**(2022) 10 NCLT CK 0040**

**In the National Company Law Tribunal**

**Case No :** C.A. (CAA) No. 121 / KB /2022

**Maryada Advisory Services Private Limited & Ors Vs**

**Date of Decision :** 19-10-2022

**Acts Referred:**
Companies Act, 2013 — Section 103, 133, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangementsand Amalgamations) Rules, 2016 — Rule 6, 7

**Citation :** (2022) 10 NCLT CK 0040

**Hon'ble Judges :** Rohit Kapoor, 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 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 ARHAM VYAPAAR PRIVATE LIMITED being the Applicant No. 1 above named (" Transferor Company No 1 " or “Applicant No.1”) and KILBURN SOFTWARE TECHNOLOGIES INDIA LIMITED being the Applicant No. 2 above named (" Transferor Company No 2 " or “Applicant No.2”) and PUSHPDANT VYAPAAR PRIVATE LIMITED being the Applicant No. 3 above named (" Transferor Company No 3 " or “Applicant No.3”) with MARYADA ADVISORY SERVICES PRIVATE LIMITED being the Applicant No.4 above named ("Transferee Company" or “Applicant No. 4 ”) whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st April,2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”). A copy of the said Scheme is annexed to the Company Application marked – ANNEXURE – I in VOL II at Page No 266 to 284.

2. It is submitted by Ld. counsel appearing for the Applicant(s) that the Appointed Date as per the Scheme is 01st April,2021.

 

3. It is submitted by Ld. counsel appearing for the Applicant(s) that the Board of Directors of the Applicant Companies have at their respective meeting held on 28th January,2022 have passed resolution adopting the proposed Scheme of Amalgamation. A copy of the Board Resolution is annexed to the Company Application marked –ANNEXURE – J in VOL II at Page No 285 to 292.

4. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation Report dated 01-12-2021 recommending the Swap Ratio has been prepared by CAVIDHI CHANDAK, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked – ANNEXURE – K in VOL II at Page No 293 to 316.

5. It is submitted by Ld. counsel appearing for the Applicant(s) that the Transferee Company / Applicant No 4 is a NBFC Company duly registered with Reserve Bank of India and is holding a valid Certificate of Registration issued by the said Bank.

6. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Applicant(s) have the following classes of shareholders and creditors:-

a. APPLICANT NO 1

Number of EQUITYSHAREHOLDERS: 2 as on 15TH FEBRUARY, 2022.

Number of PREFERENCE SHAREHOLDERS: NIL

Number of SECURED CREDITORS: NIL as on 31ST JANUARY, 2022.

Number of UNSECURED CREDITORS: 4 as on 31ST JANUARY, 2022.

b. APPLICANT NO 2

Number of EQUITYSHAREHOLDERS: 8 as on 15TH FEBRUARY, 2022.

Number of PREFERENCE SHAREHOLDERS: NIL

Number of SECURED CREDITORS: NIL as on 31ST JANUARY, 2022.

Number of UNSECURED CREDITORS: 3 as on 31ST JANUARY, 2022.

c. APPLICANT NO 3

Number of EQUITY SHAREHOLDERS: 5 as on 15th FEBRUARY, 2022.

Number of PREFERENCESHAREHOLDERS: NIL

Number of SECURED CREDITORS: NIL as on 31ST JANUARY, 2022.

Number of UNSECURED CREDITORS: 3 as on 31ST JANUARY, 2022.

d. APPLICANT NO 4

Number of EQUITYSHAREHOLDERS: 9 as on 15TH FEBRUARY, 2022.

Number of PREFERENCESHAREHOLDERS: NIL

 

Number of SECURED CREDITORS: NIL as on 31ST JANUARY, 2022.

Number of UNSECURED CREDITORS: 7 as on 31ST JANUARY, 2022.

7. It is submitted by Ld. counsel appearing for the Applicant(s) that all the Equity Shareholders of the Applicant No1 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 15-02-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked –ANNEXURE – L in VOL – II at Page No 317 to 327.

8. It is submitted by Ld. counsel appearing for the Applicant(s) that directions are sought to convene and hold separate meeting of Equity Shareholders of the Applicant No2 The list of equity shareholders as on 15-02-2022 duly certified by the statutory auditor is annexed to the Company Application marked – ANNEXURE – L1 in VOL – III at Page No 328.

9. It is submitted by Ld. counsel appearing for the Applicant(s) 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 15-02-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked –ANNEXURE – L2 in VOL – III at Page No 329 to 353.

10. It is submitted by Ld. counsel appearing for the Applicant(s) that all the Equity Shareholders of the Applicant No 4 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 15-02-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked –ANNEXURE – L3 in VOL – III at Page No 354 to 404.

11. It is submitted by Ld. counsel appearing for the Applicant(s) 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 in VOL – III at Page No 405, ANNEXURE – M1 in VOL – III at Page No 416, ANNEXURE – M2 in VOL – III at Page No 425 and ANNEXURE – M3 in VOL – III at Page No 436.

12. It is submitted by Ld. counsel appearing for the Applicant(s) that 95.72% in value of Unsecured Creditors of the Applicant No.1 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of Unsecured Creditors as on 31-01-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – M in VOL – III at Page No 405 to 415.

13. It is submitted by Ld. counsel appearing for the Applicant(s) that 96.54% in value of Unsecured Creditors of the Applicant No.2 have already given their

 

consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of Unsecured Creditors as on 31-01-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – M1 in VOL – III at Page No 416 to 424.

14. It is submitted by Ld. counsel appearing for the Applicant(s) that 98.24% in value of Unsecured Creditors of the Applicant No.3 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of Unsecured Creditors as on 31-01-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – M2 in VOL – III at Page No 425 to 435.

15. It is submitted by Ld. counsel appearing for the Applicant(s) that 95.56% in value of Unsecured Creditors of the Applicant No.4 have already given their consent to the Scheme by way of affidavits all of which are annexed to the Company Application. The list of Unsecured Creditors as on 31-01-2022 duly certified by the statutory auditor together affidavit of consent are all collectively annexed to the Company Application marked – ANNEXURE – M3 in VOL – III at Page No 436 to 446.

16. It is submitted by Ld. counsel appearing for the Applicant(s) that the statutory auditor of the Transferee Company / Applicant No 4 have by their certificate dated 22-02-2022 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 – N in VOL III at Page No 447.

17. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

a. Meetings dispensed:

EQUITY SHAREHOLDERS

Meeting of Equity Shareholders of the Applicant No 1 , Applicant No 3, and Applicant No 4 for considering the Scheme are dispensed with in view of all shareholders of Applicant No 1 , Applicant No 3 , and Applicant No 4 having respectively given their consent to the Scheme by way of affidavits.

UNSECURED CREDITORS

Meeting of Unsecured Creditors of Applicant No 1 for considering the Scheme are dispensed with in view of consent by 95.72 % in value of Unsecured creditors of Applicant No 1 having respectively given their consent to the Scheme by way of affidavits.

 

Meeting of Unsecured Creditors of Applicant No 2 for considering the Scheme are dispensed with in view of consent by 96.54 % in value of Unsecured creditors of Applicant No 2 having respectively given their consent to the Scheme by way of affidavits.

Meeting of Unsecured Creditors of Applicant No 3 for considering the Scheme are dispensed with in view of consent by 98.24 % in value of Unsecured creditors of Applicant No 3 having respectively given their consent to the Scheme by way of affidavits.

Meeting of Unsecured Creditors of Applicant No 4 for considering the Scheme are dispensed with in view of consent by 95.56 % in value of Unsecured creditors of Applicant No 4 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 auditors certificate.

c. Meetings to be held

EQUITY SHAREHOLDERS

Meeting of Equity Shareholders of Applicant No 2.

d. Meetings date and time

EQUITY SHAREHOLDERS

Equity Shares holders of Applicant No 2 to be convened and held Physical on Saturday 10th December, 2022 at 11.00 A.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 Equity Shares holders of Applicant No 2 shall be held Physically.

f. Venue of Meetings:

The meeting directed by this Tribunal shall be convened and held at the at the Registered Office of Applicant No 2 at VASUNDHARA BUILDING, 2ND FLOOR, SPACE NO. 5 & 6, 2/7, SARAT BOSE ROAD, KOLKATA -700020.

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 Equity Shares holders of Applicant No 2 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. Sailendra Kumar (Mob. No. 9831686686) is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs.65000/- for conducting the aforesaid meeting(s) as Chairperson.

j. Scrutinizer:

Ms. Neha Somani (Mob. No. 9051441471) is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs.50,000./- 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 Equity Share holders 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:

Voting on the resolution shall be through Ballot Paper at the venue of the meeting and the Applicant No 2 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 ("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 Equity Shares holders of Applicant No 2 shall be as on 30th November, 2022. The cut-off date for dispatch of notice to Equity Shares holders of Applicant No 2 shall be 30th September, 2022.

o. Proxies & Board Resolutions:

Voting shall be allowed on the proposed Scheme by proxy at the meeting of the Equity Shares holders of Applicant No 2 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 Applicant No 2 at its Registered Office not later than forty-eight hours before the meetings. In case of a Body Corporate, being a Equity Shareholder of Applicant No 2 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 Applicant No 2 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 Equity Shareholders shall be in accordance with the books and records of the Applicant No 2 as on 30th November, 2022 and, where entries in the books are 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 Equity Shareholder casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) 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. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

18. 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. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

b. Registrar of Companies , West Bengal ,Kolkata

c. Reserve Bank of India , Kolkata Regional Office

d. Official Liquidator; High Court Calcutta

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

by sending the same by hand delivery through special messenger, by speed post and 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. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

19. The Applicant(s) to file an affidavit proving service of notices of meeting(s) and publication of advertisement and compliance of all directions contained herein at least a week before the meeting(s) to be held.

20. The Company Application being C.A. (CAA) No. 121/KB/2022 is disposed of accordingly.

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

 