(2023) 08 NCLT CK 0036

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : CA(CAA) No. 46/ND Of 2023

M/s.Trenchless Engineering and Sales Pvt. Ltd Vs

Date of Decision : 31-08-2023

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223. 224, 225, 226, 227, 230, 232, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2023) 08 NCLT CK 0036

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J);Rahul Bhatnagar, Member (T)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Rahul Bhatnagar, Member (Technical)

1. This joint application is filed by the Applicant Companies herein, under Section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants.

2. Affidavits in support of the above application sworn by Mr. Vipin P. Gupta and Ms. Vishakha Gupta, Authorized Signatories the Applicant Company No. 1 & 2 respectively, who have been authorized vide board resolutions dated 15.02.2023 for both the Applicant Companies, have been duly filed, along with the application. It was also represented that the registered office of the Applicant Companies is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and within the territorial jurisdiction of this Tribunal.

3. The Applicant Company No. 1/Transferor Company – M/s. Trenchless Engineering and Sales Pvt. Ltd. bearing Corporate Identification No. (CIN): U45209DL2010PTC399775) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of

Incorporation dated 06.10.2010, having its registered office at C-185, Mayapuri, Phase II, Delhi-110064. The Authorized Share Capital of the Applicant Company No. 1/Transferor Company is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each.

4. The Applicant Company No. 2/Transferee Company – M/s. Trenchless Engineering and Sales Pvt. Ltd. bearing Corporate Identification No. (CIN): U51109DL2000PTC106283) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 14.06.2010, having its registered office at C-185, Mayapuri, Phase II, Delhi-110064. The Authorized Share Capital of the Applicant Company No. 2/Transferee Company is Rs. 5,00,00,000/- divided into 50,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 3,51,00,000/- divided into 35,10,000 Equity Shares of Rs. 10/- each.

5. The Transferor Company as well as the Transferee Company have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses, as well as their last Audited Annual Accounts for the Financial year 31.03.2022.

6. The Applicant Companies, vide their respective meeting of the Board of Directors held on 15.02.2023 have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record.

7. It has been stated that the Transferor Company No. 1 has 2 Shareholders. Certificate from Chartered Accountants certifying list of shareholders was annexed and both of them have given their respective consents by way of affidavits which were annexed to the application. It was further represented that the Company has nil Secured/Unsecured Creditors. Certificate from Chartered Accountants certifying list of creditors was annexed. In relation to the Shareholders, it seeks to dispense with holding/convening of the meetings as their consent affidavits were placed on record. Since there were no Secured/ Unsecured Creditors therefore the necessity of convening/holding a meeting does not arise.

8. It has been stated that the Transferee Company has 3 Shareholders. Certificate from Chartered Accountants certifying list of shareholders was annexed and all of them have given their respective consents by way of affidavits which were annexed to the application. It was further represented that the Company has 8 Secured Creditors and 257 Unsecured Creditors. Certificate from Chartered Accountants certifying list of creditors was annexed. In relation to the Shareholders, it seeks to dispense with holding/convening of the meetings as their consent affidavits were placed on record. In relation to the Secured/

Unsecured Creditors, it seeks directions to convene their meetings.

9. The Transferor Company and the Transferee Company are closely held private limited group companies under common management and control. The proposed amalgamation of the Transferor Company with the Transferee Company will result in consolidation of various group companies and pooling their resources into a single entity. It will also result in most beneficial utilization of the existing resources in the combined entity.

10. The Applicant Companies have stated that the provisions relating to the accounting treatment for the proposed scheme were in conformity with the applicable provisions of the Companies Act, 2013. Certificates from the Statutory Auditor of the Applicant Companies on the accounting treatment, as proposed in the Scheme, were annexed to the application and it is clearly stated that the Accounting treatment is in conformity with that prescribed under Section 133 of Companies Act, 2013.

11. The Applicant Companies have stated that no litigation, proceedings or any investigation under Sections 235 to 251 of the Companies Act, 2013 or Sections 210 to 227 of the Companies Act, 2013 were pending against any of the Applicant Companies.

12. The appointed date is not specified in the Scheme and therefore, the appointed date of the scheme shall be 01st April, 2023.

13. Taking into consideration the submissions and the documents filed therewith, the following directions are issued forthwith in respect of convening/holding or dispensing with the meetings of the Shareholders, Secured and Unsecured Creditors as well as issue of notices including by way of paper publication as follows:

A. In relation to the Transferor Company No. 1:

a) With respect to Equity shareholders: In view of consent affidavits from the 2 equity shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: There are nil Secured Creditors; therefore, the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: There are nil Unsecured Creditors; therefore, the necessity of convening a meeting does not arise.

B. In relation to the Transferee Company:

a) With respect to Equity shareholders: In view of consent affidavits from the 3 equity shareholders, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: The meeting of the Secured Creditors of the Transferee Company is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 6 in number.

c) With respect to Unsecured Creditors: The meeting of the Unsecured Creditors of the Transferee Company is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 180 in number.

14. Mr. Prabhat Kumar Sarangi, IAS (Retd.) (Mobile No. 9997775457; Email Id-prabhatsarangi62@gmail.com) is appointed as the Chairperson, Mr. Rishabh Sachdeva, Advocate (Mobile No. 9996759595; Email Id-rishabhsachdeva25@gmail.com) is appointed as Alternate Chairperson and Mr. Saurabh Agrawal, Company Secretary (Mobile No. 8440074006; Email Id-cs.saurabh20@gmail.com) is appointed as Scrutinizer for the meetings of the Secured and Unsecured Creditors of the Transferee Company in terms of the directions issued herein.

15. In case the quorum as noted above for the aforesaid meeting is not present at the meeting, then the meeting shall be adjourned by half an hour. Thereafter the persons present and voting shall be deemed to constitute the quorum. The Chairperson and Alternate Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy Registers are properly maintained.

16. The Fees of the Chairperson for the aforesaid meetings shall be Rs. 1,00,000/-. The Fees of the Alternate Chairperson shall be Rs. 75,000/- and the Fees of the Scrutinizer shall be Rs. 50,000/- in addition to meeting their incidental expenses. The Chairperson will file his report within a week from the date of holding of the aforesaid meeting. The fees of Chairperson, Alternate Chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses shall be borne by the Applicant Companies. A copy of this order shall be provided to the learned counsels for the Applicant Companies who in turn shall provide a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer.

17. Individual notices shall be sent to the Secured and Unsecured Creditors as above by the Applicant Companies through email or through registered post or speed post, 30 days in advance before the scheduled date of meeting, indicating the day, date, the place fixed for and time of meeting as aforesaid, together with a copy of the Scheme and copy of explanatory statement as required under the Companies Act, 2013 and the Rules, along with the proxy forms and any other documents as may be prescribed under the Act. These will be provided free of cost. A compliance affidavit of service will be filed with this Tribunal.

18. The Applicant Companies shall publish an advertisement at least 30 clear days before the aforesaid meeting, indicating the day, date and the place fixed and time of meeting as aforesaid, which will be published in “Financial Express” (English) and “Jansatta” (Hindi), both Delhi NCR editions. The Applicant Companies shall also publish the notice on their websites, if any and file a

compliance affidavit of service with this Tribunal.

19. The Chairperson shall be responsible to report the results of the meetings to the Tribunal in Form No. CAA 4, as per Rule 14 of the Rules within 7 (seven) days of the conclusion of the meetings. The Chairperson shall be assisted by the Authorized Representative / Company Secretary of the Applicant Companies and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the reports.

20. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be decided by the Chairperson in consultation with the counsel of the Applicant Companies in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

21. Notice of this application shall also be served on the following:

i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

iii. Official liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi-110001;

iv. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.

v. Any other sectoral regulators required to be served.

The application stands allowed on the aforesaid term and accordingly disposed off.

