(2023) 02 NCLT CK 0031

In the National Company Law Tribunal

Case No : Company Application (CAA) NO. 180/KB/2022

Maxwell Distributors Private Limited Vs

Date of Decision : 07-02-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230, 230(1), 230(5), 232, 232(1)

Citation : (2023) 02 NCLT CK 0031

Hon'ble Judges : Bidisha Banerjee, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Rohit Kumar Keshri, Zubeen Pandey

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 dispensation of meetings of shareholders and creditors in connection with the Scheme of Amalgamation of MEDIRECO DATABASE PRIVATE LIMITED being the Applicant No. 1 above named ("Transferor Company No. 1" or "Applicant No.1") and ROOPMAHAL DEALERS PRIVATE LIMITED being the Applicant No. 2 above named ("Transferor Company No. 2" or "Applicant No. 2") with MAXWELL DISTRIBUTORS PRIVATE LIMITED being the Applicant No. 3 above named ("Transferee Company" or "Applicant No. 3") whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, 01st Day of April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred in "Scheme"). A copy of the said Scheme is annexed to the Company Application marked – ANNEXURE – A5 Page No 357 to 379.

2. It is submitted by Ld. counsel appearing for the Applicants that the Appointed Date as per the Scheme is 01st Day of April, 2022.

3. It is submitted by Ld. counsel appearing for the Applicants that none of the

Applicant Companies involved in the Scheme are Non-Banking Financial Company (NBFC).

4. 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 October 15, 2022 have passed resolution adopting the proposed Scheme of Amalgamation. A copy of the Board Resolution is annexed to the Company Application marked as – ANNEXURE – A-1/5 at Page No 99 to 102, A-2/5 at Page No. 173 to 176 and A-3/5 at Page No 253-256.

5. It is submitted by Ld. Counsel appearing for the Applicants that the Valuation Report dated 15.10.2022 recommending the Swap Ratio has been prepared by CA Anita Tosniwal, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Application marked – ANNEXURE – A 4 at Page No 341 to 356.

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

PARTICULARS

AS ON 31ST AUGUST, 2022

EQUITY SHARE HOLDERS

PREFERENCE SHARE

HOLDERS

SECURED CREDITORS

UNSECURED CREDITORS

TRANSFEROR COMPANY NO 1/APPLICANT NO 1

5

NIL

NIL

NIL

TRANSFEROR COMPANY NO 2/APPLICANT NO 2

4

NIL

NIL

1

TRANSFEREE COMPANY/ APPLICANT NO 3

5

NIL

2

24

7. It is submitted by Ld. Counsel appearing for the Applicants that there is no requirement of meeting of Secured Creditors of Applicant Companies as the Equity Shareholders of 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 equity shareholders as on 31-10-2022 duly certified by the statutoryauditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – A-1/6 at Page No 103 and A-1/7 at Page No 104 to 117.

8. It is submitted by Ld. Counsel appearing for the Applicants that the Equity Shareholders of 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 equity shareholders as on 31-10-2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – A-2/6 at Page No 177 and A-2/7 at Page No 178-189.

9. It is submitted by Ld. Counsel appearing for the Applicants that the Equity Shareholders of 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 equity shareholders as on 31-10-2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – A-3/6 at Page No 257 and A-3/7 at Page No 258-271.

10. It is submitted by Ld. counsel appearing for the Applicants that there is no requirement of meeting of Secured Creditors of Applicant Companies 1 and 2 in view of NIL Secured Creditors as on 31-10-2022 as evidenced by the statutory auditor's certificate of the Company and the Applicant Company No. 3 has two secured creditors who have given their consent to the scheme, all of which are annexed to the Company Application marked – ANNEXURE –A-1/8 at Page No 118 and A-2/8 at Page No 190 and A-3/8 at Page No 272-281 and Supplementary Affidavit dated 06.01.2023 Annexure A - 3/8/A page - 4.

11. It is submitted by Ld. Counsel appearing for the Applicants that there are no Unsecured Creditors of the Applicant No.1 and the NIL list as on 31-10-2022 duly certified by the statutory auditor is annexed to the Company Application marked – ANNEXURE – A-1/9 at Page No 119.

12. It is submitted by Ld. Counsel appearing for the Applicants that 100% 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 31-10-2022 duly

certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – A-2/9 at Page No 191 to 194.

13. It is submitted by Ld. counsel appearing for the Applicants that 90.47% 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 31-10-2022 duly certified by the statutory auditor together affidavit of consent is all collectively annexed to the Company Application marked – ANNEXURE – A-3/9 at Page No 282 and A-3/10 at Page No 283 to 339.

14. It is submitted by Ld. counsel appearing for the Applicants that the statutory auditor of the Applicant Companies has all by their certificate all dated 5th December 2022 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 – A-6 Page no 380.

15. 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 shareholder representing 100% in value of shares of Applicant Companies 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 there being no Unsecured creditor duly certified by the Statutory Auditors.

Meeting of Unsecured Creditors of Applicant No. 2 for considering the Scheme are dispensed with in view of consent by 100 % 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 90.47 % in value of Unsecured creditors of Applicant No. 3 having respectively given their consent to the Scheme by way of affidavits.

b. No requirement of Meetings

SECURED CREDITORS

Secured Creditors of Applicant Companies 1 and 2- NIL Creditors verified by auditor's certificate and the Secured Creditors of Applicant Company. 3 have given their consent to the scheme

c. Meetings to be held

No meetings are required to be held

16. 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, MCA, Kolkata;

b. Registrar of Companies, West Bengal, Kolkata

c. Official Liquidator; High Court Calcutta

d. Income Tax Department having jurisdiction over the Applicants

These notices shall be sent by hand delivery through special messenger, by 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 Applicants. 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.

17. The Applicants to file an affidavit proving service of notice and compliance of all directions contained herein at least a week before the meeting(s) to be held.

18. The application being Company Application (CAA) No. 180/ KB / 2022 is disposed of accordingly.

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