,,,,

x) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the,,,,,

Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.",,,,,

The application stands allowed on the aforesaid terms.,,,,,

