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(2022) 12 NCLT CK 0017

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 131 / KB /2022

Manas Flour Mills Private Limited Vs

Date of Decision : 14-12-2022

Acts Referred:

Companies Act, 2013 — Section 103, 133, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2)

Citation : (2022) 12 NCLT CK 0017

Hon'ble Judges : P. Mohan Raj, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Manju Bhuteria, N. Gurumurthy, Madan Kumar Maroti, Aisha Amin

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

1. The Court is convened through hybrid mode.

2. The instant application has been filed in the first stage of the proceedings under Sub-section 1 of the Section 230 read with Sub-section 1 of the Section 232 of the Companies Act, 2013 (hereinafter referred as "Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation of GEMINI (INDIA) LIMITED being the Applicant No. 1 above named (hereinafter referred as "Transferor Company No 1" or "Applicant No.1") and TOPLINE COMMOTRADE PRIVATE LIMITED being the Applicant No. 2 above named ("Transferor Company No. 2" or "Applicant No.2") with MANAS FLOUR MILLS PRIVATE LIMTIED being the Applicant No. 5 above named ("Transferee Company" or "Applicant No. 5") whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz, April 1,2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred as "Scheme"). A copy of the said Scheme is annexed to the Company Application marked – ANNEXURE – G in VOL II at Page No 225 to 257.

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3. It is submitted by Ld. counsel appearing for the Applicants that the Appointed Date as per the Scheme is April 1, 2022.

4. It is submitted by Ld. counsel appearing for the Applicants that none of the Applicant Companies involved in the Scheme are Non-Banking Financial Companies (NBFC).

5. It is submitted by Ld. counsel appearing for the Applicants that the Board of Directors of the Applicant Companies have at their respective meeting held on July 30,2022 passed resolution adopting the proposed Scheme of Amalgamation. A copy of the Board Resolution is annexed to the Company Application marked – ANNEXURE – H in VOL II at Page No 258 to 260.

6. It is submitted by Ld. counsel appearing for the Applicants that the Valuation Report dated July 25, 2022 recommending the Swap Ratio has been prepared by VISHAL GUPTA, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked – ANNEXURE – I in VOL II at Page No 261 to 272.

7. It is submitted by Ld. counsel appearing for the Applicants that, the Applicants have the following classes of shareholders and creditors: -

Applicant

Equity Share

holders

Preference Share holders

Secured Creditors

Unsecured Creditors

As on July 31st 2022

1

7

NIL

NIL

NIL

2

2

NIL

NIL

NIL

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3

6

NIL

NIL

14

8. It is submitted by Ld. counsel appearing for the Applicants that all the Equity Shareholders of the Applicant No 1 have already given their consent to the Scheme by way of affidavits which are annexed to the Company Application. The list of equity shareholders as on July 31, 2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – J in VOL – II at Page No 273 to 298.

9. It is submitted by Ld. counsel appearing for the Applicants that all the Equity Shareholders of the Applicant No. 2 have already given their consent to the Scheme by way of affidavits which are annexed to the Company Application. The list of equity shareholders as on July 31, 2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – K in VOL – II at Page No 299 to 305.

10. It is submitted by Ld. counsel appearing for the Applicants that all the Equity Shareholders of the Applicant No. 3 have already given their consent to the Scheme by way of affidavits which are annexed to the Company Application. The list of equity shareholders as on July 31, 2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked –ANNEXURE – L in VOL – II at Page No 306 to 333.

11. It is submitted by Ld. counsel appearing for the Applicants that there is no requirement of meeting of Secured Creditors of Applicant Companies in view of NIL Creditors evidenced by the statutory auditor’s certificate of the Company all of which are annexed to the Company Application marked – ANNEXURE – M and ANNEXURE – N in VOL – II at Page No 334 and 335.

12. It is submitted by Ld. counsel appearing for the Applicants that there is no requirement of meeting of Unsecured Creditors of Applicant No 1 and Applicant No 2 in view of NIL Creditors evidenced by the statutory auditor’s certificate of the Company all of which are annexed to the Company Application marked – ANNEXURE – M and ANNEXURE – N in VOL – II at Page No 334 and 335.

13. It is submitted by Ld. counsel appearing for the Applicants that in Applicant No 3 there are 14 (Fourteen) Unsecured Creditors. The list of Unsecured Creditors duly certified by the statutory auditor’s certificate of the Company are annexed to the Company Application marked – ANNEXURE – O at Page No 336.

14. It is submitted by Ld. counsel appearing for the Applicants that directions are sought to convene and hold separate meeting of Unsecured Creditors of

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Transferee Company / Applicant No 3.

15. It is submitted by Ld. counsel appearing for the Applicants that the statutory auditor of Applicant Companies has by their certificate dated

August 05, 2022 have confirmed that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 and Rules made there under. Copy of the said certificate is annexed to the Company Application marked – ANNEXURE – P in VOL II at Page No 338 to 343.

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

(a) Meetings dispensed:

EQUITY SHAREHOLDERS

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of all shareholders of Applicant Companies having respectively given their consent to the Scheme by way of affidavits.

(b) No requirement of Meetings:

SECURED CREDITORS:

Secured Creditors of Applicant Companies - NIL Creditors verified by auditor’s certificate.

UNSECURED CREDITORS:

Unsecured Creditors of Applicant No1 and Applicant No 2 - NIL Creditors verified by auditor’s certificate.

(c) Meetings to be held

UNSECURED CREDITORS

Meeting of Unsecured Creditors of Transferee Company /Applicant No 3.

(d) Meetings date and time

UNSECURED CREDITORS

Unsecured Creditors of Transferee Company /Applicant No 3 to be convened and held Physical on Saturday 28 January 2023 at 11.00A.M for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation.

(e) Mode of Meetings:

The Meetings of the Unsecured Creditors of Transferee Company / Applicant No 3 shall be held Physically.

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(f) Venue of Meetings:

The meeting directed by this Tribunal shall be convened and held at the at the Registered Office of Transferee Company /Applicant No 3 at 25-B, Shakespeare Sarani Kolkata- 700017.

(g) Advertisement:

At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in the FINANCIAL EXPRESS in English and Bengali translation thereof in AAJKAL as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(h) Individual Notices:

At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to all Unsecured Creditors of Transferee Company / Applicant No 3 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be posted on the websites of the Applicant(s), if any.

(i) Chairperson:

Mr. Rahul Auddy, Adv. is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 75000 /- for conducting the aforesaid meeting(s) as Chairperson in the manner described herein.

(j) Scrutinizer:

Mr. Rohit Parasrampuria PCS is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 60,000/-for acting as Scrutinizer.

(k) Quorum and Attendance:

The quorum for the said meeting (s) shall be as laid down in Section 103 of the Companies Act, 2013.In the event no quorum is present at the said meeting(s) within 30 minutes from commencement of meeting then in such event the

Unsecured Creditors of Transferee Company / Applicant No 3 physically present at the venue of such meeting shall constitute the quorum. The attendance of such persons shall be recorded in the minutes of the meetings.

(l) Mode of Voting:

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Voting on the resolution shall be through Ballot Paper at the venue of the meeting and the Transferee Company /Applicant No 3 shall make necessary arrangement for voting accordingly.

(m) Voting procedure:

Subject to the directions and matters dealt with herein, the procedure for voting by polling paper/ ballot paper and conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 (hereinafter referred as "the said Rules"), and the forms there under shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

(n) Cut-off date:

The cut-off date for determining the eligibility to vote and value of votes of the Unsecured Creditors of Transferee Company / Applicant No 3 shall be as on 15 January 2023. The cut-off date for dispatch of notice to Unsecured Creditors of Transferee Company / Applicant No 3 shall be 19 December, 2022.

(o) Proxies & Board Resolutions:

Voting shall be allowed on the proposed Scheme by proxy at the meeting of the Unsecured Creditors of Transferee Company / Applicant No 3 provided that the proxies are in the prescribed form duly signed by the persons(s) entitled to attend and vote at the meeting is filed with the Transferee Company / Applicant No 3 at its Registered Office not later than forty-eight hours before the meetings. In case of a Body Corporate, being a Unsecured Creditors of Transferee Company / Applicant No 3 opting to attend and vote at the meeting, as aforesaid, through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at the meeting on its behalf is deposited at the registered office of the Transferee Company / Applicant No 3 not later than forty-eight hours before the time for holding the meeting.

(p) That the Chairperson appointed for the said meeting(s) or any person authorized by the Chairperson do issue and send the notices of the aforesaid meeting(s).

(q) The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meeting(s) along with all papers relating to the voting to the Chairperson of the meeting(s) within 3 days from the conclusion of the meeting(s). The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer.

(r) The value of each Unsecured Creditors of Transferee Company / Applicant No 3 shall be in accordance with the books and records of the Transferee Company / Applicant No 3 as on 15th December,2022 and, where entries in the books are

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disputed, the chairperson shall determine the value for purposes of the said meeting(s).

(s) The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of the Unsecured Creditors of Transferee Company / Applicant No 3 casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Sub-section 1 of the Section 230 read with Sub-section 1 of the Section 232 of the Companies Act, 2013.

(t) The Chairperson do report to this Tribunal the results of the said meeting(s) within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA 4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

17. Notice under Sub-section 5 of the Section 230 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. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

b. Registrar of Companies, West Bengal, Kolkata

c. Official Liquidator; High Court Calcutta

d. Income Tax Department having jurisdiction over the Applicant(s)

by sending the same by hand delivery through special messenger or by speed post and also by email within two 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 Authorized 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.

18. The Applicant(s) to file an affidavit proving service of notices and compliance of all directions contained herein.

19. The application being Company Application (CAA) No. 131 / KB / 2022 is disposed of accordingly.

20. Urgent Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

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