
(2023) 07 NCLT CK 0018

In the National Company Law Appellate Tribunal

Case No : CA(CAA)/14/ND/2023

Middle Path Trading Private Limited Vs Shiraj Marketing Private Limited ?

Date of Decision : 13-07-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 230(9), 232
Companies (Indian Accounting Standards) Rules, 2015 — Rule 3
Companies (Compromises Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 07 NCLT CK 0018

Hon'ble Judges : P.S.N. Prasad, Member (J); Dr. Binod Kumar Sinha, Member (J)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Dr. Binod Kumar Sinha, Member (Technical)

1. Under Consideration is the Company Scheme Application jointly filed by the Applicant Companies under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) for the purpose of approving the proposed Scheme of Amalgamation ('Scheme') of M/s. Middle Path Trading Private Limited (Applicant Company No.1/Transferor Company No.1) and M/s. Shiraj Marketing Private Limited (Applicant Company No.2/Transferor Company No.2) with M/s. Purshottam Investofin Limited (Applicant Company No.3/ Transferee Company). The copy of the proposed scheme of Amalgamation has been placed on record. It is represented that the registered office of all the Applicant Companies are situated in Delhi, therefore, jurisdiction lies with this Tribunal.

2. M/s. Middle Path Trading Private Limited ("Transferor Company No.1" or "Applicant Company No.1") bearing CIN: U51100DL2009PTC186443 was incorporated on 06.01.2009 and registered office of the Applicant Company-1 is presently situated at Unit No.4, Pocket - 7, Sector-B4, Narela, New Delhi-110040. The Applicant Company- 1 is engaged in the business of general trader, merchant, transactions in nature of hedging, spot trading, option market, investment and other related activities.

3. M/s. Shiraj Marketing Private Limited ("Transferor Company No.2" or "Applicant Company No. 2") bearing CIN: U51100DL2009PTC186445 was incorporated on 06.01.2009 having its registered office situated at Unit No.4, Pocket-7, Sector-B4, Narela, New Delhi – 110040. The Applicant Company- 2 is engaged in the business of general trader, merchant, transactions in nature of hedging, spot – trading, options market, investment and other related activities.

4. M/s. Purshottam Investofin Limited ("Transferee Company" or "Applicant Company No. 3") bearing CIN: L65910DL1998PLC033799 was incorporated on 04.11.1998 having its registered office situated at L-7, Menz Floor, Green Park Extension South Delhi-110016. The Applicant Company- 3 is a Non Banking Financial Company ('NBFC') registered with Reserve Bank of India vide certificate of Registration B-14.01044.

5. The Board of Directors of the respective Applicant Companies have approved the proposed Scheme of Amalgamation in their respective Board Meetings held on 24.12.2021. The certified copy of the Board Resolutions of the Applicant Company No.1, Applicant Company No.2 and Applicant Company No.3 are annexed as Annexure A-2 (Page 80-81), Annexure A-8 (Page 187 – 188) and Annexure A-14 (Page 291-292) of the Company Scheme Application respectively.

6. The Learned Counsel for the Applicant Companies submits that the shares of the Applicant Company No.3 are listed on the Stock Exchanges. The BSE vide its letter dated 04.01.2023 has given its observation letter to the proposed scheme of Amalgamation and the same is annexed as Annexure A – 20 (Page no. 465-493) of the Company Scheme Application.

7. The Learned Counsel for the Applicant Companies submits that the rationale for the Scheme of Amalgamation between the Applicant Companies are as follows:

a) Optimum and efficient utilization of capital, resources, assets and facilities; ii. Enhancement of competitive strengths including financial resources;

b) Consolidation of businesses and enhancement of economic value addition and shareholder value;

c) Obtaining synergy benefits;

d) Better management and focus on growing the businesses.

e) The amalgamation would result in reduction of overheads, administrative, managerial and other expenditure and bring about operational rationalization, efficiency and optimum utilization of various resources.

f) A larger growing company will mean enhanced financial and growth prospects for the people and organization connected therewith, and will be in public interest. The amalgamation will conducive for better and more efficient and economical control over the business and financial conduct of the Companies

8. The Applicant Companies have placed on record their respective Certificate of Incorporation ('CoI'), Memorandum of Association ('MoAs'), Article of Associations ('AoAs'), List of Directors and MCA Master Data. The Applicant Companies further placed on record the Audited Balance Sheet of the respective Applicant Companies as on 31.03.2022 and provisional Financial Statement of the respective Applicant Companies as on 30.09.2022.

9. The Applicant Companies have placed on record respective certificate from statutory auditors of the Applicant Companies certifying that accounting treatment provided in the Scheme is being compliant with the applicable Accounting Standards as specified under Section 133 of the Act, read with Rule 3 of the Companies (Indian Accounting Standards) Rules, 2015 and other generally accepted accounting principles. The copy of the Certificate issued by the statutory Auditor of the respective Applicant Companies is annexed as Annexure A-23 (page no. 530 - 532) to the Company Scheme Application.

10. The Learned Counsel for the Applicant Companies submits that the Appointed Date for the Scheme of Amalgamation means April 01, 2021 or such other date as may be approved by the Hon'ble National Company Law Tribunal, New Delhi or by such other competent authority having jurisdiction over the Transferor Companies and the Transferee Company. The copy of the Scheme of Amalgamation between the Applicant Companies is annexed as 'Annexure A-1' (page no. 58-79) to the Company Scheme Application.

11. The Learned Counsel for the Applicant Companies submits that upon coming into effect of the Scheme, the consideration in respect of such transfer shall, subject to the provisions off the scheme, be paid and satisfied by Transferee Company as follows:-

a) Transferee Company, without further application, act or deed, shall issue and allot to each of the shareholders of "Transferor Company 1" (other than the shares already held therein immediately before the amalgamation by Transferee Company, its Nominee or Subsidiary Company), shares in proportion of 97 (Ninety Seven) equity shares of face value of Rs. 10/- (Rupees Ten) each in Transferee Company for every 100 (One Hundred) equity shares of face value of Rs. 10/- (Rupees Ten) each held by them in "Transferor Company 1" pursuant to this Scheme of Amalgamation.

b) Transferee Company, without further application, act or deed, shall issue and allot to each of the shareholders of "Transferor Company 2" (other than the shares already held therein immediately before the amalgamation by Transferee Company, its Nominee or Subsidiary Company), shares in proportion of 108 (One Hundred and Eight) equity shares of face value of Rs. 10/- (Rupees Ten) each in Transferee Company for every 100 (One Hundred) equity shares of face value of Rs. 10/- (Rupees Ten) each held by them in Transferor Company 2" pursuant to this Scheme of Amalgamation.

12. The Learned Counsel for the Applicant Companies submits that for arriving at

the share exchange ratio, the Applicant Companies have considered the Valuation Report dated 24.12.2021 submitted by Mr. Ajay Siwach, Registered Valuer – Securities or Financial Assets. The copy of the valuation report dated 24.12.2021 issued by Mr. Ajay Siwach, Registered Valuer is annexed as 'Annexure A-22 (Colly.)' (page no. 501-529).

13. The Learned Counsel for the Applicant Companies submits that the Applicant Company No.1 as on 31.12.2022 has 05 (five) Equity Shareholders. Further, it is submitted that all the '5' Equity Shareholders of the Applicant Company No.1 has given their No-Objection by way of affidavit. The copy of the list of the Equity Shareholders of the Applicant Company No.1 as on 31.12.2022 and the 'No Objection' by way of affidavit from the respective shareholder is annexed as 'Annexure A-4(Colly.)' (page no. 116-134) to the Company Scheme Application.

14. The Learned Counsel for the Applicant Companies submits that there is 'Nil' Secured Creditor in the Applicant Company No.1. The copy of the certificate of the Chartered Accountant certifying that there is 'Nil' Secured Creditors of the Applicant Company No.1 as on 31.12.2023 is annexed as 'Annexure A-5 (Colly.)' (page no. 125 - 136) to the Company Scheme Application.

15. The Learned Counsel for the Applicant Companies submits that there are '5' Unsecured Creditors aggregating to the value of Rs.1,71,30,846/- as on 31.12.2022 in the Applicant Company No.1. Further, it is submitted that '3' Unsecured Creditor out of total '5' Unsecured Creditors holding 99.68% of total outstanding debt. The list of the Unsecured Creditors along with the certificate of the chartered accountant certifying list of the Unsecured Creditors of the Applicant Company No.1 as on 31.12.2022 as well as No -Objection certificates are annexed as 'A-6 (Colly.)' (page no. 137 - 151) to the Company Scheme Application.

16. The Learned Counsel for the Applicant Companies submit that the Applicant Company No.2 as on 31.12.2022 has '5' (Five) Equity Shareholders. Further, it is submitted that all the '5' Equity Shareholders of the Applicant Company No.2 has given their No-Objection by way of affidavit. The copy of the list of the Equity Shareholders of the Applicant Company No.1 as on 31.12.2022 and the 'No Objection' by way of affidavit from the respective shareholder is annexed as 'Annexure A-10 (Colly.)' (page no.221-239) to the Company Scheme Application.

17. The Learned Counsel for the Applicant Companies submits that there is 'Nil' Secured Creditor in the Applicant Company No.2. The copy of the certificate of the Chartered Accountant certifying that there is 'Nil' Secured Creditors of the Applicant Company No.2 as on 31.12.2023 is annexed as 'Annexure A-11 (Colly.)' (page no. 240 - 241) to the Company Scheme Application.

18. The Learned Counsel for the Applicant Companies submits that there are '5' Unsecured Creditors aggregating to the value of Rs.1,27,07,254/- as on 31.12.2022 in the Applicant Company No.2. Further, it is submitted that '3' Unsecured Creditor out of total '5' Unsecured Creditors holding 99.18% of total

outstanding debt have given their respective no-objection to the proposed scheme of amalgamation. The list of the Unsecured Creditors along with the certificate of the chartered accountant certifying list of the Unsecured Creditors of the Applicant Company No.2 as on 31.12.2022 as well as No -Objection certificates are annexed as 'A-12 (Colly.)' (page no.242-255) to the Company Scheme Application.

19. The Learned Counsel for the Applicant Companies submit that the Applicant Company No.3 as on 31.12.2022 has '963' ('Nine Six Three') Equity Shareholders. The copy of the list of the Equity Shareholders of the Applicant Company No.3 as on 31.12.2022 is annexed as 'Annexure A-16' (page no.350-362) to the Company Scheme Application.

20. The Learned Counsel for the Applicant Companies submits that there is 'One' ('1') Secured Creditor in the Applicant Company No.3 having an outstanding debt of Rs.51,57,090/-. Further, it is submitted that the sole Secured Creditor of the Applicant Company No.3 has given its No Objection' by way of affidavit to the proposed scheme of amalgamation. The copy of the certificate of the Chartered Accountant certifying the Secured Creditors of the Applicant Company No.3 as on 31.12.2023 along with the No objection certificate by the Secured creditor is annexed as 'Annexure A-17 (Colly.)' (page no.363-367) to the Company Scheme Application.

21. The Learned Counsel for the Applicant Companies submits that there are '15' ('fifteen') Unsecured Creditor in the Applicant Company No.3 having outstanding debt of Rs.51,57,81,976/-.Further, it is submitted that '12' Unsecured Creditor out of total '15' Unsecured Creditors holding 99.99% of total outstanding debt have given their respective no-objection to the proposed scheme of amalgamation. The copy of the certificate of the Chartered Accountant certifying the list of Unsecured Creditors of the Applicant Company No.3 as on 31.12.2023 along with the respective consent affidavit is annexed as 'Annexure A-18 (Colly.)' (page no. 368 -380) to the Company Scheme Application.

22. We have heard the Learned Counsel for the Applicant Companies and perused the record. Taking into consideration aforesaid submissions, following directions are issued: -

A1. In relation to Transferor Company/Applicant Company No.1

i) With respect to convening the meeting of the Equity Shareholders:-

In view of the fact that all the 'Five' ('5') equity shareholders of the

Applicant Company No.1 have given their respective consent by way of affidavit, the requirement of convening the meeting of the Equity Shareholders of the Applicant Company No.1 is hereby dispensed with.

ii) With respect to convening the meeting of the Secured Creditors: -

The Applicant Company No.1 has 'Nil' Secured Creditor. Therefore, the

requirement of convening the meeting of the Secured Creditors of the Applicant Company No.1 does not arise.

iii) With respect to convening the meeting of the Unsecured Creditors:-

In view of the fact that the Applicant Company No.1 has '5' ('Five') Unsecured Creditors aggregating to the value of Rs.1,71,30,846/- in the Applicant Company No.1, as on 31.12.2022 and out of the '8' Unsecured Creditors, '3' Unsecured Creditors being 99.68% in value have given their respective written consent to the proposed Scheme of Amalgamation. Therefore, in view of Section 230 (9) of the Companies Act, 2019, the requirement of convening the meeting of the Unsecured Creditors of the Applicant Company No.1 is hereby dispensed with.

A2. In relation to Transferor Company No.2/Applicant Company No.2

i) With respect to convening the meeting of the Equity Shareholders:-

In view of the fact that all the 'Five' ('5') equity shareholders of the Applicant Company No.2 have given their respective consent by way of affidavit, the requirement of convening the meeting of the Equity Shareholders of the Applicant Company No.2 is hereby dispensed with.

ii) With respect to convening the meeting of the Secured Creditors: -

The Applicant Company No.2 has 'Nil' Secured Creditor. Therefore, the requirement of convening the meeting of the Secured Creditors of the Applicant Company No.2 does not arise.

iii) With respect to convening the meeting of the Unsecured Creditors:-

In view of the fact that the Applicant Company No.2 has '5' ('Five') Unsecured Creditors aggregating to the value of Rs.1,27,07,254/- in the Applicant Company No.2, as on 31.12.2022 and out of the '5' Unsecured Creditors, '3' Unsecured Creditors being 99.18% in value have given their respective written consent to the proposed Scheme of Amalgamation. Therefore, in view of Section 230 (9) of the Companies Act, 2019, the requirement of convening the meeting of the Unsecured Creditors of the Applicant Company No.2 is hereby dispensed with.

A3. In relation to Transferee Company/Applicant Company No.3

i) With respect to convening the meeting of the Equity Shareholders: -

In view of the fact that the Applicant Company No.3 being a listed entity and has 963 Equity Shareholders as on 31.12.2022, meeting of the Equity Shareholders of the Applicant Company No.3 is directed to be held within a period of 60 days at such date and time as mutually decided by the Applicant Company No.3 and the Chairperson appointed at Registered Office of the Applicant Company No.1 or such other place as may be decided within the jurisdiction where registered office is situated or through audio visual means enabled with e-voting for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation. The quorum for the meeting of Equity

Shareholders of the Applicant Company No.3 is at least 600 equity shareholders present in person or through Authorised Representative or proxy.

ii) With respect to convening the meeting of the Secured Creditors: - The Applicant Company No.3 has a sole Secured Creditor amounting Rs.51,57,090/- and the said sole secured creditor has given its consent by way of affidavit. Therefore, in view of Section 230 (9) of the Companies Act, 2019, the requirement of convening the meeting of the Secured Creditors of the Applicant Company No.3 does not arise.

iii) With respect to convening the meeting of the Unsecured Creditors:-

In view of the fact that the Applicant Company No.3 has '15' ('Fifteen') Unsecured Creditors aggregating to the value of Rs.51,57,81,976/- in the Applicant Company No.3 as on 31.12.2022 and out of the '15' Unsecured Creditors, '13' Unsecured Creditors being 99.99% in value have given their respective written consent to the proposed Scheme of Amalgamation. Therefore, in view of Section 230 (9) of the Companies Act, 2019, the requirement of convening the meeting of the Unsecured Creditors of the Applicant Company No.3 is hereby dispensed with.

iv) Mr. Milan Singh Negi, Advocate (Mobile No. +91-9015332650, Email Id- negimilan04@gmail.com) is appointed as the Chairperson, Mr. Parvindra Nautiyal, Advocate & Company Secretary (Mobile No. +91-8882017384, Email Id: Adv.parvindra@gmail.com) is appointed as Alternate Chairperson and Ms. Pooja, Company Secreatry (Mobile No. +91-9971702476, Email Id- cspoojaupadhyay@gmail.com), is appointed as Scrutinizer for the meeting of the Equity Shareholders of the Applicant Company No.3 in terms of the direction issued herein.

v) The Fees of the Chairperson for the aforesaid meeting shall be Rs.1,50,000/-. The Fees of the Alternate Chairperson for the aforesaid both the meetings Shall be Rs.1,25,000/- and the Fees of the Scrutinizer for the aforesaid meeting shall be Rs.1,00,000/- in addition to meeting their incidental expenses. The fees of Chairperson, Alternate Chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses shall be borne by the Applicant Company No.3. A copy of this order shall be supplied to the learned counsels for the Applicant Company No.3 who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer.

vi) The Applicant Company No.3 to comply with the General Circular No. 10/2022 and General Circular No. 11/2022 read with General Circular No. 14/2020 dated 08th day of June, 2020 and General Circular No. 14/2020 dated 13th day of April, 2020 clarifying the passing of ordinary and special resolutions by companies under the Companies Act, 2013 read with rules made thereunder in case the meeting is conducted through audio visual means enabled with e-voting. The Applicant Company No.3 may conduct the meeting of shareholders through Video Conferencing or Other Audio-Visual Means (VC/OAVM) and submit

a report to this Tribunal about the compliance of the same.

vii) In case the quorum as noted above for the aforesaid meeting of Equity Shareholders is not present at the meeting, then the meeting shall be adjourned by half an hour. Thereafter the persons present and voting shall be deemed to constitute the quorum.

viii) That individual notices of the above said meetings shall be sent by the Applicant Company No.3 through registered post or speed post or through courier or e—mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along with it, and in addition to the above any other documents as may be prescribed under the Act or Rules may also be duly sent with the notice.

ix) That a public notice of the aforesaid meeting of the equity shareholders of Applicant Company No.3 shall be advertised in two local newspapers viz. ? Business Standard? in English and translation thereof in ?Business Standard? in Hindi, both circulated in Delhi not less than one month before the date fixed for the meetings. The Applicant Companies shall also publish the notice on their websites, if any and file a compliance affidavit of service with this Tribunal.

x) The Chairperson shall be responsible to report the results of the meetings to the Tribunal in Form No. CAA 4, as per Rule 14 of the Rules within 7 (seven) days of the conclusion of the meetings. The Chairperson shall be assisted by the Alternate Chairperson and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the reports.

xi) Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be decided by the Chairperson in consultation with the counsel of the Applicant Companies in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

23. The Applicant Company No.1 is further directed to serve notice along with copy of scheme upon: (1) the Regional Director (Northern region), Ministry of Corporate Affairs, Delhi; (2) the Registrar of Companies, NCT of Delhi & Haryana; (3) Income Tax Authority within whose jurisdiction the Applicant Company No.1 is assessed to tax; and any sectoral authorities who may have bearing on the operation of the Applicant Company No.1, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

24. The Applicant Company No.2 is further directed to serve notice along with copy of scheme upon: (1) the Regional Director (Northern region), Ministry of

Corporate Affairs, Delhi; (2) the Registrar of Companies, NCT of Delhi & Haryana; (3) Income Tax Authority within whose jurisdiction the Applicant Company No.2 is assessed to tax; and any sectoral authorities who may have bearing on the operation of the Applicant Company No.2, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

25. The Applicant Company No.3 is further directed to serve notice along with copy of scheme upon: (1) the Regional Director (Northern region), Ministry of Corporate Affairs, Delhi; (2) the Registrar of Companies, NCT of Delhi & Haryana; (3) Income Tax Authority within whose jurisdiction the Applicant Company No.3 is assessed to tax; (4) SEBI; (5) NSE; (6) BSE; (7) RBI and any sectoral authorities who may have bearing on the operation of the Applicant Company No.3, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

26. The Applicant Companies shall file Compliance Affidavit with regard to the directions given in this order proving dispatch of service of notices to Equity Shareholders of the Applicant Company No.3 as well as service of notice to the regulatory authorities by the Applicant Companies.