
(2024) 03 NCLT CK 0009

In the National Company Law Tribunal

Case No : C.A. (CAA) / 13/ MB / 2024

Manorama Ropes India Private Limited Vs

Date of Decision : 07-03-2024

Acts Referred:

Companies Act, 2013 — Section 103, 230, 230(1)(a), 230(1)(b), 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 8

Citation : (2024) 03 NCLT CK 0009

Hon'ble Judges : Reeta Kohli, Member (J); Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Nitin Gutka, ZADN & Associates

Final Decision : Disposed Of

Judgement

1. Heard the Representative for the Applicant Companies.
2. The Representative for the Applicant Companies states that the present Scheme is a Scheme of Amalgamation of Manorama Ropes India Private Limited (?Applicant Company 1 / First Transferor Company?) and Baheti Synthetic India Private Limited (?Applicant Company 2 / Second Transferor Company?) with Kohinoor Ropes Private Limited (?Applicant Company 3 / Transferee Company?) and their respective shareholders (hereinafter referred as to ?Scheme?).
3. The Representative for the Applicant Companies states that the Board of Directors of the Applicant Companies in their respective Board Meeting held on 25th June, 2023 have approved the Scheme. The Appointed Date fixed under the Scheme is 1st April, 2023.
4. The Representative for the Applicant Companies further states that the rationale for the Scheme of Amalgamation is as follows:
 - a) Implementation of the Scheme shall result in consolidation of businesses, business resources and activities, integration of operations under a single unified entity, facilitating optimum utilization of assets and other resources for future growth, avoiding duplication of efforts and resources, and thereby providing economies of scale.

b) Consolidated entity to emerge stronger financially resulting in increased business and improved financial leverage.

c) All the Companies have shareholders belonging to the same family and promoter group with common management and control. The consolidation of the companies shall simplify the business structure by eliminating multiple entities and creating a single unified entity resulting in integration of operations and simplification of structure while the shareholders pre and post the amalgamation belong to the same family.

d) Combined entity would be able to effectively optimize the overall administrative and statutory compliances.

5. The Authorised, Issued, Subscribed, and Paid-up Share Capital of the First Transferor Company as on 31st March, 2023:

Particulars

Amount in

Rs.

Authorised Share Capital

20,00,000 Equity Shares of Rs.10/- each.

2,00,00,000

TOTAL

2,00,00,000

Issued, Subscribed, and Paid-up Share

Capital

13,63,700 Equity Shares of Rs.10/- each fully
paid up.

1,36,37,000

TOTAL

1,36,37,000

Subsequent to 31st March, 2023 there has been no change in either Authorized Share Capital or paid-up share capital in the First Transferor Company.

6. The Authorised, Issued, Subscribed, and Paid-up Share Capital of the Second Transferor Company as on 31st March, 2023:

Particulars

Amount in

Rs.

Authorised Share Capital

50,000 Equity Shares of Rs.10/- each.

5,00,000

TOTAL

5,00,000

Issued, Subscribed, and Paid-up Share

Capital

27,500 Equity Shares of Rs.10/- each fully paid

up.

2,75,000

TOTAL

2,75,000

Subsequent to 31st March, 2023 there has been no change in either Authorized Share Capital or paid-up share capital in the Second Transferor Company.

7. The Authorised, Issued, Subscribed, and Paid-up Share Capital of the Transferee Company as on 31st March, 2023:

Particulars

Amount in

Rs.

Authorised Share Capital

50,00,000 Equity Shares of Rs.10/- each.

5,00,00,000

TOTAL

5,00,00,000

Issued, Subscribed, and Paid-up Share

Capital

34,54,546 Equity Shares of Rs.10/- each fully

paid up.

3,45,45,460

TOTAL

3,45,45,460

Subsequent to 31st March, 2023 there has been no change in either Authorized Share Capital or paid-up share capital in the Transferee Company.

8. The Applicant Company 1 is presently carrying on the business of manufacturing PP/HDPE ropes. The Applicant Company 2 is presently carrying on the business of manufacturing PP/HDPE ropes, PP/HDPE Twine. The Applicant Company 3 is presently carrying on the business of manufacturing PP/HDPE ropes, and PP/HDPE Twine.

9. The Representative for the Applicant Companies further submits that pursuant to the Scheme the Transferee Company is proposing to issue shares to the shareholders of the Transferor Companies as per the below ratio:

a) The equity shareholders of the First Transferor Company shall be issued and allotted 1 (One) equity share of Rs. 10/- (Ten) each, credited as fully paid up, of the Transferee Company for every 1(One) equity share of the face value Rs.10/- (Ten) each held by them in the First Transferor Company.

b) The equity shareholders of the Second Transferor Company shall be issued and allotted 1(One) equity shares of Rs. 10/- (Ten) each, credited as fully paid up, of the Transferee Company for every 68 (Sixty-eight) equity shares of the face value Rs.10/- (Ten) each held by them in the Second Transferor Company.

10. The Representative for the Applicant Companies further submits that the pre and post-merger net worth of the Applicant Companies as per the certificate given by the respective statutory auditor as on the Appointed Date i.e. 1st April, 2023 which is filed with an additional affidavit dated 6th February, 2024 on NCLT e-portal are as follows:

Sr.

No.

Applicant Company

Pre-Merger Net Worth

(In INR)

Post-Merger Net Worth

(in INR)

1.

Manorama Ropes India Private Limited

9,45,61,134/-

Not Applicable

2.

Baheti Synthetic India

Private Limited

-1,31,01,091/-

Not Applicable

3.

Kohinoor Ropes Private

Limited

23,61,62,643/-

31,76,22,687/-

11. There are 15 (fifteen) Equity Shareholders holding 13,63,700 Equity Shares of Rs. 10/- each in Applicant Company 1. All the Equity Shareholders have filed affidavits consenting to the Scheme, which have been placed on record in Annexure??K-1? to ?K-15? of the Joint Company Scheme Application. Therefore, the meeting of the Equity Shareholders of Applicant Company 1 is dispensed with.

12. There are 4 (four) Equity Shareholders holding 27,500 Equity Shares of Rs. 10/- each in Applicant Company 2. All the Equity Shareholders have filed affidavits consenting to the Scheme, which have been placed on record in Annexure??L-1? to ?L-4? of the Joint Company Scheme Application. Therefore, the meeting of the Equity Shareholders of Applicant Company 2 is dispensed with.

13. There are 5 (five) Equity Shareholders holding 34,54,546 Equity Shares of Rs. 10/- each in Applicant Company 3. All the Equity Shareholders have filed affidavits consenting to the Scheme, which have been placed on record in Annexure??M-1? to ?M-5? of the Joint Company Scheme Application. Therefore, the meeting of the Equity Shareholders of Applicant Company 3 is dispensed with.

14. There are 2(Two) Secured Creditors in the Applicant Company 1 of the value of Rs. 25,32,77,233/- (Rupees Twenty Five Crore Thirty-Two Lakhs Seventy-Seven Thousand Two Hundred and Thirty-Three only), as per certificate given by Statutory Auditor, which are placed as Annexure-N of the Joint Company Scheme Application. The Representative further submits that since the present Scheme is an arrangement between the Applicant Companies and its shareholders as contemplated in Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013, as there is no compromise or arrangement with creditors as it does not affect the rights and interests of the Secured Creditors of the Applicant Company 1. Further, there is no diminution of liability of any of the Secured Creditors of the Applicant Company 1 who will be

paid off in the ordinary course of business. Pursuant to the Scheme, all assets of Applicant Company 1 and Applicant Company 2 will be transferred and vested in Applicant Company 3. There is no compromise and/or arrangement with the Secured Creditors of Applicant Company 1 as no sacrifice is called for. The Applicant Company 1 Undertakes to obtain NOC / consent from 100% of the total value of the Secured Creditors and file before the final hearing of the Company Scheme Petition.

15. The Applicant Company 2 has no Secured Creditors, as per the certificate given by the practicing-chartered accountants, which is placed as Annexure ?O? of the Joint Company Scheme Application. Therefore, the question of conducting a meeting of the Secured Creditors of Applicant Company 2 does not arise.

16. There are 3(Three) Secured Creditors in the Applicant Company 3 of the value of Rs. 76,91,98,622/- (Rupees Seventy-Six Crore Ninety One Lakhs Ninety Eight Thousand Six Hundred and Twenty-Two only), as per certificate given by Statutory Auditor, which are placed as Annexure-P of the Joint Company Scheme Application. The Representative further submits that since the present Scheme is an arrangement between the Applicant Companies and its shareholders as contemplated in Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013, as there is no compromise or arrangement with creditors as it does not affect the rights and interests of the Secured Creditors of the Applicant Company 3. Further, there is no diminution of liability of any of the Secured Creditors of the Applicant Company 3 who will be paid off in the ordinary course of business. Pursuant to the Scheme, all assets of Applicant Company 1 and Applicant Company 2 will be transferred and vested in Applicant Company 3. There is no compromise and/or arrangement with the Secured Creditors of Applicant Company 3 as no sacrifice is called for. The Applicant Company 2 Undertakes to obtain NOC/ consent from 100% of the total value of the Secured Creditors and file before the final hearing of the Company Scheme Petition.

17. A meeting of the Unsecured Creditors of the Applicant Company 1, be convened and held at Gut No. 47, Khupsa Shiwar, Devgoan Fhata Road, Selu-431 503, Parbhani, Maharashtra on Saturday, 6th day of April, 2024 at 11.00 A.M. (IST) for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Manorama Ropes India Private Limited and Baheti Synthetic India Private Limited with Kohinoor Ropes Private Limited and their respective shareholders.

18. A meeting of the Unsecured Creditors of the Applicant Company 2, be convened and held at Gut No. 47, Khupsa Shiwar, Devgoan Fhata Road, Selu-431 503, Parbhani, Maharashtra on Saturday, 6th day of April, 2024 at 1.00 P.M. (IST) for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Manorama Ropes India Private Limited and Baheti Synthetic India Private Limited with Kohinoor Ropes Private Limited and their respective shareholders.

19. A meeting of the Unsecured Creditors of the Applicant Company 3, be convened and held at Gut No. 47, Khupsa Shiwar, Devgoan Fhata Road, Selu-431 503, Parbhani, Maharashtra on Saturday, 6th day of April, 2024 at 3.00 P.M. (IST) for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Manorama Ropes India Private Limited and Baheti Synthetic India Private Limited with Kohinoor Ropes Private Limited and their respective shareholders.

20. At least one month before the said the meetings of Unsecured Creditors of the Applicant Companies to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the explanatory statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified and the prescribed Form of Proxy, shall be sent by Registered Post or by courier or by speed post or by hand delivery or through email, (to those Unsecured Creditors whose email addresses are duly registered with the respective Applicant Companies for the purpose of receiving such notices be email), addressed to each of the Unsecured Creditors of the Applicant Companies, at their registered or last known addresses or e-mail addresses as per the records of the Applicant Companies or can be obtained free of charge by emailing to the Applicant Companies at atulrathi@kohinoorrope.com.

21. At least not less than 30 days before the said meeting of the Unsecured Creditors of the respective Applicant Companies to be held as aforesaid, a notice convening the said meeting, indicating the place, day, date and time of the meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 and the form of Proxy can be obtained free of charge at the Registered Office of the respective Applicant Companies as aforesaid and/or at the office of its Authorised Representative ZADN & Associates at 1st Floor, Sadhana Rayon House, Dr. D.N. Road, Fort, Mumbai-400 021.

22. That the joint notice of the Meeting of the Unsecured Creditors of the respective Applicant Companies shall be advertised in two local newspapers, viz, ? Times of India? in English and translation thereof in ?Lokmat? in Marathi language both having wide circulation in the state in which Registered Office of the respective Applicant Companies are situated and shall also be placed not less than thirty (30) days before the date fixed for the meeting on the website of the Applicant Companies, if any.

23. Mr. Maroti Ramkishan Giri, Practicing Chartered Accountants (mobile no. 9168168777), failing him Mr. Prakash Mangilal Ahir, Practicing Chartered Accountants (mobile no.9372227850), shall be the Chairperson of the aforesaid meeting of the unsecured creditors of the Applicant Company 1.

24. Mr. Maroti Ramkishan Giri, Practicing Chartered Accountants (mobile no. 9168168777), failing him Mr. Prakash Mangilal Ahir, Practicing Chartered Accountants (mobile no.9372227850), shall be the Chairperson of the aforesaid meeting of the unsecured creditors of the Applicant Company 2.

25. Mr. Maroti Ramkishan Giri, Practicing Chartered Accountants (mobile no. 9168168777), failing him Mr. Prakash Mangilal Ahir, Practicing Chartered Accountants (mobile no.9372227850), shall be the Chairperson of the aforesaid meeting of the unsecured creditors of the Applicant Company 3.

26. S M Gupta & Co., Chartered Accountant, 1103, Olive Dosti Acres, S.M. Road, Antop Hill, Wadala East, Mumbai -400037 is appointed as scrutinizer for the aforesaid meetings on a fees of Rs. 1,50,000/- excluding taxes.

27. That the Chairperson appointed for the aforesaid meetings of the Unsecured Creditors is authorised to issue the advertisement and send out the notices of the meeting referred to above. The said Chairperson shall have all powers as per the company's Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, 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 meetings by any person(s).

28. The quorum of the aforesaid of meeting of the unsecured creditors of the respective Applicant Companies shall be as prescribed under Section 103 of the Companies Act, 2013, present either in person or by authorized representative.

29. In case if the quorum as mentioned above is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of quorum for the meeting of respective Applicant Companies, proxies will be considered, as per applicable provisions of the secretarial standards, 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 respective Applicant Companies at least 48 hours before the meeting.

30. The voting by proxy or authorised representative shall be permitted, provided that a proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the meeting, are filed with the respective Applicant Companies at its Registered office(s) not later than 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

31. The amount of the outstanding value of debt of each of the Unsecured Creditors of respective Applicant Companies shall be in accordance with the books/ register of respective Applicant Companies as on 30th January, 2024 and where the entries in the books/ register are disputed, the Chairperson of the aforesaid meeting of the Unsecured Creditors of the respective Applicant

Companies shall determine the value for the purposes of the said meeting of Unsecured Creditors of the respective Applicant Companies and his decision in that behalf would be final.

32. The Chairperson of the meeting is to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting of Unsecured Creditors and do report to this Tribunal that the direction regarding the issue of notices and the advertisement has been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements, and Amalgamation) Rules, 2016.

33. The Chairperson of the meeting to report to this Tribunal, the result of the aforesaid meeting of Unsecured Creditors within thirty days of the conclusion of the meeting.

34. That the Applicant Companies are directed to serve notices along with a copy of the Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 upon the

I. Central Government through the office of Regional Director, Western Region, Mumbai;

II. Jurisdictional Registrar of Companies;

III. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company 1 assessment is made (mentioning the PAN: AAECM2335B at the following address: Income Tax Officer, Ward-1, Wardha Road, Jalna Industrial Area MIDC, Jalna- 431213;

IV. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company 2 assessment is made (mentioning the PAN: AACCB5973A at the following address: Income Tax Officer, Ward-Hingoli, Shivaji Nagar, Hingoli-431513;

V. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company 3 assessment is made (mentioning the PAN: AAFCK7732D at the following address: Income Tax Officer, Ward-1, Wardha Road, Jalna Industrial Area MIDC, Jalna- 431213; and

VI. GST Departments;

35. The Transferor Companies are also directed to serve the Copy of Scheme upon the Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

36. The Notice shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery and email along with a copy of the Scheme and state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned

Authorities has no objection to the proposed Scheme?. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgment of the notice.

37. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.

38. The Applicant Companies are to file an affidavit of service with the Registry proving dispatch of notices as stated above and report to this Tribunal that the directions have been duly complied with.

39. Ordered accordingly.