(2019) 01 NCLT CK 0037

In the National Company Law Appellate Tribunal

Case No : Company Application No. (CAA) 11/ND Of 2019

M/s KCM Leasing And Finance Pvt. Ltd. And Ors. APPELLANT

Vs

M/s Asimit Finvest Pvt. Ltd. RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:
Companies Act, 2013 — Section 230, 230(5), 231, 232

Citation : (2019) 01 NCLT CK 0037

Hon'ble Judges : Ina Malhotara, J

Bench : Single Bench

Advocate : Rajeev Goel

Final Decision : Allowed

Judgement

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 to 5 in connection with the Scheme of Amalgamation (hereinafter referred to as The Scheme') for merging its business

with M/s Asimit Finvest Private Limited (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 23rd January, 1992under the name and style of ""KCM

Leasing and Finance Private Limited"" having CIN U65910 DL1992 PTC 047317. Its authorized share capital is Rs. 1,50,00,000/- while its and issued,

subscribed and paid up capital is Rs. 1,18,60,200/ -divided into 11,86,020 equity shares of Rs. 10/-each.

The main object of Applicant No.1 Company/Transferor Company is to carry on the business and engaged in investment in securities and other NBFC

business like providing loans and advances and other related activities.

4. The Applicant No. 2 / Transferor No. 2 Company was incorporated under the Act under the name and style of ""Reema Chit Fund Private Limited"".

Subsequently its name has been changed a few times and is presently operating its business under the name of ""Shri Shindhuswarna Investment

Limited"". Certificate of incorporation dated 29th January, 2003 having CIN U 74899 D1,1985 PTC 020283 has been annexed alongwith.

Its authorized share capital is Rs. 1,50,00,000/- while its and issued, subscribed and paid up capital is Is. 1,15,70,000/ -divided into 11,57,000 equity

shares of Rs. 10/ -each.

The main object of Applicant No.2 Company/Transferor Company is engaged in business of investment in securities and other NBFC business like

providing loans and advances and other related activities.

5. The Applicant No. 3 / Transferor No. 3 Company was incorporated under the Act on 5thy February, 2007 under the name and style of ""Neelkant

Tradelink Private Limited"" having GIN 1.1 51101 DI,2007 PTC 158785. Its authorized share capital is Rs. 2,11,00,000/- while its and issued,

subscribed and paid up capital is Rs.2,09,90,000/ -divided into 20,99,000 equity shares of Rs. 10/ -each.

The main object of Applicant No.3 Company/Transferor Company is engaged in the business of purchase, sale and trading of commodities and other

related activities.

6. The Applicant No. 4 / Transferor No. 4 Company was incorporated under the Act on 6th February, 2007 under the name and style of ""Murli

Manohar Trade Private Limited"" having CIN U 51909 DL2007 PTC 158858. Its authorized share capital is Rs. 2,00,00,000/- while its and issued,

subscribed and paid up capital is Rs.1,72,00,000/-divided into 17,20,000 equity shares of Rs. 10/-each.

The main object of Applicant No.4 Company/Transferor Company is engaged in the business of purchase, sale and trading of commodities and other

related activities.

7. The Applicant No. 5 / Transferor No. 5 Company was incorporated under the Act on 6th February, 2007 under the name and style of ""Radhey

Tradelink Private Limited"" having CIN U 51909 DL2007 PTC 158859. Its authorized share capital is Rs. 2,10,00,000/- while its and issued, subscribed

and paid up capital is Rs. 2,08,40,000/-divided into 20,84,000 equity shares of Rs. 10/ -each.

The main object of Applicant No.5 Company/Transferor Company is engaged in the business of purchase, sale and trading of commodities and other

related activities.

8. The Transferee Company was incorporated under the Act under the name and style of ""Asimit Exports Private Limited"". Subsequently its name

has been changed a few times and is presently operating its business under the name of "" Asimit Finvest Private Limited"". Certificate of incorporation

dated 9th September, 2016 having GIN U 74899 DL 1993 PTC 056559 has been annexed along-with.

Its authorized share capital is Rs. 1,80,00,000/- while its and issued, subscribed and paid up capital is Rs. 1,77,22,000J-divided into 17,72,200 equity

shares of Rs. 10J-each.

The main object of Transferee Company is engaged in business of investment in securities and other NHFC business like providing loans and

advances and other related activities.

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

Amalgamation.

10. Copies of the Memoranda of Association and Articles of Association along with their latest audited Balance Sheets, as on 31.03.2018 and reports

of the Statutory Auditors of all the Applicant Companies have been filed. Provisional un-audited Financial Statements upto 30th September, 2018 have

also been filed.

It has also been certified by the Statutory Auditors of each of the applicant companies that the Accounting Treatment as in the Scheme is in

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

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

a. The Transferor and Transferee Companies are closely held group Companies under common control and management and would result in consolidation and pooling off their resources and business synergy;

b. The Transferor Companies No.1 and 2 and the Transferee Company are non-deposit accepting Non- Banking Finance Companies (NBFC)

registered with RBI and are engaged in investment in securities and other NBFC business like providing loans and advances and other related

activities. The Transferor Companies No.3 to 5 are engaged in purchase, sale and trading of commodities and other related activities. The

management of these companies has decided to consolidate their financial resources by amalgamating all Transferee Companies and to focus on the

NBFC business only;

c. Would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the

combined entity;

d. Would result in usual economies of a centralized and a large company holding elimination of duplicate work, reduction in overheads, better and more

productive utilization of human and other resource and enhancement of overall business efficiency;

e. The scheme will be beneficial to the applicant companies and their respective shareholders and creditors.

f. Would have beneficial impact on all the Transferor and Transferee Companies, their shareholders, employees and other stakeholders and all

concerned.

The Appointed Date of the Scheme is 1st April, 2019.

12, So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of

Shares & Share Exchange Ratio dated 16th November 2018, issued by Jagdish Aggarwal & Co. Chartered Accountants, New Delhi, as per the

settled principles of valuation. The Share Exchange ratio, based on net asset value. The Chartered accountants have proposed the following:-

a. 110 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 100 equity shares of Rs, 10/ each fully paid

up to the shareholders of KCM Leasing and Finance Private Limited (Transferor Company No. 1);

b. 116 Equity Shares of Rs. 10/ each to be issued and allotted by the Transferee Company in lieu of every 100 equity shares of Rs.10/- each fully paid up to the shareholders of Shri. Shindhuswarna Investment Private Limited (Transferor Company No.2);

c. 153 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 100 equity shares of Rs.10/- each fully

paid up to the shareholders of Neelkanth Tradelink Private Limited (Transferor Company No.3);

d. 153 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 100 equity shares of Rs. 10/- each fully

paid up to the shareholders of Murli Manohar Trade Private Limited (Transferor Company No.4);

e. 146 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 100 equity shares of Rs.10/- each fully

paid up to the shareholders of Radhey Tradelink Private Limited (Transferor Company No.5);

13. The Board of Directors of each of the applicant companies vide their respective meetings held on 21st November, 2018 have unanimously

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

14. 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 6 shareholders who have accorded their consent vide affidavits placed on record.

â?¢ It has no Secured or Unsecured creditor as certified by the Chartered Accountant.

In view of the consent affidavits of its 6 shareholders being on record, the requirement of convening the meeting of the shareholders is dispensed with.

Further, as there is no secured or unsecured 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 6 Equity Shareholders who have accorded their consent vide affidavits placed on record.

â?¢ It has no Secured or Unsecured creditor as certified by the Chartered Accountant.

In view of the consent accorded by its 6 Shareholders, the requirement of convening the meeting of the shareholders is dispensed with. Further, as

there is no secured or unsecured creditor, the question of convening their meeting does not arise.

C. In respect of the Transferor Company No.3/ Applicant Company No.3:-

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

â?¢ It has no Secured or unsecured creditor as certified by the Chartered Accountant.

In view of the consent accorded by its 4 Shareholders, the requirement of convening the meeting of the is dispensed with. Further, as there is no

secured or unsecured creditor, the question of convening their meeting does not arise.

D. In respect of the Transferor Company No.4/ Applicant Company No.4:-

â?¢ It has 3 Equity Shareholders who have accorded their consent vide affidavits placed on record.

â?¢ It has no Secured or unsecured creditor as certified by the Chartered Accountant.

In view of the consent accorded by its 3 Shareholders, the requirement of convening the meeting of the is dispensed with. Further, as there is no

secured or unsecured creditor, the question of convening their meeting does not arise.

E. In respect of the Transferor Company No.5/ Applicant Company No.5:-

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

â?¢ It has no Secured or unsecured creditor as certified by the Chartered Accountant.

In view of the consent accorded by its 4 Shareholders, the requirement of convening the meeting of the is dispensed with.

Further, as there is no secured or unsecured creditor, the question of convening their meeting does not arise.

F. In respect of the Transferee Company

â?¢ It has 6 Equity Shareholders who have accorded their consent vide affidavits placed on record.

â?¢ It has no Secured or unsecured creditor as certified by the Chartered Accountant.

In view of the consent accorded by its 6 Shareholders, the requirement of convening the meeting of the is dispensed with. Further, as there is no

secured or unsecured creditor, the question of convening their meeting does not arise

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

16. 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.

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

18. 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.

18. 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 of the applicant companies.

