(2019) 10 NCLT CK 0017

In the National Company Law Appellate Tribunal

Case No : Company Application No. CA (CAA)-153/(ND) Of 2019

M/s. Ragnor Buildtech India Pvt. Ltd. And Ors. APPELLANT

Vs

M/s. Experion Developers Pvt. Ltd. RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Companies (Compromise, Arrangement And Amalgamation), Rules 2016 — Rule 3(2)
Companies Act, 2013 — Section 133, 230, 230(2), 231, 232

Citation : (2019) 10 NCLT CK 0017

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

Bench : Division Bench

Advocate : Rajeev K. Goel, Kartikeya Goel

Final Decision : Disposed Of

Judgement

Particulars,Amount in INR

Authorised Share Capital,

10,000 Equity shares of Rs.10/-each","1,00,000

Total,"1,00,000/-

Issued, Subscribed and Paid-up Share Capital",

10,000 Equity Shares of Rs.10/- each","1,00,000

Total,"1,00,000/-

Particulars,Amount in INR

Authorised Share Capital,

10,000 Equity shares of Rs.10/-each","1,00,000

Total,"1,00,000/-

Issued, Subscribed and Paid-up Share Capital",

10,000 Equity Shares of Rs.10/- each","1,00,000

Total,"1,00,000/-

Particulars,Amount in INR

Authorised Share Capital,

10,000 Equity shares of Rs.10/-each","1,00,000

Total,"1,00,000/-

Issued, Subscribed and Paid-up Share Capital",

10,000 Equity Shares of Rs.10/- each","1,00,000

Total,"1,00,000/-

Particulars,Amount in INR

Authorised Share Capital,

4,00,000 Equity shares of Rs.100/-each","4,00,00,000

Total,"4,00,00,000/-

U n-s e cure d Compulsory Convertible

Debentures",

4,07,59,942 Un-secured Compulsory Convertible

debentures of Rs. 100/- each","4,07,59,94,200/-

Issued, Subscribed and Paid-up Share Capital",

24,47,542 Equity Shares of Rs.10/- each","2,44,75,420

Total,"2,44,75,420/-

100% in number. The consent affidavits of both the shareholder is placed on record. It is further represented that the Transferor Company No. 5 has,

1 (One) Unsecured Creditor and no secured creditor. The consent affidavit in support of the Scheme of the sole unsecured creditor constituting 100%,

in value and 100% in number is placed on record. The certificates of chartered accountant in respect of creditors have also been placed on record. In,

relation to the shareholders and unsecured creditor, the Transferor Company No.5 seeks dispensation from convening and holding of their meeting on",

the ground that the same have given their consent affidavits in favour of the Scheme.,

21. In relation to M/s. Frida Buildcon Pvt. Ltd. being the Transferor Company No.6, it is submitted that the it is submitted that the Company has 2",

(Two) Equity Shareholders and both the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in,

value and 100% in number. The consent affidavit of both the shareholders is placed on record. It is further represented that the Transferor Company,

No. 6 has 2 (Two) unsecured creditors and no secured creditor. The consent affidavits in support of the scheme of the unsecured creditors,

constituting 100% in value and 100% in number is placed on record. The certificates of chartered accountant in respect of creditors have also been,

placed on record. In relation to the shareholders and unsecured creditors, the Transferor Company No.6 seeks dispensation from convening and",

holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.,

22. In relation to M/s. Radiant Town Planners Pvt. Ltd. being the Transferor Company No.7, it is submitted that the Company it is submitted that the",

Company has 2 (Two) Equity Shareholders and both the equity shareholders have given their consent by filing affidavits in support of the Scheme,

constituting 100% in value and 100% in number. The consent affidavits of both the shareholders is placed on record. It is further represented that the,

Transferor Company No. 7 has 2 (Two) Unsecured Creditors and no secured creditor. The consent affidavits in support of the Scheme of the,

unsecured creditors constituting 100% in value and 100% in number is placed on record. The certificates of chartered accountant in respect of,

creditors have also been placed on record. In relation to the shareholders and unsecured creditors, the Transferor Company No.7 seeks dispensation",

from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.,

23. In relation to M/s. Stella Buildtech India Pvt. Ltd. being the Transferor Company No.8, it is submitted that the Company it is submitted that the",

Company has 2 (Two) Equity Shareholders and both the equity shareholders have given their consent by filing affidavits in support of the Scheme,

constituting 100% in value and 100% in number. The consent affidavits of the both the shareholders is placed on record. It is further represented that,

the Transferor Company No. 8 has 2 (Two) Unsecured Creditors and no secured creditor. The consent affidavits in support of the Scheme of, unsecured creditors constituting 100% in value and 100% in number is placed on record. The certificates of chartered accountant in respect of,

creditors have also been placed on record. In relation to the shareholders and unsecured creditors, the Transferor Company No.8 seeks dispensation",

from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.,

24. In relation to M/s. Trandy Buildtech Pvt. Ltd. being the Transferor Company No.9, it is submitted that the Company has 2 (Two) Equity",

Shareholders and both the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and,

100% in number. The consent affidavits of both the shareholders is placed on record. It is further represented that the Transferor Company No.9 has,

1 (One) Unsecured Creditor and no secured creditor. The consent affidavit in support of the Scheme of the sole unsecured creditor constituting 100%,

in value and 100% in number is placed on record. The certificates of chartered accountant in respect of creditors have also been placed on record. In,

relation to the shareholders and unsecured creditor, the Transferor Company No.9 seeks dispensation from convening and holding of their meeting on",

the ground that the same have given their consent affidavits in favour of the Scheme.,

25. In relation to M/s. Trandy Realtors Pvt. Ltd. being the Transferor Company No.10, it is submitted that the Company has 2 (Two) Equity",

Shareholders and both the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and,

100% in number. The consent affidavits of both the shareholders is placed on record. It is further represented that the Transferor Company No. 10,

has 1 (One) Unsecured Creditor and no secured creditor. The consent affidavit in support of the Scheme of the sole unsecured creditor constituting,

100% in value and 100% in number is placed on record. The certificates of chartered accountant in respect of creditors have also been placed on,

record. In relation to the shareholders and unsecured creditor, the Transferor Company No.10 seeks dispensation from convening and holding of their",

meeting on the ground that the same have given their consent affidavits in favour of the Scheme.,

26. In relation to M/s. Spledid Buildhomes India Pvt. Ltd. being the Transferor Company No.11, it is submitted that the Company has 2 (Two) Equity",

Shareholders and both the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and,

100% in number. The consent affidavits of both the shareholders is placed on record. It is further represented that the Transferor Company No. 11,

has 1 (One) Unsecured Creditor and no secured creditor. The consent affidavit in support of the Scheme of sole unsecured creditor constituting 100%,

in value and 100% in number is placed on record. The certificates of chartered accountant in respect of creditors have also been placed on record. In,

relation to the shareholders and creditors, the Transferor Company No.11 seeks dispensation from convening and holding of their meeting on the",

ground that the same have given their consent affidavits in favour of the Scheme.,

27. In relation to M/s. Experion Developers Pvt. Ltd. , being the Transferee Company, it is submitted that the Transferee Company has 2 (Two)",

Equity Shareholders and 1 (One) Debenture Holder and both the Equity Shareholders and sole Debenture Holder have given their consent by filing,

affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of both the shareholders is placed on,

record. It is further represented that the Transferee Company has 242 Unsecured Creditors and since all the Transferor Companies No.1 to 11 are,

the wholly owned subsidiaries of the Transferee Company, consent of the Unsecured Creditors of the Transferee Company may not be required for",

the present Scheme of Amalgamation. The Ld. Counsel for applicant companies placed reliance on two judgments before the Tribunal where NCLT,

Delhi Bench had taken view in line with the argument placed before this bench and the Honâ??ble NCLAT had observed that in view of judicial,

propriety it is advisable to uphold the view of co-ordinate bench.,

Also relying on the precedent of co-ordinate bench, NCLT New Delhi in case of Berkeley Design Automation India Private Limited with Mentor",

Graphics (India) Private Limited where it was held that when all the transferor companies are wholly owned subsidiary companies of transferee,

company, the requirement of obtaining consents from unsecured creditors of transferee company is not mandatory and meeting of unsecured creditors",

can be dispensed with.,

28. It is further represented that the Transferee Company has 1 (one) Secured

Creditor who has given consent by filing affidavits in support of the,

Scheme constituting 100% in value and 100% in number. The consent affidavits of both the shareholders, sole debenture holder and sole secured",

creditor have been placed on record. The certificates of chartered accountant in respect of creditors have also been placed on record. In relation to,

the shareholders, debenture holder and secured creditor, the Transferee Company seeks dispensation from convening and holding of their meeting on",

the ground that the same have given their consent affidavits in favour of the Scheme.,

29. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the,

Act. It is further represented that the application filed by the applicant is maintainable in view of Rule 3(2) of the Rules. It is submitted that the,

registered offices of all the Applicant Companies are situated within the territorial jurisdiction of the Registrar of Companies, NCT of Delhi and",

Haryana. Hence, this tribunal has jurisdiction to entertain and try this application.",

30. The appointed date as specified in the Scheme is 01.08.2019 subject to the directions of this Tribunal.,

31. The Board of Directors of the Transferor Companies No.1 to 11 and the Transferee Company vide their respective Board Resolutions have,

unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions have also been placed on record by all,

the Applicant Companies herein.,

32. The Certificates of statutory auditors of all the twelve applicant companies confirming that the accounting treatment in the scheme is in conformity,

with the Companies (Accounting Standards) Rules, 2016 and Generally Accepted Accounting Principles in India (India GAAP) and is in conformity",

with Section 133 of the Companies Act, 2013 have been placed on record.",

33. Having perused the Application and the connected documents / papers filed along with the Scheme of Amalgamation contemplated amongst the,

Applicant Companies and taking into consideration the joint application showing compliance of various provisions of the Companies Act and the rules,

framed there under, we propose to issue the following directions with respect to convening and holding or dispensing with the meetings of the", Shareholders, Debenture holders, Secured and Unsecured Creditors as follows:-",

Applicant Company No.1 / Transferor Company No.1,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.1 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of sole (One) Unsecured Creditor giving its consent affidavit in support of the Scheme constituting 100% in value and 100% in number which,

is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.2 / Transferor Company No.2,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme, constituting 100% in value and 100% in number,",

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.2 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of both Unsecured Creditors having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.3 / Transferor Company No.3,

With respect to Equity Shareholders,

In view of both the equity shareholders have given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number, which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.3 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of sole Unsecured Creditor having given its consent affidavit in support of the Scheme constituting 100% in value and 100% in number which,

is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.4 / Transferor Company No.4,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.4 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of sole Unsecured Creditor having given its consent affidavit in support of the Scheme constituting 100% in value and 100% in number which,

is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.5/ Transferor Company No.5,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.5 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of sole Unsecured Creditor having given its consent affidavit in support of the Scheme constituting 100% in value and 100% in number which,

is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.6/ Transferor Company No.6,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.6 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of both Unsecured Creditors having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.7 / Transferor Company No.7,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.7 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of both Unsecured Creditors having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which is on record, hence the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.8 / Transferor Company No.8,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.8 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of both unsecured creditors having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.9 / Transferor Company No.9,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.9 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of sole Unsecured Creditor having given its consent affidavit in support of the Scheme constituting 100% in value and 100% in number which,

is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.10/ Transferor Company No.10,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.10 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of sole Unsecured Creditor having given its consent affidavits in support of the Scheme constituting 100% in value and 100% in number which,

is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.11 / Transferor Company No.11,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the Equity Shareholders is dispensed with.",

With respect to Secured Creditors,

The Transferor Company No.11 has none Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors does not arise.",

With respect to Unsecured Creditors,

In view of sole Unsecured Creditor having given its consent affidavits in support of the Scheme constituting 100% in value and 100% in number which,

is on record, the necessity of convening a meeting of the Unsecured Creditors is dispensed with.",

Applicant Company No.12/ Transferee Company,

With respect to Equity Shareholders,

In view of both the equity shareholders having given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number,

which are on record, the necessity of convening a meeting of the same is dispensed with.",

With respect to Secured Creditors,

In view of sole Secured Creditor having given consent affidavit in support of the Scheme constituting 100% in value and 100% in number which is on,

record, the necessity of convening a meeting of the same is dispensed with.",

With respect to Unsecured Creditors,

The Transferee Company has 242 (Two Hundred and Forty- Two) Unsecured Creditors and since all the Transferor Companies No. 1to 11 are the, wholly owned subsidiaries of the Transferee company, consent of the Un-secured Creditors of the Transferee Company is not required for the",

present scheme of amalgamation, hence the necessity of convening a meeting of the same is dispensed with.",

The application stands allowed on the aforesaid terms and disposed of accordingly.,

