(2023) 03 NCLT CK 0038

In the National Company Law Tribunal

Case No : CA(CAA)/10/KB/2023

MSP Metallics Limited & Anr Vs

Date of Decision : 07-03-2023

Acts Referred:

Companies Act, 2013 — Section 103, 133, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2)

Citation : (2023) 03 NCLT CK 0038

Hon'ble Judges : Bidisha Banerjee, Member (J);Satya Ranjan Prasad, Member (T)

Bench : Division Bench

Advocate : Sidhartha Sharma, Madhuri Pandey, Shalini Basu

Final Decision : Disposed Of

Judgement

Bidisha Banerjee, Member (Judicial):

1. This is an application under sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 filed by the Applicant Companies, namely, MSP Metallics Limited (Transferor Company), and Orissa Metaliks Private Limited (Transferee Company), in connection with a proposed Scheme of Amalgamation of the applicant Companies. (“Scheme”).

2. The Board of Directors of the Applicant Companies approved the Scheme of Amalgamation between the Applicant Companies and their respective shareholders for amalgamation of the Transferor Company with the Transferee Company, whereby and where under the entire undertaking of the Transferor Company together with all assets and liabilities relating thereto as going concerns are proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the Application and marked as “Annexure E” at “Page No. 224-251”. The appointed date of the Scheme of Amalgamation is 1st October, 2022.

3. The Corporate Insolvency Resolution Process ("CIR Process") as prescribed under the Insolvency & Bankruptcy Code, 2016 ("IBC Code") was admitted against the Transferor Company vide order dated 25th November, 2021 passed by the Hon'ble National Company Law Tribunal, Kolkata. Pursuant to the admission, the Transferee Company by following all the rules and regulations laid down by the Insolvency & Bankruptcy Code, 2016 submitted its resolution plan which was approved by the Committee of Creditors and was subsequently approved by the Hon'ble National Company Law Tribunal, Kolkata Bench vide order dated 11th July, 2022 in I.A. 616/KB/2022.

4. The circumstances which justify and necessitate the said Scheme of Amalgamation are, inter-alia, as follows:

a) The Transferor Company is a wholly owned subsidiary acquired by way of Corporate Insolvency Resolution Process prescribed under the Insolvency & Bankruptcy Code, 2016 by the Transferee Company and therefore, the amalgamation will help consolidate the entities and avoid duplication of work and efforts.

b) The Transferor Company and the Transferee Company are engaged in the business of manufacture and sale of iron and steel products. The amalgamation will ensure focused management in the combined entity thereby resulting in efficiency of management and maximizing value for the shareholders. Such restructuring will lead to simplification of group structure by eliminating multiple Companies in similar business.

c) The existing operating business and activities of the Transferee Company will continue to constitute the main business and activity of the merged entity with the greater share of the assets and turnover of the merged entity being contributed by such operating business and activities. The business of the Transferor Company would, inter alia, benefit greatly from the larger infrastructure, easier access to finance and better outreach of the Transferee Company. The consolidation of undertakings will result in the formation of a larger and a broader based and diversified Company.

d) The proposed amalgamation will rationalize and optimize the group structure to ensure greater alignment with the business being carried out by the Parties in the group and by further consolidating the number of entities.

e) The proposed Scheme will help to improve the management focus to respective business and facilitate the unified control over operations. It is expected that such consolidation of entities will eliminate inefficiencies and streamline corporate structures and more efficient use of capital. A single operating entity would also result in centralized management and overnight, integrated business approach, overall optimisation of operational and administration costs and supporting the group's competitive growth.

f) The Scheme is in the interest of the group and its stakeholders and it will not have any adverse impact on the stakeholders.

g) The said amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration, better and more productive utilisation of various resources.

h) Reduction in multiplicity of legal and regulatory compliances by the Transferor and Transferee Company.

5. Transferee Company owns 100% shareholding of Transferor Company making Transferor Company wholly owned subsidiary of Transferee Company and as such, pursuant to the amalgamation, no shares shall be issued as consideration to the shareholder of Transferor Company.

6. The Board of Directors of the Applicant Companies have, at their respective Board meetings, held on 14.11.2022 by a resolution passed unanimously approved the Scheme of Amalgamation. The said resolution is annexed with the Application and referred in "Annexure F" at "Page 252-264".

7. The assets of the Applicant Companies are sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any of the Applicant Companies in any manner whatsoever.

8. The Applicant Companies have made due provisions for payment of all the liabilities as and when the same will fall due.

9. There are 1 (One) equity shareholder in the Transferor Company. The list of equity shareholders of the Applicant Companies as on 30.09.2022 along with the certificate by the Chartered Accountant dated 18.11.2022 verifying the correctness of the same is annexed with the Application and marked as "Annexure G" at "Page 276-277".

10. Each and every shareholders of the Transferor Company have considered the Scheme of Amalgamation and have given their consent in writing agreeing to the Scheme of Amalgamation and also consenting to waive the holding of the meeting of the shareholders of the concerned Transferor Company. The copies of the consent affidavits of all the shareholders of the Transferor Company are annexed with the application and collectively marked as "Annexure-H" at "Page-324-326".

11. There are 53 (Fifty-Three) equity shareholders and 45 (Forty-Five) Preference Shareholders in the Transferee Company. The list of shareholders of the Transferee Company as on 30.09.2022 along with the certificate by the Chartered Accountant dated 18.11.2022 verifying the correctness of the same is annexed with the Application and marked as "Annexure G" at "Page-265-275".

12. Each and every shareholder of the Transferee Company have considered the Scheme of Amalgamation and have given their consent in writing agreeing to the Scheme of Amalgamation and also consenting to waive the holding of the meeting of the shareholders of the concerned Transferee Company. The copies of

the consent affidavits of all the shareholders of the Transferee Company are annexed with the application and collectively marked as "Annexure-H" at "Page-327-622".

13. The shareholders of all the Applicant Companies have considered and agreed in writing to the Scheme of Amalgamation and have also consented to waiving the holding of the meeting of shareholders of the Applicant Companies concerned.

14. There are NIL secured creditor and 333 Unsecured creditors in the Transferor Company.

15. There are NIL secured creditor and 1756 Unsecured creditors in the Transferee Company.

16. The statutory auditors of the Transferor Company have given certificate dated 22.11.2022 certifying the list of secured and unsecured creditors in the Transferor Company as on 31.10.2022. The copies of such certificate along with the list of secured and unsecured creditors drawn as on 31.10.2022 mentioned above, are annexed with the Application, and marked as "Annexure J" at "Page-650-657". The copies of the consent affidavits of the unsecured creditors of the Transferee Company are annexed with the application and marked as "Annexure K" from page number "658 to 1192" of the Application.

17. The statutory auditor of the Transferee Company has given certificate on 22.11.2022 certifying the list of secured and unsecured creditors of the Transferee Company as on 31.10.2022. The copies of such certificate along with the list of secured and unsecured creditors drawn as on the dates mentioned above, are annexed with the Application and marked as "Annexure I" at "Page-623-649". The copies of the consent affidavits of the unsecured creditors of the Transferee Company are annexed with the application and marked as "Annexure K" from page number "658 to 1192" of the Application.

18. Copy of Permanent Account Number (PAN) cards of the Transferor Company is annexed with the application and marked as "Annexure A" at "Page-87". Copy of Permanent Account Number (PAN) card of the Transferee Company is annexed with the application and marked as "Annexure C" at "Page-160".

19. The certificate by the Statutory Auditor in respect of the Transferee Company verifying conformity with Accounting Standard under Section 133 of the Companies Act, 2013 is annexed with the Application and marked as "Annexure L" at "Page-1193-1195".

20. Transferee Company owns 100% equity of Transferor Company (including 6 Nominee Shareholders) making Transferor Company wholly owned subsidiary of Transferee Company. The copy of challan for the filing of E-Form MGT 6 has been annexed with the application and marked as "Annexure M" at "Page- 1196-1205"

21. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the

instant application and make the following orders:-

a. In view of the fact that all the shareholders of the Applicant Companies duly consented in writing by way of affidavits, to the proposed Scheme of Amalgamation, duly certified by the Chartered Accountants, the requirements of convening and holding of separate meetings of the shareholders of the Applicant Companies to ascertain the wishes of the shareholders of all the Applicant Companies for the Scheme of Amalgamation, are dispensed with;

b. Since there are no secured Creditors in the Applicant Companies, as certified by the statutory auditor of the respective Applicant companies, the question of convening and holding the meeting of the secured creditors of the Applicant Companies does not arise.

c. Meetings to be held | Date and Times: The following meeting shall be convened and held at the following time on 13th April, 2023 for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification:-

i. Meeting of Unsecured Creditors of the Applicant Company No. 1 / Transferor Company at 11.30 A.M.

ii. Meeting of Unsecured Creditor of the Applicant Company No. 2 / Transferee Company at 2.00 P.M.

d. Mode of meetings: The meetings, as above, shall be held physically/hybrid mode/remote e-voting.

e. Advertisement: At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting be published once each in the "Business Standard" in English and "Aajkaal" in Bengali language as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

f. Individual Notices: At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notices convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the said Unsecured creditors of the Applicant Companies as applicable, as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be posted on the websites if any of the Applicant No. 2, 3, 4 and 5.

g. Chairperson: Mr. Avijit Ghoshal, Advocate having Mobile No. 9830008809 is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 75,000/- for conducting the aforesaid meeting(s) as Chairperson.

h. Scrutinizer: Mr. Sanjay Poddar, CA having Mobile No. 9830047033 is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 60,000/- for acting as Scrutinizer.

i. Quorum and Attendance: The quorum for the said meeting of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. For the meeting, only attendance of such persons physically at the venue shall be counted for quorum. In case the quorum is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.

j. Mode of Voting: At the venue of the meeting held physically/hybrid mode/ remote e-voting.

k. Cut-off date: The cut off date for determining the eligibility to vote and value of votes shall be 29th March, 2023 for the meeting of Unsecured creditors. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

l. Voting procedure: Subject to the directions and matters dealt with herein, the procedure for voting by polling paper and conduct of voting, and Companies (Management & Administration) Rules, 2014 ("the said Rules"), and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

m. Proxies & Board Resolutions: A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorising its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the concerned Applicant Company not later than 48 (forty eight) hours before the time for holding such meeting.

n. That the Chairperson appointed for the said meeting or any person authorised by the Chairperson to issue and send the notices of the aforesaid meeting.

o. The votes cast shall be Scrutinised by the Scrutinizer. Votes cast in all the modes shall be consolidated. The Scrutinizer shall prepare and submit the respective reports on the meeting along with all papers relating to the voting to the Chairperson of the meeting within 3 days of the conclusion of the meeting. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer.

p. The value of each Unsecured creditors shall be in accordance with the books and records of the Applicant and, where entries in the books are disputed, the chairperson shall determine the value for purposes of the said meeting.

q. The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of the Unsecured creditors present casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

r. The Chairperson to report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

22. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on

s. The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

t. Registrar of Companies with whom the Applicants are registered;

u. Official Liquidator; Calcutta High Court and

v. Income Tax Department having jurisdiction over the Applicants, by sending the same by hand delivery through special messenger or by speed post and by email forthwith after the notices are sent to the Unsecured creditors, as aforesaid. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorised Representative of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with disclosures required under Rule 6 & incorporating the directions herein.

23. The Applicants to file an affidavit proving service of notices of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the meetings to be held.

24. The Company Application bearing CA(CAA) No. 10/KB/2023 is, accordingly, disposed of.

25. Certified copy of this Order, may be issued, if applied for, upon compliance of all requisite formalities.

