

(2023) 10 NCLT CK 0050
In the National Company Law Tribunal
Case No : C.A.(CAA)/168/2023
Millfields Developers Private Limited Vs

Date of Decision : 18-10-2023

Acts Referred:

Companies Act 2013 — Section 230(1)(b), 230(3), 230(5), 230(6), 230(9)
Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 — Rule 6

Citation : (2023) 10 NCLT CK 0050

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Devanshi Sethi

Final Decision : Disposed Of

Judgement

Anil Raj Chellan, Member (Technical)

1. Learned Counsel for the Applicant Companies submits that the present Scheme is Scheme of Amalgamation of Millfields Developers Private Limited (First Applicant Company/ Transferor Company) and Zuri Hospitality Private Limited (Second Applicant Company/Transferee Company) and their respective shareholders. ("Scheme").

2. Learned Counsel for the Applicants further submits that the Scheme has been approved by the Board of Directors of the Applicant Companies vide board resolutions dated 30th March, 2023. The Appointed Date of the Scheme is 1st April, 2022.

3. Learned Counsel for the Applicant Companies further submits the Rationale of the Scheme:

"The directors of the Transferor Company and the Transferee Company have decided to amalgamate the Transferor Company with the Transferee Company in order to ensure better management of the Company as a single unit with focused management capabilities. The directors of the Transferor Company and the Transferee Company are of the opinion that the Transferor Company and the Transferee Company are part of the same group and are having common pro-

motors and shareholders and accordingly, the amalgamation of the Transferor Company into the Transferee Company pursuant to the Scheme would result in streamlining the group corporate structure. The amalgamation will further enable to reduce the number of entities within the group that require to be administered and also help realize operational synergies which would also result in simplification of structure and operations and would benefit both the Transferor Company and the Transferee Company in the following manner:

- (i) Reduction in operative and administrative cost;
- (ii) Improved capital allocation, optimum utilization of resources and operational efficiency etc.;
- (iii) Consolidation of operations and assets enabling the management to exercise better governance over both the companies and efficiently use the available resources
- (iv) Simplification of management structure;
- (v) Simplification of group corporate structure;"

4. That upon the Scheme becoming effective, in consideration of the transfer and vesting of the Undertaking of the Transferor Company in the Transferee Company in terms of the Scheme, the consideration shall be discharged by the Transferee Company in the following manner:

"The equity shareholders of Transferor Company as on the Record Date shall be allotted 1 (one) Equity Shares of Rs.10/- each at a price of Rs. 54/- (Rupees Fifty-Four Only) per Equity Share (including share premium of Rs. 44/- per Equity Share) credited as fully paid up shares of the Transferee Company in respect of every 3 (three) Equity Shares of Rs.10/- each fully paid up held by them in the Transferor Company."

5. Learned Counsel for the Applicant Companies submits that the share capital structure of the Applicant Companies is as follows:

i. The Authorized, Issued, Subscribed and Paid-up share capital of the First Applicant Company as on 15th March, 2023 is as under:

Particulars

Amount (₹)

Authorized Capital:

2,25,00,000 Equity Shares of Rs. 10/- each

22,50,00,000

Issued, Subscribed and Paid-up Capital:

1,60,10,009 Equity Shares of Rs. 10/- each

16,01,00,090

ii. The Authorized, Issued, Subscribed and Paid-up share capital of the Second Applicant Company as on 15th March 2023 is as under:

Particulars

Amount

Authorized Capital:

13,71,10,000 Equity Shares of Rs. 10/- each

1,37,11,00,000

Issued, Subscribed and Paid-Up capital:

1,64,02,206 Equity Shares of Rs. 10/- each

16,40,22,060

6. Learned counsel for the Applicant Companies submits that there are 2 (Two) equity shareholders amounting to Rs.16,01,00,090/-. There are 3 (Three) equity shareholders amounting to the value of Rs.16,40,22,060/- in Second Applicant Company.

7. That meeting of the Equity Shareholders of the First Applicant Company be convened through Video Conferencing on 28th of November, 2023 at 11 am and that meeting of the Second Applicant Company be convened through Video Conferencing on 28th of November, 2023 at 12 Noon for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation between Millfields Developers Private Limited ("Transferor Company" or "First Applicant Company") and Zuri Hospitality Private Limited ("Transferee Company" or "Second Applicant Company") and their respective Shareholders ('the Scheme').

8. That at least 30 days before the said meetings of the Equity Shareholders of the Applicants to be held as aforesaid, a notice convening the said meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th day of December, 2016, shall be sent by Courier / Registered Post / Speed Post / Hand delivery or through email (to those Equity Shareholders of the respective Applicants whose email addresses are duly registered with the respective Applicants for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the respective Applicants, at their last known address or email addresses as per the records of the respective Applicants.

9. That at least 30 days before the meetings of the Equity Shareholders of the Applicants to be held as aforesaid, a notice convening the said meetings,

indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 can be obtained free of charge at the Registered Office of the respective Applicants as aforesaid and / or at the office of its Advocates, M/s. Hemant Sethi & Co., 309 New Bake House, Maharashtra Chamber of Commerce Lane, Kala Ghoda, Fort, Mumbai 400023.

10. That the Notice of the meetings of the Equity Shareholders of the Applicants shall be advertised in two local newspapers viz. "O Heraldo" in English and "Loksatta" in Konkani, having circulation in Goa not less than 30 days before the date fixed for the meeting.

11. Mr. Devendra Nanalal Dave, Director of Applicant Companies, shall be the Chairman of the aforesaid meetings of the Equity Shareholders of the Applicant Companies to be held as aforesaid or any adjournments thereof.

12. The Scrutinizer for the aforesaid meeting of Equity shareholders of Applicant Companies shall be Mr. Sampath Raghavan, Bengaluru with a remuneration of INR 25,000/- for each of the meeting for the services rendered.

13. That the Chairperson appointed for the aforesaid respective meetings is authorised to issue the advertisement and send out the notices of the meetings referred to above. The said Chairperson shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the aforesaid respective meetings by any person(s).

14. The value and the number of shares held by each Equity Shareholders of the Applicants shall be in accordance with the books/register of the Applicants or depository records and where the entries in the books/register/depository records are disputed, the Chairperson of the meeting shall determine the value for the purpose of the meetings of Equity Shareholders of the Applicants and his/her decision in that behalf would be final.

15. That the Chairperson to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings of the Equity Shareholders of the Applicants and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.

16. The Chairperson shall report to this Tribunal, the results of the aforesaid respective meetings of the Applicants within 30 (thirty) days of the conclusion of the aforesaid meetings.

17. That there are No Secured Creditors in the First Applicant Company. The First Applicant Company has 3 (Three) Unsecured Creditors amounting to the value of Rs. 23,75,84,231/- The Second Applicant Company has 1 (One) Secured creditor

amounting to the value of Rs. Nil and has 120 Unsecured Creditors amounting to the Value of Rs. 1,30,00,46,767/-. The Learned Counsel submits that the present Scheme is an arrangement under section 230(1)(b) of the Companies Act, 2013 and not in accordance with the provisions of section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with Creditors. The rights of the Creditors will not be affected and they will be paid off in ordinary course of business.

18. However, this Bench hereby directs the Applicant Company to procure consent Affidavits of at least 90% value of its unsecured creditors, as per Section 230(9) of the Companies Act, 2013 before filing the Company Petition and annex the same with the Company Petition or convene and hold the meeting of the Unsecured Creditors of the Applicant Companies.

19. The Applicant Companies are directed to serve notice of the present Application along with its enclosures on –

i. the Central Government through the office of Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai;

ii. Registrar of Companies, Goa.

iii. Income Tax Authority within whose jurisdiction the respective Applicant Companies are assessed to tax; for the First Applicant Company -PAN: AAECM7222M at Circle (4)(1)(1), BMTC Building, and for the Second Applicant Company - PAN: AAECs0799K at Circle 1(1), Aaykar Bhavan, Panaji.

iv. To the official liquidator, High Court, Goa pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, through R.P.A.D or by Email or by speed post or registered post or by courier or hand delivery with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the Scheme.

20. The Applicant Companies to file affidavit of service in the Registry proving dispatch of notices to the Regulatory Authorities to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

21. Order accordingly. Pronounced in open Court today.