(2020) 02 NCLT CK 0183

In the National Company Law Appellate Tribunal

Case No : Company Application (CAA) No. 17/ND Of 2020

M/s EEE Realty Pvt Ltd APPELLANT

Vs

Mayur Builcon Pvt Ltd. RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 231, 232

Citation : (2020) 02 NCLT CK 0183

Hon'ble Judges : Ina Malhotra, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Suman Kumar Jha

Final Decision : Allowed

Judgement

Ina Malhotra, J

1. This is a joint petition filed by way of a 1st Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as the Act) by the

Applicant Companies No. 1-2, (Transferor Companies 1-2) in connection with the Scheme of Amalgamation (hereinafter referred to as the Scheme')

for merging its business with M/s GGG Reality Private Limited (Applicant Company No.3/Transferee Company).

2. As per averments, the registered offices of the Transferor as well as that of the Transferee Companies are situated in the National Capital

Territory of Delhi, falling within the territorial jurisdiction of this Court.

3. The Applicant No. 1 / Transferor No. 1 Company was incorporated under the Act on 15.06.2007 under the name and style of ""EEE Reality Private

Limited"" having CIN U45400 DL2007 PTC164827, Its authorized share capital and issued, subscribed and paid up capital is Rs. 1,00,000/-divided into

10,000 equity shares of Rs. 10/ -each.

4. The Applicant No. 2 / Transferor No. 2 Company was incorporated on 01.06.2007 under the Act under the name and style of ""Mayur Buildcon

Private Limited"" having CIN U45400 DL2007 PTC164257, Its authorized share capital and issued, subscribed and paid up capital is Rs.1,00,000/-

divided into 10,000 equity shares of Rs. 10/-each.

5. The Applicant No. 3 / Transferee No, 3 Company was incorporated under the Act on 15,06.2007 under the name and style of"" GGS Reality Private

Limited"" having CIN U70109DL2007 P1c164840 . Its authorized share capital and issued, subscribed and paid up capital is Rs.1,00,000/ -divided into

10,000 equity shares of Rs. 10/-each.

6. The main object of all the Applicant Companies Nos.1 to 3 is common and they are engaged in the business of Real Estate for development and

maintenance of residential, commercial and industrial buildings.

7. As per averments, the Transferor Companies are desirous of amalgamating with the Transferee Company and have formulated a Scheme of

Amalgamation.

8. Copies of the Memoranda of Association and Articles of Association along with their latest audited Balance Sheets, as on 31.03.2019 and reports

of the Statutory Auditors of all the Applicant Companies No.1 to 3 have been filed. Provisional un-audited Financial Statements upto 10th October,

2019 have also been filed.

It has also been certified by the Statutory Auditor that each of the applicant companies has adhered to the Accounting Treatment which is in

compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013.

9. It has been stated on behalf of the Applicant Companies that the Scheme of Amalgamation is necessitated and justified on grounds that :-

a. The Transferor Companies are wholly owned subsidiaries of Transferee Company and are managed by the same management. All the Companies

are engaged in the similar nature of business, hence, after consolidation of all the companies, the management would be able to supervise its business

more effectively. The transferor companies and transferee company as a single entity will provide several benefits including streamlined group structure leading to rationalization of costs and simplying regulatory compliances.

b. The amalgamation will contribute in furthering the objectives and business strategies, accelerating growth, expansion and development of the

respective businesses through the Transferee Company. The arrangement would bring about concentrated focus of the management, integration,

streamlining of the management structure, implementation of policy changes and shall also help enhance the efficiency and control of the Transferor

Companies and Transferee Company.

c. The independent operations of the Transferor Companies and Transferee Company leads to incurring significant costs and the amalgamation would

enable achieve cost saving. The amalgamation will eliminate a multi-layered structure and reduce managerial overlaps and prevent cost duplication

which erodes financial efficiency of the holding structure. This Scheme would result in a simplified corporate structure of the business, thereby leading

to more efficient utilization of the capital and creating a consolidated base for future growth of the Transferee Company,

d. The synergies created by the scheme of arrangement would increase operational efficiency and integrate business functions.

e. The proposed arrangement will provide greater integration and flexibility to the Transferee Company and strengthen its position in the industry, in

terms of the asset base, revenue and service range.

10. The Board of Directors of the Transferor Companies Nos. 1 to 2 and Transferee Company/ Applicant No.3 vide their respective meetings held on

19.12.2019 have unanimously approved the proposed Scheme of Amalgamation. Copy of the board resolutions passed have been filed.

11. Vide the present application, a prayer is made for dispensation of convening meetings in view of the following facts:-

A. In respect of the Transferor Company No.1 / Applicant Company No.1:-

â?¢ It has 2 shareholders, Consent affidavit of 1 Shareholder, having a stake of 99 % in terms of value has been filed on record.

â?¢ It has no Secured as certified by the Statutory Auditor.

â?¢ It has 4 Unsecured creditors who have accorded their consent vide affidavits placed on record.

In view of the consent of the shareholder having an equity of 99% and consent affidavits of its 4 unsecured creditors being on record, the requirement of convening the meeting of the shareholders and unsecured creditor is dispensed with. Further, as there is no secured creditor, the question of

convening their meeting does not arise.

B. In respect of the Transferor Company No.2/ Applicant Company No.2:-

â?¢ It has 2 Equity Shareholders, Consent affidavit of 1 Shareholder, having a stake of 99 % in terms of value has been filed on record.

â?¢ It has no Secured as certified by the Statutory Auditor.

â?¢ It has 16 Unsecured creditors who have accorded their consent vide affidavits placed on record

In view of the consent of the shareholder having an equity of 99% and consent affidavits of its 16 unsecured creditors being on record, the

requirement of convening the meeting of the shareholders and unsecured creditor is dispensed with. Further, as there is no secured creditor, the

question of convening their meeting does not arise.

C. In respect of the Transferee Company

â?¢ It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.

â?¢ It has no Secured as certified by the Statutory Auditor.

â?¢ It has 29 Unsecured creditors who have accorded their consent vide affidavits placed on record

In view of the consent accorded by its 2 Shareholders and 29 Unsecured Creditors vide affidavits, the requirement of convening the meeting of the

shareholders and unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not

arise.

12. The proposed Scheme of Amalgamation is annexed along with the present application.

13. It is submitted that the proposed arrangement is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the

Scheme if sanctioned by this Tribunal, will take effect from the date of on which certified copy of the order of sanctioning of proposed Scheme,

passed by this Tribunal is filed with the Registrar of Companies.

14. It has also been submitted that there are no proceedings pending inquiry or investigation in respect of the applicant company.

15. While dispensing with the meetings, this Bench also directs that notices be sent to the Central Government through the office of the Regional

Director (Northern Region), the Income Tax Authorities, Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator and other sectoral

regulators or authorities as required under sub- section (5) of section 230 of the Companies Act, 2013 who may have significant bearing on the

operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013

read with Companies (Compromises, Arrangement, and Amalgamation) Rules, 2016. Copies of the notices along with the proof of dispatch be filed

before this Bench along with the affidavit of compliance.

16. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the

Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicant.

As sequel to the above, the present application stands allowed by dispensing with the meetings of shareholders and unsecured creditors of the

applicant companies

