**(2023) 03 NCLT CK 0023**

**In the National Company Law Tribunal**

**Case No :** Company Application (CAA) No. 176/KB/2022

**Natraj Dealcomm Private Limited, [NDPL] & Ors Vs**

**Date of Decision :** 02-03-2023

**Acts Referred:**

Companies Act, 2013 — Section 133, 217, 219, 221, 224, 225, 230, 230(5), 232
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

**Citation :** (2023) 03 NCLT CK 0023

**Hon'ble Judges :** Bidisha Banerjee, Member (J);Balraj Joshi, Member (T)

**Bench :** Division Bench

**Advocate :** Madhuri Pandey

**Final Decision :** Disposed Of

## Judgement

Balraj Joshi, Member (Technical)

1. This Court is congregated through hybrid mode.

2. 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, Natraj Dealcomm Private Limited, being Applicant Company No. 1 (Transferor Company No. 1), C L Developers Private Limited, being the Applicant Company no. 2 (Transferor Company No. 2), Sakthi Consultants Private Limited, being Applicant Company No. 3 (Transferor Company No. 3), Westwood Marketing Private Limited, being the Applicant Company No. 4 (Transferor Company No. 4) and Sona Vets Private Limited, being Applicant Company No. 5 (Transferee Company), whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, that is 1st April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). The Copy of the said proposed is annexed to and marked as Annexure- E, at Page No. 293-332.

3. 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 Companies with the Transferee Company, whereby and where under the entire undertaking of the Transferor Companies 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.

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

a) The Scheme of Amalgamation has been proposed to consolidate the group structure and provide advantages of synergies in business activities.

b) The business of all the Transferor Companies and the Transferee Company can be combined and carried forward conveniently with the combined strength of all the Applicant Companies.

c) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company;

d) The amalgamation will result in usual economies of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources and the business of the companies can be conveniently and advantageously combined together and in general business of the Companies concerned will be carried on more economically and profitably under the said Scheme of Amalgamation.

e) The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the Companies concerned. The aforesaid Scheme of Amalgamation will also enable the undertakings and business of the said Applicant Companies to obtain greater facilities possessed and enjoyed by one large company compared with a number of small companies for raising capital, securing and conducting trade on favourable terms and other benefits;

f) The said scheme will contribute in furthering and fulfilling the objects of the companies concerned and, in the growth, and development of these businesses.

g) The said scheme will strengthen and consolidate the position of the amalgamated Company and will enable the amalgamated Company to increase its profitability.

h) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;

i) The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;

 

j) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

5. The Board of Directors of the Applicant Companies have at their respective Board meetings held on 08.10.2022, by a resolution passed unanimously, and approved the Scheme of Amalgamation. The said resolutions are annexed with the Application and referred in "Annexure F" from page number "333 to 337" of the Application.

6. 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.

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

8. The report determining the number and exchange ratio of shares which shall be issued and allotted to the equity shareholders of the Transferor Companies by the Transferee Company for implementing the terms of the Scheme has been prepared by an independent Registered Valuer in practice and such recommendation has been accepted by the Board of Directors of all the Applicant Companies. The said report is annexed with the Application and marked as "Annexure G" from page number "338 to 357" of the Application.

9. It is stated in the Application that all the Applicant Companies are closely held Companies and there are no outside shareholder(s) or director(s) in any of the Transferor Company(s) or the Transferee Company.

10. There are 3 (Three) equity shareholders in the Transferor Company No. 1, 5 (Five) equity shareholder in Transferor Company No. 2, 8 (Eight) equity shareholder in Transferor Company No. 3, 5 (Five) equity shareholder in Transferor Company No. 4.

11. The list of equity shareholders of all the Transferor Companies as on 15.09.2022 along with the certificate by the Chartered Accountant verifying the correctness of the same as on that date are annexed with the Application and marked as "Annexure H" from page number "358 to 366" of the Application.

12. Each and every shareholder of the Transferor Companies 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 all the Transferor Companies are annexed with the application and collectively marked as "Annexure-I" from page number "367 to 476" of the Application.

13. There are 4 (Four) equity shareholders in the Transferee Company.

14. The list of equity shareholders of the Transferee Company as on 15.09.2022 along with the certificate by the Chartered Accountant verifying the correctness

 

of the same as on that date is annexed with the Application and marked as "Annexure J" from page number "477 to 478" of the Application.

15. 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 letters by way of affidavit of all the equity shareholders of the Transferee Company are annexed with the application and collectively marked as "Annexure-K" from page number "479 to 498" of the Application.

16. The equity 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.

17. There are NIL secured and unsecured creditors in each of the Transferor Companies.

18. There are 2 (Two) secured and 16 (Sixteen) unsecured creditors in the Transferee Company.

19. The Statutory Auditors of all the Transferor Companies have given certificate certifying the NIL secured and unsecured creditors in each of the Transferor Companies as on 15.09.2022. The copies of such certificate are annexed with the Application and marked as "Annexure L" from page number "499 to 502" of the Application.

20. The Statutory Auditor of the Transferee Company has given certificate certifying the list of secured and unsecured creditors of the Transferee Company as on 15.09.2022. 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 M" from page number "503 to 506" of the Application. The copies of the consent affidavits of the unsecured creditors of the Transferee Company are annexed with the Application and marked as "Annexure N" from page number "507 to 578" of the Application.

21. The Transferee Company has received the consent affidavit from its Secured Creditors namely, State Bank of India and Indusind Bank Ltd on 10.01.2023 along with the List of Secured Creditors as on 15.09.2022 and Certificate from Chartered Accountant verifying the correctness of the same. The same of the collectively is annexed as "Annexure A" from page number "11 to 21" of the Supplementary affidavit that has been e-filed on the NCLT Portal by the Transferee Company on 07.02.2023. The hard copy of the same was submitted to the Hon'ble National Company Law Tribunal on 09.02.2023.

PARTICULARS OF THE COMPANY

EQUITY SHAREHOLD

 

ERS

PREFERENCE SHAREHOLDE

RS

SECURED CREDITOR

S

UNSECURED CREDITORS

Applicant Company 1

3

NIL

NIL

NIL

Applicant Company 2

5

NIL

NIL

NIL

Applicant Company 3

8

NIL

NIL

NIL

Applicant Company 4

5

NIL

NIL

NIL

Applicant Company 5

4

NIL

2

 

22. Copy of Permanent Account Number (PAN) cards of all the Applicant Companies are annexed herewith and marked as "Annexure O" from page number "579 to 583" of the Application.

23. The certificate by the Statutory Auditor 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 P" on page number "584" of the Application.

24. Transferor Company No. 2 & 3 namely C L Developers Private Limited and Sakthi Consultants Private Limited are the Non-Banking Financial Companies (NBFCs) registered with Reserve Bank of India (RBI). The Proof of submission of the Application to Reserve Bank of India is annexed as "Annexure Q" on page number "585" of the Application.

25. It has also been stated in the Application that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Applicant Companies.

26. Heard the learned Authorized Representative for the applicants, perused the records, documents annexed the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed:

i. In view of the fact that all the equity 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 equity shareholders of all the Applicant Companies for the Scheme of Amalgamation are dispensed with;

ii. Since there are no secured and unsecured creditors in all the Transferor Companies, as certified by the Statutory Auditor of the respective Transferor companies, the question of convening and holding the meeting of the creditors of the Transferor Companies does not arise.

iii. The Secured and Unsecured Creditor of the Transferee Company have given their consent in writing by way of an affidavit agreeing to the Scheme of Amalgamation and also consenting to waive holding of separate meetings of the secured and unsecured creditors of the concerned Transferee company and hence meeting of Creditors of the Sona Vets Private Limited (Transferee Company), has been waived and dispensed;

iv. Let the notice be served by the Applicant Companies, as per the requirements of sub-section (5) of Section 230 of The Companies Act, 2013, along with the copy of the Application and all other documents including the copy of the Scheme of Amalgamation and the statement disclosing necessary details to the following authorities:

a) Central Government, through the Regional Director, Eastern Region Ministry of Corporate Affairs, Registrar of Companies, West Bengal,

b) Registrar of Companies, West Bengal,

c) The concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Companies through E-Mail and by Speed Post, or by messenger,

d) The Official Liquidator, having jurisdiction over the Applicant Companies

e) The Reserve Bank of India, Department of Non-Banking Supervision, Eastern Region.

Such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger, by registered post and by Speed Post, and by E-Mail, within ten days from the date of this order for filing their representation, if any, on the Application within 30 days from the date of the notice;

v. The Applicants shall file affidavit of notice service not less than 7 days before the date of hearing of Second Motion Petition;

vi. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicants and/or their Advocates, in advance;

vii. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation; Objections, if any, to the scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject to other conditions being applicable under The Companies Act, 2013 and relevant rules made thereunder;

27. The Company Application bearing Company Application (CAA) No.176/ KB/2022 is, accordingly, disposed of.

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