
(2020) 07 NCLT CK 0043

In the National Company Law Appellate Tribunal

Case No : Company Application No. (CAA)- 38/(Nd) Of 2020, Company Application No. CA (CAA)-10/(Nd) Of 2020

Mccormick Support Services Private Limited

APPELLANT

Vs

Kohinoor Specialty Private Limited

RESPONDENT

Date of Decision : 30-07-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 15(1), 16
Companies Act, 2013 — Section 230, 230(4), 230(5), 230(7), 231, 232, 232(3)

Citation : (2020) 07 NCLT CK 0043

Hon'ble Judges : Dr. Deepti Mukesh, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Rajeev Kumar, Ajit Sharma, Anant Ram Mishra, Rishabh Sharma, Ashutosh Senger

Judgement

Dr. Deepti Mukesh, J

1. This petition has been filed on 17.02.2020 by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with Rule 15(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for the Scheme of Arrangement (for brevity Scheme), praying for fixing a date of hearing of the main Company Petition, for approving the scheme of arrangement by way of amalgamation, as well as for issuance of direction concerning publication of notices in press to be carried and notices to be issued to the authorities concerned, including regulators, if any.

2. It is seen from the records that the First Motion application seeking convening/ dispensation from convening the meetings of Shareholders and Creditors of the petitioner companies was filed before this Bench vide Company Application CA(CAA)10(ND)/2020. Based on such joint application moved under Sections 230-232 of the Companies Act, 2013, vide order dated 07.02.2020 passed by

this Bench, following directions were issued.

a. Conveying of the meeting of Equity Shareholders of the Transferor Companies No. 1 was dispensed with. Transferor Companies No. 1 has no Secured Creditor, hence the necessity of convening a meeting of the Creditors was obviated. Transferor Company No. 1 has 'three' unsecured creditors, who have given its consent in support of the scheme, hence the necessity of convening a meeting of the secured Creditors was dispensed with.

b. Conveying of the meeting of Equity Shareholders of the Transferee Company was dispensed with, Transferee Companies has sole secured, who have given its consent in support of the scheme, hence the necessity of convening a meeting of the secured Creditors was dispensed with. Transferee Company has 'fifteen' unsecured creditors, who have given its consent in support of the scheme, hence the necessity of convening a meeting of the secured Creditors was dispensed with.

3. Therefore, in the present second motion petition, filed under Sections 230 to 232 of Companies Act, 2013, read with Rule 16 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, the prayer for fixing a date of hearing as well as for other consequential directions is allowed with the following directions: -

(i) The next date of hearing of the Petition shall be on 17.09.2020 for the consideration of the approval of the Scheme of Amalgamation as contemplated between the Petitioner Companies.

(ii) Notice of the hearing shall be advertised in the newspapers namely, "Business Standard" (English, Delhi edition) and "Business Standard" in Vernacular (Hindi, Delhi edition) not less than 10 days before the next date fixed for hearing.

(iii) In addition to the public notice, each of the Petitioners shall serve the notice of the Petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the Income Tax Department; (d) Official Liquidator; and to such other Sectoral Regulatory Authorities who are likely to be affected by the Scheme, at least 30 days before the date fixed for hearing of the above Petition. The said authorities are directed to send their representations if any, within 30 days from the date of receipt of such notice as per the provisions of subsection 5 of Section 230 of the Companies Act, 2013. (iv) Further, notices shall also be served to the Objector(s) or to their representative, if any, as contemplated under Sub-Section (4) of Section 230 of the Companies Act, 2013 who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the Annexures filed therewith at least 15 days before the date fixed for hearing.

(v) All the Petitioner companies shall, at least 7 days before the date of hearing

of the Petition, file an affidavit of service in relation to paper publication effected as well as service of notices on the Authorities specified above including the Sectoral Regulators as well as to the Objectors, if any.

(vi) Objections, if any, to the Scheme contemplated by the authorities to whom notices have been given, may file their objections on or before the date fixed for hearing, failing which it will be considered that there is no objection on the part of the authorities to the approval of the Scheme by this Tribunal and subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.

(vii) The Petitioner Companies shall individually comply with proviso to sub section (3) of Section 232 or proviso to sub section (7) of Section 230, of the Companies Act, 2013, as may be applicable under the circumstances on or before the date fixed for hearing by filing the required certificate of Company's auditor.

(viii) The petitioner companies shall file their respective up to date audited financial statements before next date of hearing on 17.09.2020.

Let copy of the order be served to the parties.