**(2022) 05 NCLT CK 0035**

**In the National Company Law Tribunal**

**Case No :** Company Scheme Application No.: 85 Of 2022.

MB Realty Private Limited — APPELLANT

Vs

Minerva Deales Pvt. Ltd — RESPONDENT

**Date of Decision :** 12-05-2022

**Acts Referred:**

Companies Act, 2013 — Section 230, 230(1)(a), 230(1)(b), 230(5)
Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 — Rule 8

**Citation :** (2022) 05 NCLT CK 0035

**Hon'ble Judges :** P.N. Deshmukh, Member (J);Shyam Babu Gautam, Member (T)

**Bench :** Division Bench

**Advocate :** Kaushik Nahar

**Final Decision :** Disposed Of

## Judgement

Shyam Babu Gautam, Member Technical

1. This Bench is convened through video conferencing.

2. The Authorised Representative for the Applicant Companies states that the present Scheme is of Amalgamation of MB Realty Private Limited and Vision Enterprise Private Limited and Growtrez Enterprises Private Limited and Lynx Enterprises Private Limited and Samsara Consultants Private Limited (Transferor Companies) with Alena Consultants Private Limited (Transferee Company).

3. The Authorised Representative for the Applicant Companies states that the Board of Directors of the Transferor Companies and Transferee Company in their respective Board Meetings conducted on 21.03.2022 for the Transferor Companies and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is 01.04.2021.

4. The Transferor Company No. 1 is engaged in the business of Providing services and also derives other income from investment.

5. The Transferor Company No. 2 is engaged in the business of Providing services

and also derives other income from investment.

6. The Transferor Company No. 3 is engaged in the business of Providing services and also derives other income from investment.

7. The Transferor Company No. 4 is engaged in the business of Providing services and also derives other income from investment.

8. The Transferor Company No. 5 is engaged in the business of Providing services and also derives other income from investment.

9. The Transferee Company is engaged in the business of Providing services and also derives other income from investment.

10. The Authorised Representative for the Applicant Companies submits that the proposed Amalgamation would accomplish the following benefits:

a. All the six Companies including the Transferee Company are engaged in the same line of business and therefore in order to consolidate the operations in the Transferee Company as well as to eliminate the duplication of various administrative processes, it is proposed to amalgamate the Transferor Companies by way of the present Scheme of Amalgamation into the Transferee Company.

b. As the Transferor Companies and the Transferee Company are having common shareholders, it would be desirable to consolidate their activities into a Single Entity.

c. The benefits of the Scheme inter alia include improved synergies in their respective businesses, better, efficient and economical management, control and running of their businesses, attaining economies of scale, further development and growth of their businesses, to avoid and eliminate unnecessary duplication in costs of administration, and to achieve administrative convenience.

d. Consolidation of activities by way of amalgamation will lead to synergies of operations and a stronger and wider capital and financial base for future growth/ expansion.

e. Merging the operations of the Transferor Companies with Transferee Company will result in an entity that has significantly improved operational flexibility, thereby enabling the Transferee Company to provide newer, better and more cost effective solutions and services to its customers and to the Transferor Company's customers.

f. The amalgamation will result in economies of scale, reduction in overheads, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of various resources.

g. The business expertise of the Transferor Companies and the Transferee Company will be combined giving additional strength to the Transferee Company. Consequently, the Transferee Company will offer a strong financial structure to all its creditors including the creditors of the Transferor Companies. It will further facilitate resource mobilization and achieve better cash flows. This would also contribute substantially towards enhancement of shareholders' value of the Transferor Companies and the Transferee Company.

h. The proposed amalgamation will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Companies and the Transferee Company.

i. The secured creditors of transferor companies, if any, are not affected by the proposed amalgamation as their security is maintained and the liability owed to them by the Transferor Companies will be discharged by the Transferee Company upon the Scheme coming into effect. But there are no secured creditors in the Transferor Companies.

j. The increased asset base of the Transferee Company and greater financial inflow would be to the benefit of all the shareholders and creditors of the Transferor Companies and the Transferee Company, who would continue to be associated with the Transferee Company. The Transferee Company would have better financial viability and clearer focus, which would be in the interests of all its shareholders and creditors including the shareholders and creditors of the Transferor Companies.

k. The amalgamation will result in the combination of manpower of all the companies and a single management structure. The combined skill and managerial expertise would enable the Transferee Company to develop an organisation structure that would be more competitive and better structured.

11. The Authorised Representative for the Applicant Companies submit that for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of MB Realty Private Limited and Vision Enterprise Private Limited and Growtrez Enterprises Private Limited and Lynx Enterprises Private Limited and Samsara Consultants Private Limited (Transferor Companies) with Alena Consultants Private Limited (Transferee Company), the Meeting of Equity Shareholders of MB Realty Private Limited, Transferor Company No. 1 be dispensed with in view of the Consent Affidavits given by all the Equity Shareholders of MB Realty Private Limited, Transferor Company No. 1 which are annexed as "Annexure V-Colly" at Page Nos. 669- 677 of the Company Scheme Application.

12. The Authorised Representative for the Applicant Companies submit that for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of MB Realty Private Limited and Vision Enterprise Private Limited and Growtrez Enterprises Private Limited and Lynx Enterprises Private Limited and Samsara Consultants Private Limited (Transferor Companies) with Alena Consultants Private Limited (Transferee Company), the Meeting of Equity Shareholders of Vision Enterprise Private Limited, Transferor Company No. 2 be dispensed with in view of the Consent Affidavits given by all the Equity Shareholders of Vision Enterprise

 

Private Limited, Transferor Company No. 2 which are annexed as “Annexure W-Colly” at Page Nos. 678- 686 of the Company Scheme Application.

13. The Authorised Representative for the Applicant Companies submit that for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of MB Realty Private Limited and Vision Enterprise Private Limited and Growtrez Enterprises Private Limited and Lynx Enterprises Private Limited and Samsara Consultants Private Limited (Transferor Companies) with Alena Consultants Private Limited (Transferee Company), the Meeting of Equity Shareholders of Growtrez Enterprises Private Limited, Transferor Company No. 3 be dispensed with in view of the Consent Affidavits given by all the Equity Shareholders of Growtrez Enterprises Private Limited, Transferor Company No. 3 which are annexed as “Annexure X-Colly” at Page Nos. 687– 699 of the Company Scheme Application.

14. The Authorised Representative for the Applicant Companies submit that for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of MB Realty Private Limited and Vision Enterprise Private Limited and Growtrez Enterprises Private Limited and Lynx Enterprises Private Limited and Samsara Consultants Private Limited (Transferor Companies) with Alena Consultants Private Limited (Transferee Company), the Meeting of Equity Shareholders of Lynx Enterprises Private Limited, Transferor Company No. 4 be dispensed with in view of the Consent Affidavits given by all the Equity Shareholders of Lynx Enterprises Private Limited, Transferor Company No. 4 which are annexed as “Annexure Y-Colly” at Page Nos. 700- 708 of the Company Scheme Application.

15. The Authorised Representative for the Applicant Companies submit that for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of MB Realty Private Limited and Vision Enterprise Private Limited and Growtrez Enterprises Private Limited and Lynx Enterprises Private Limited and Samsara Consultants Private Limited (Transferor Companies) with Alena Consultants Private Limited (Transferee Company), the Meeting of Equity Shareholders of Samsara Consultants Private Limited, Transferor Company No. 5 be dispensed with in view of the Consent Affidavits given by all the Equity Shareholders of Samsara Consultants Private Limited, Transferor Company No. 5 which are annexed as “Annexure Z-Colly” at Page Nos. 709- 717 of the Company Scheme Application.

16. The Authorised Representative for the Applicant Companies submit that for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of MB Realty Private Limited and Vision Enterprise Private Limited and Growtrez Enterprises Private Limited and Lynx Enterprises Private Limited and Samsara Consultants Private Limited (Transferor Companies) with Alena Consultants Private Limited (Transferee Company), the Meeting of Equity Shareholders of Alena Consultants Private Limited, Transferee Company be dispensed with in view of the Consent

Affidavits given by all the Equity Shareholders of Alena Consultants Private Limited, Transferee Company which are annexed as "Annexure AA-Colly" at Page Nos. 718- 738 of the Company Scheme Application.

17. The Authorised Representative for the Applicant Companies submit that as on 20.03.2022, MB Realty Private Limited, Transferor Company No. 1 has no Secured Creditors. However, it has three (3) Unsecured Creditor to the tune of Rs. 32,850/-.

18. The Authorised Representative for the Applicant Companies submit that as on 20.03.2022, Vision Enterprise Private Limited, Transferor Company No. 2 has no Secured Creditors. However, it has four (4) Unsecured Creditor to the tune of Rs. 1,86,580/-.

19. The Authorised Representative for the Applicant Companies submit that as on 20.03.2022, Growtrez Enterprises Private Limited, Transferor Company No. 3 has no Secured Creditors. However, it has four (4) Unsecured Creditor to the tune of Rs. 3,39,080/-.

20. The Authorised Representative for the Applicant Companies submit that as on 20.03.2022, Lynx Enterprises Private Limited, Transferor Company No. 4 has no Secured Creditors. However, it has four (4) Unsecured Creditor to the tune of Rs. 9,760/-.

21. The Authorised Representative for the Applicant Companies submit that as on 20.03.2022, Samsara Consultants Private Limited, Transferor Company No. 5 has no Secured Creditors. However, it has four (4) Unsecured Creditor to the tune of Rs. 9,260/-

22. The Authorised Representative for the Applicant Companies submit that as on 20.03.2022, Alena Consultants Private Limited, Transferee Company has one (1) Secured Creditor amounting to Rs. 10,92,11,649/-and nine (9) Unsecured Creditors to the tune of Rs. 1,34,65,748/-

23. The Authorised Representative for the Applicant Companies submits that the present Scheme is an Arrangement between the Shareholders of MB Realty Private Limited and Vision Enterprise Private Limited and Growtrez Enterprises Private Limited and Lynx Enterprises Private Limited and Samsara Consultants Private Limited (Transferor Companies) with Alena Consultants Private Limited (Transferee Company) as contemplated under 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 and/or Arrangement with the creditors as no sacrifice whatsoever is called for. Further, there is no diminution of liability of any of the Creditors of the Transferor Companies who will be paid off in the ordinary course of business. In view of the above the Meetings of the Secured and Unsecured Creditors of the Transferor Companies and Transferee Company are hereby dispensed with. However, the Transferor Companies and the Transferee Company are hereby directed to issue Notices to all its Secured, if any and Unsecured

 

Creditors, with a direction that they may submit their representation, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Transferor Companies and the Transferee Company respectively. The Notices be sent by Registered Post AD/Speed Post/Courier/Hand delivery/Email.

24. The Applicant Companies shall serve the Notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Regional Director within 30 days of the date of receipt of the Notice it will be presumed that the Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

25. The Applicant Companies shall serve the Notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the Notice it will be presumed that the Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

26. At least 30 clear days before the date fixed for hearing, the Applicant Companies shall serve the Notice of hearing of Application upon the Official Liquidator, High Court, Bombay pursuant to Section 230(5) of the Companies Act, 2013. If no response is received by the Tribunal from the Official Liquidator within 30 days it may be presumed that the Official Liquidator, High Court, Bombay has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

27. The Applicant Companies to serve the Notice on the concerned Income Tax Authority within whose jurisdiction, (1) MB Realty Private Limited, Transferor Company No. 1 (PAN:- AAGCS8030D), (2) Vision Enterprise Private Limited, Transferor Company No. 2 (PAN:- AABCV4869J), (3) Growtrez Enterprises Private Limited, Transferor Company No. 3 (PAN:-AACCG4436B), (4) Lynx Enterprises Private Limited, Transferor Company No. 4 (PAN:- AAACL3568M), (5) Samsara Consultants Private Limited, Transferor Company No. 5 (PAN:- AAFCS0327N) and (5) Alena Consultants Private Limited, Transferee Company (PAN:-AACCA9700E), the Applicant Companies assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the Notice it will be presumed that the Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

 

28. The Applicant Companies shall file compliance report with the Registry in regard to the directions given in this Order in lieu of customary Affidavit of Service proving dispatch of Notices to relevant Creditors of the Applicant Companies and service of Notice to the Regulatory Authorities by the Applicant Companies.

 