(2020) 06 NCLT CK 0053

In the National Company Law Appellate Tribunal

Case No : Company Application (CAA) No. 42 (PB) Of 2019

Naya India Digital Private Limited APPELLANT

Vs

Samvad Parikrama Private Limited RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:
Companies Act, 2013 — Section 230, 230(9), 231, 232

Citation : (2020) 06 NCLT CK 0053

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Final Decision : Allowed

Judgement

B.S.V. Prakash Kumar, J

1. This is a joint petition filed by way of 1st Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as the Act') by Naya India Digital Private Limited (Applicant/Transferor Company), in connection with the Scheme of Amalgamation (hereinafter referred to as the Scheme') for merging its business with Samvad Parikarma Private Limited (Transferee Company/ Applicant).

2. As per averments, the registered office of the Transferor Company is situated in Jaipur, Rajasthan and of the Transferee Company is situated in the National Capital Territory of Delhi. On order dated 24.05.20 19, we allowed the application filed by the transferor company seeking permission to continue the proceedings at New Delhi Bench of NCLT where the registered office of Transferee Company is situated.

3. The Applicant/Transferor Company was incorporated under the Companies Act, 1956 on 24th June 2013 in the name and style of "NAYA INDIA DIGITAL PRIVATE LIMITED" in the office of Registrar of Companies, Jaipur, under the Corporate Identification No. U92100RJ2013PTC043019. The present authorized capital of

the Transferor Company is Rs. 2,00,00,000/- divided into 20,00,000 equity shares of Rs. 10/-each. The present issued, subscribed, paid up company of the Transferor Company is Rs. 1,00,000/- divided into 10,000/- equity shares of Rs. 10/-each.

4. The main objects of Applicant Company/Transferor Company are as set out in Clause III (A) of the Memorandum of Association are stated below:

i. To carry on the business of producing, acquiring, buying, selling, exporting and trading, broadcasting and distribution of news portal, digital newspaper, web contents and allied activities, television radio programs for entertainment to establish links via satellites, downlink and uplink, through TVRO's reception system, Terrestrial networks and by radio programs and by any other means of broadcasting subject to the rules and regulations prescribed by the government.

ii. To install, operate, design, fabricate, purchase, sell, import, export, trade, engineer, assemble, service, repair, exploit or deal in audio, video and or computer generated data signal broadcasting, data transfer, transmission, and or reception system networks or part thereof which may include ISP, Local area network LAN, wide area network WAN, satellite television channels, entertainment channel in all languages, informative channels, educative channels, microwave multi-channel distribution system, fibre optic system, laser beam system, telephonic personal cellular system, data transfer, transmission reception, dissembles, by utilizing, using, subscribing, hiring, chartering, renting, leasing, or in any other manner exploiting satellite transponders, satellite transmission/reception, processing of audio video and data communication for information/ educational/entertainment and other purposes.

iii. To undertake the business of advertisement and communication in digital media or in any other media including telecommunication solutions, wireess, data, electronic article surveillance, GPS, transformation of video, audio or other related services online mode or on any other mode in India or elsewhere.

iv. To establish printing press and publish newspapers, magazines and any advertising related information.

v. To act as wholesaler, retailer, agent, stockist, distributor, franchise or otherwise to deal in all sorts of items, systems, plants, machines, instruments, apparatus, appliances, devices, articles or things of Communications of different models, capacities, characteristics, applications and uses in all its branches and to carry out all the foregoing activities for components, parts, settings, fixtures, accessories, tools, devices and system, connected there to and to do all incidental acts and things necessary for the attainment of foregoing objects.

5. The Transferee Company/Applicant was incorporated under the Companies Act, 1956 on 3 1st March 1995 in the name and style of "SAMVAD PARIKARMA PRIVATE LIMITED" in the office of Registrar of Companies, NCT of Delhi and Haryana, under the Corporate Identification No. U74899DL1995PTC058993. Its

present authorized share capital of Rs. 10,00,00,000/- divided into 10,00,000 equity shares of Rs. 100/- each. The present issue, Subscribed and Paid up company of the Transferee Company is Rs. 37,50,000/- divided into 3,75,000 equity shares of Rs. 10/- each.

6. The main object of Transferee Company/Applicant is as set out in Clause III (A) of the Memorandum of Association are stated below:

i. To run a news or Feature Agency for the print media.

ii. To carry on the business as Proprietor and publisher of News Feature and Communication Services, news Papers, Periodicals and such other Print Media related works and undertaking of all such types.

iii. To carry on the business of public relation and advertising agency.

iv. To run Printing and Composing Unit.

v. To own wholly the business Samvad Parikarma, a proprietary concern.

vi. To make, to produce, edit, direct, finance, distribute and make copies of feature and Video Films and to record, distribute and market audio and video tapes and allied equipment.

vii. To undertake assignment through public relation and newspapers to make feature documentary and advertisement films, still and slide projection and Audio Video displays.

7. As per averments, the Transferor Company is desirous of amalgamating with the Transferee Company and has formulated a Scheme of Amalgamation.

8. Copies of the Memorandum of Association and Articles of Association have been filed along with their latest audited Annual Accounts of the transferor and transferee company for the year 2017-2018.

9. Affidavit Under sections 230(9) and other provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by shareholders of Transferor Company and creditors of Transferee Company been filed on record.

10. It has been stated on behalf of the Applicant Companies that the Scheme of Amalgamation is necessitated and justified with the following benefits: -

i. The proposed scheme will result in formation of a larger company enabling further growth and development of the business of the said companies. The scheme will enable the undertakings and business of the said companies to obtain greater facilities possessed and enjoyed by one large company compared to small companies for raising capital, securing and conducting trade and business on favourable terms and other related benefits.

ii. The business of the transferor company and of the transferee company could be combined in such a manner so as to take up the activities, which relate to the business of the Transferee Company.

iii. The proposed scheme will result in reduction in overheads and other expenses reduction in administrative and procedural work eliminate duplication of work better or more productive utilisation of various resources and will enable the undertakings concerned to affect internal economies and optimise productivity.

iv. The proposed scheme will result in formation of a larger company enabling for the growth and development of the business of the said company. The said scheme will enable the undertakings and business of the said company to obtain greater facilities possessed and enjoyed buy one large company compared to a small company for raising capital securing and conducting trade and business on favourable terms and other related benefits.

v. The scheme will enable the company concerned to rationalize and streamline their management businesses and finances and lead to a better and more economic control over the running and Management of the business and undertakings of the said company.

vi. The business of the transferor company and the transferee company can be combined conveniently and advantageously and in general the said businesses will be carried on more economically and profitably after the proposed amalgamation under the proposed scheme.

vii. The proposed scheme will contribute in furthering and fulfilling the objectives of the company concerned and enabling the optimum growth and development of their combined business.

viii. The proposed scheme will thus have beneficial results for both the companies and all concerned.

11. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 20th February, 2019, issued by ANUJ GARG & COMPANY, Chartered Accountants, New Delhi, as per the settled principles of valuation.

12. It is submitted that the transferor company has 2 shareholders. It is also stated that there are neither any secured creditor nor any unsecured creditor in the company. The certificate of chartered accountant has been placed on record.

13. In respect of Transferee Company, it is submitted that the company has 4 shareholders. It is also stated that the company has no secured creditor and 2 unsecured creditors. The certificate of chartered accountant has been placed on record.

14. We have perused the application and the connected documents/papers filed with the application including the Scheme of amalgamation.

15. The Board of Directors of each of the applicant companies vide their respective meetings held on 3 1st January, 20 19 have unanimously approved the proposed Scheme of Arrangement. Copies of the board resolutions passed have been filed.

16. It is submitted that the proposed arrangement is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the Scheme if sanctioned by this Tribunal, will take effect from the date of on which certified copy of the order of sanctioning of proposed Scheme, passed by this Tribunal is filed with the Registrar of Companies after obtaining necessary sanctions, orders or approvals.

17. It has also been submitted that there are no proceedings pending inquiry or investigation in respect of the applicant company.

18. Further, it has been stated that the scheme will be beneficial to the applicant companies and their respective shareholders and creditors.

19. In the aforesaid facts the following directions are issued:

A. In relation to the Transferor Company/Applicant Company

? The Meeting of the shareholders of the transferor company shall be convened on 04.08.2020 at 11:00 am at the registered office of the transferor company. The quorum of the meeting shall be 2 in number present in person.

? The meeting of Secured creditors and unsecured creditors are dispensed with because there is no Secured creditor and unsecured creditor in the company and therefore, the requirement of convening of their respective meetings does not arise.

B. In relation to the Transferee Company/Applicant Company

? The Meeting of the shareholders of the transferor company shall be convened on 04.08.2020 at 1:00 pm at the registered office of the transferee company. The quorum of the meeting shall be 2 in number present in person.

? The meeting of Secured creditors is dispensed with because there is no Secured creditor in the company and therefore, the requirement of convening of their meeting does not arise.

? In view of the Consent affidavits of both the Unsecured Creditors, the requirement of convening the meeting of the Secured Creditor is dispensed with.

C. Mr. Rohit Aggarwal, Advocate (Mobile No. 9810016791) is appointed as the Chairperson and Mr. J.S. Rana, Advocate (Mobile No. 9999686808) is appointed as the Alternate Chairperson and Mr. Aditya Aggarwal, Chartered Accountant (Mobile No. 9541870366) is appointed as Scrutinizer for the aforementioned meetings as may have been directed to be convened by this Tribunal.

D. In case the quorum as noted above for the above meetings are not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. The Chairperson and Alternate Chairperson appointed herein along with scrutinizer shall ensure that the proxy registers are properly maintained.

E. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/- and the fee of the Alternate Chairperson shall be Rs. 1,25,000/- the fee of the Scrutinizer shall be Rs. 1,25,000/-in addition to meeting their incidental expenses. The Chairpersons will file their reports within a week from the date of holding of the above said meetings.

F. That individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through, courier or through, e-mail, 30 days in advance before the scheduled date of the meetings, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

G. That the Applicant Companies shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi editions of 'Business Standard' both English and Hindi stating the copies of Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Company-11/Transferee Company.

H. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of the Applicant Companies under the Companies Act, 2013 and rules framed there under.

I. The companies shall individually send notice to Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana, Official Liquidator along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

J. The Applicant Companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor of the Applicant Company-II/Transferee Company entitled to attend the meetings as aforesaid.

K. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

L. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed in the aforesaid terms.

Let the copy of the order be served to the parties.

