(2020) 02 NCLT CK 0135

In the National Company Law Appellate Tribunal

Case No : Company Application No. CA (CAA) - 13/(ND) Of 2020

Mstar Semiconductor Private Limited APPELLANT

Vs

Mediatek India Technology Private Limited RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 3(2)
Companies Act, 2013 — Section 133, 230, 230(2), 231, 232

Citation : (2020) 02 NCLT CK 0135

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

Bench : Division Bench

Advocate : S.P. Singh Chawla, Shubham Bansal

Final Decision : Disposed Of

Judgement

Hemant Kumar Sarangi, Member (T)

1. This is a First Motion application jointly filed by the Applicant companies herein, M/s. Mstar Semiconductor India Pvt. Ltd. and M/s. Mediatek India Technology Pvt. Ltd., and their respective Shareholders and Creditors under sections 230-232 of the Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME"), proposed between the applicants. The said Scheme is annexed with this application. 2. The applicants above named have preferred the instant application for the following namely:

i. Dispensing with requirement for convening the meetings of the Equity Shareholders of the Transferee Company and also to dispense with the requirement of issue and publication of notices of the same;

ii. Dispensing with requirement for convening the meeting of the Secured and Unsecured Creditors of the Transferee Company as there are no Secured/

Unsecured Creditors;

iii. Dispensing with requirement for convening the meeting of the Equity Shareholders of the Transferor Company and also to dispense with the requirement of issue and publication of notices for the same;

iv. Dispensing with requirement for convening the meeting of the Secured and Unsecured Creditors of the Transferor Company as there are no Secured/ Unsecured Creditors;

v. Issuing direction for permitting the filing of application, petition, and other documents as may be required, for the purpose of sanctioning the proposed Scheme of Amalgamation; vi. Passing such other and further orders as are deemed necessary in the facts and circumstances of the case.

3. An affidavit in support of the above application sworn by and on behalf of Transferor Company No. 1 by Mr. Anku Jain and on behalf of Transferee Company by Ms. Aakansha Joshi, the authorised persons of all the companies, have been filed. The corresponding Board resolutions of authorizations by all companies are also placed on record.

4. All the Applicant Companies have filed their Memorandum and Articles of Association as well as last available audited Financial Statements as on 31.03.2019.

5. The Transferor Company No. 1, was incorporated under the provisions of the Companies Act, 2013, as a private limited company, the company is a subsidiary of Foreign Company, with the name and style as 'Mstar Semiconductors India Pvt. Ltd.' on 31st July, 2015, with the ROC, NCT Delhi & Haryana, having CIN No. U72300DL2015FTC316533 and having registered office at, B-25, Sagar Apartments, 6 Tilak Marg, New Delhi 110001. The Share Capital structure of the Transferor Company on the date of filing of this Application is as follows:

Particulars

Amount in INR

Authorised Share Capital

3,000 Equity shares of Rs. 100/- each

3,00,000/-

Total

3,00,000/-

Issued, Subscribed and Paid-up Share Capital

1,500 Equity Shares of Rs. 100/- each

1,50,000/-

Total

1,50,000/-

6. In relation to the Transferor Company No. 1, it is submitted that the Company has Two Equity Shareholders and all the equity shareholders have given their written consent by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of both the members have been placed on record. It is further represented that the Transferor Company has Nil Secured Creditors and Nil Unsecured Creditors.

7. The consent affidavits of each of the shareholders 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, the Transferor 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.

8. The Transferee Company was incorporated as a private limited company under the provisions of the Companies Act, 1956, on 26th December, 2011, as a Company limited by shares, with the name and style "Flummox Marketing Pvt. Ltd." having CIN No. U45100DL2011PTC338822 and having registered office at A-187, Basement, Defence Colony, New Delhi 110024. The Share Capital structure of the Transferee Company on the date of filing of this Application is as follows:

Particulars

Amount in INR

Authorised Share Capital

55,00,000 Equity shares of Rs. 10/- each

5,50,00,000/-

Total

5,50,00,000/-

Issued, Subscribed and Paid-up Share Capital

55,00,000 Equity Share of Rs. 10/- each

5,50,00,000/-

TOTAL

5,50,00,000/-

9. In relation to the Transferee Company, it is submitted that the Company has Two Equity Shareholders, all 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 each of the members have been placed on

record. It is further represented that the Transferee Company has Nil secured creditors and Nil Unsecured Creditors.

10. The consent affidavits of each of the shareholders and creditors 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 and creditors, 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.

11. 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. Learned Counsel also submits that the registered offices of all the Applicant Companies are situated within the territorial jurisdiction of this tribunal and fall within the territorial jurisdiction of the Registrar of Companies, NCT, and New Delhi.

12. The appointed date as specified in the Scheme is 01.11.2019 subject to the directions of this Tribunal.

13. The Board of Directors of the Applicant No. 1/Transferor Companies and the Applicant No. 2/Transferee Company vide Board Resolutions passed on 03.12.2019 and 02.12.2019 respectively, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions have also been placed on record by the Applicant Companies herein.

14. The Certificates of statutory auditors of all the applicant companies confirming that the accounting treatment in the scheme is in conformity with the Companies (Accounting Standards) Rules, 2016 and is in conformity with Section 133 of the Companies Act, 2013 have been placed on record.

15. We have perused the Application and the connected documents/papers filed along with the Scheme of Amalgamation contemplated amongst the Applicant Companies.

16. Taking into consideration the joint application and the documents filed therewith 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 of the meetings of the Shareholders, Debenture holders, Secured and Unsecured Creditors or dispensing with the same as follows: -

A. Applicant Company No. 1/Transferor Company

? With respect to Equity Shareholders

The Transferor Company has Two Equity Shareholders and all 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, hence the necessity of convening a meeting of the Equity Shareholders is dispensed with.

? With respect to Secured Creditors

The Transferor Company has Nil Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

? With respect to Unsecured Creditors

The Transferor Company has Nil Unsecured Creditors, hence the necessity of convening a meeting of the Secured Creditors is obviated.

B. Applicant Company No. 3/Transferee Company

? With respect to Equity Shareholders

The Transferee Company has Two Equity Shareholders and all the shareholders have given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number which are on record, hence the necessity of convening a meeting of the same is dispensed with.

? With respect to Secured Creditors

The Transferor Company has Nil Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

? With respect to Unsecured Creditors

The Transferor Company has Nil Unsecured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

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

