(2023) 05 NCLT CK 0005

In the National Company Law Tribunal

Case No : CA (CAA)/26/MB-IV/2023

Nessa Hearing India Private Limited Vs

Date of Decision : 02-05-2023

Acts Referred:

Companies Act, 2013 — Section 230, 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 05 NCLT CK 0005

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Nithish Bangera

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. This Bench is convened through Video Conferencing.

2. That the present application is for a Scheme of Amalgamation of Nessa Hearing India Private Limited ('Transferor Company') with GN Hearing India Private Limited ('Transferee Company') and their respective shareholders ('Scheme') under sections 232 read with Section 230 of the Companies Act, 2013.

3. The Board of Directors of the Applicant Companies approved the Scheme of Amalgamation on 06th December, 2022. The appointed date of Scheme of Amalgamation is 1st April, 2022.

4. That the Transferor Company is engaged in the business of trading, buying, selling, reselling, importing, exporting, transporting, storing, developing, promoting, retailing, wholesaling, marketing not only limited to digital marketing, supplying, assembling, servicing, customising, to act as distributor, trader, agent, representative, franchiser, consultant, collaborator, stockist, liasioner, consulting, advising for all types of hearing aids and devices and all the accessories relating to thereof in any way to individuals, companies, governments, local authorities, hospitals, dispensaries, association of persons, medical institutions, medical centres, health centres, clinics, NGO's, Trusts, nursing homes, cottage hospitals,

and other Business & Non-Business entities with the help of all means and resources and providing all other services, whether supplementary and complimentary, to the attainment of above businesses. And the Transferee Company is engaged in business of carrying on all or any of the trades or business of manufacturing of hearing aid kits, assembling, servicing, customizing, supplying, purchasing, importing and dealing in all types of hearing aids and allied products, including but not limited to product kits components, apparatus, accessories, circuits, amplifiers and such raw material as are associated with the aforesaid process.

5. The Rationale for the Scheme of Amalgamation is as under:

I. As both the Companies are under same Management and carrying similar and/ or complimentary business, it would be advantageous to combine the activities and operations in a single Company. The Merger would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the merged Company.

II. The proposed Scheme will contribute in furthering and fulfilling the objects of the companies concerned and enabling the optimum growth and development of their combined business.

III. It is considered desirable and expedient to reorganize and merge the business of both the companies so as to have a stronger asset base and skills to conduct the business in the emerging environment and to rationalize the costs of business.

6. The Ld. Counsel submits that in consideration of the transfer and vesting of all the assets and liabilities of the Transferor Company into the Transferee Company in accordance with this Scheme, the Transferee Company shall issue and allot to every member of Transferor Company, holding fully paid up equity shares in Transferor Company and whose names appear in the register of members of Transferor Company on the Effective Date or to such of their heirs, executors, administrators or the successors-in-title in the following manner :-

“The Transferee Company shall, issue and allot 1 (one) equity share of Rs. 10/- (Rupees Ten only), at par as fully paid up, of the share capital of the Transferee Company for 10,000 (Ten Thousand) Equity Shares of the Transferor Company.”

7. The authorized, issued, subscribed and paid-up share capital of the First Applicant Company/ Transferor Company as on 30th June 2022 is as under:

Particulars

Amount (In Rs)

Authorised Capital

1,00,000 Equity Shares of Rs.10/- each

10,00,000

Total

10,00,000

Issued, Subscribed and Paid-up capital

10,000 Equity Shares of Rs.10/- each fully paid up

1,00,000

Total

1,00,000

8. The authorized, issued, subscribed and paid-up share capital of the Second Applicant Company/ Transferee Company as on 30th June 2022 is as under:

Particulars

Amount   (In Rs)

Authorized Capital

2,34,00,000 Equity Shares of Rs.10/- each

23,40,00,000

Total

23,40,00,000

Issued, Subscribed and Paid-up capital

20,98,321 Equity Shares of Rs.10/- each fully paid up

2,09,83,210

Total

2,09,83,210

9. During the hearing, the Ld. Authorised Representative for the Transferee Company submitted that in view of the above submissions, no reconstruction or arrangement is taking place with its shareholders or creditors, and thus, it does not require to hold shareholder and creditors' meeting for approval of the proposed Scheme, in view of ratio laid down by this Tribunal in CA(CAA) No 243 of 2017 in the matter of

“Housing Development Finance Corporation Limited”, in CA(CAA) No. 915 of 2017 in the matter of “Godrej Consumer Products Limited”, in CA(CAA) No. 899 of 2017 in case of “Mahindra CIE Automotive Limited”, in CA(CAA) No. 1019 of 2017 in case of “Godrej Properties Limited”, in CA(CAA) No. 1615 of 2018 in case of “Dolvi Minerals and Metals Private Limited”, in CA(CAA) No. 396 of 2019 in “JSW

Logistic Infrastructure Private Limited", in CA(CAA) No. 1611 of 2019 in "CEAT Specialty Tyres Limited", in CA(CAA) No. 3123 of 2019 in "JAI Corp Limited" and in CA(CAA) No. 4149 of 2019 in "Godrej Properties Limited" and CA(CAA) No.634 of 2020 in "Asian Paints Limited" and CA(CAA) No 1037 of 2020 in "Armstrong World Industries (India) Private Limited". The Ld. Counsel for the Transferee Company submits that the facts in the present case are similar to the facts of above case therefore, no meeting of Shareholders and Creditors of the Transferee Company are required to be convened. The Ld. Authorised Representative for the Applicant Company further clarifies that the Transferee Company will file petition and comply with the provisions of service of notices upon all Regulatory Authorities.

10. The Transferor and Transferee Company has already obtained consents from its respective Members and an affidavit to this effect shall be filed. In view of this, the meeting of the Equity Shareholders of the Transferee Company is dispensed with, subject to filing of consent affidavits from the shareholders along with valid authority in favour of such person swearing the affidavit on behalf of shareholder.

11. There are no Secured Creditors in both the Applicant Companies and therefore, the question of holding a meeting of the Secured Creditors does not arise.

12. The Transferor Company has total 13 Unsecured Creditors totalling to amount of Rs. 56,09,772/- as on November 24, 2022. Since, the present Scheme does not involve an arrangement with Creditors and there will be no diminution of the liability of the Applicant Companies towards the said Unsecured Creditors. This Bench hereby directs the Applicant Company to issue notice through Registered Post-AD/ Speed Post/ hand delivery and e-mail to its all Unsecured Creditors whose name appears in list of Creditors respectively and individually, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Transferee Company. The Notice shall state that "If no representation/ response is received by the Tribunal from Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016".

13. The Transferee Company has 103 Unsecured Creditors having an outstanding amount of Rs. 78,12,86,530/- as on November 24, 2022. Since, the present Scheme does not involve an arrangement with Creditors and there will be no diminution of the liability of the Applicant Companies towards the said Unsecured Creditors. This Bench hereby directs the Applicant Company to issue notice through Registered Post-AD/ Speed Post/ hand delivery and e-mail to its all Unsecured Creditors whose name appears in list of Creditors respectively and individually, as required under Section 230(3) of the Companies Act, 2013 with a

direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Transferee Company. The Notice shall state that "If no representation/ response is received by the Tribunal from Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016".

14. That there are no Secured and Unsecured Lenders in Applicant Companies and therefore the question of holding a meeting of the Secured and Unsecured Lender does not arise.

15. Since, individual notices is being sent to all the Creditors, meeting of the Creditors is dispensed with, subject to filing of service of proof evidencing service of notice(s) on such creditors on an affidavit duly sworn by the director of petitioner companies.

16. That the Applicant Companies are directed to serve notices along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the -

(i) Central Government through the office of Regional Director, Western Region, Mumbai;

(ii) Jurisdictional Registrar of Companies;

(iii) Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: mumbai.pccit@incometax.gov.in];

(iv) Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law;

(v) Ministry of Corporate Affairs; and

(vi) Any other Sectoral/ Regulatory Authorities relevant to the Petitioner Companies or their business.

17. The Transferor Companies are also directed to serve the Copy of Scheme upon the Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Notice shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery and email along with copy of Scheme and state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the

date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme". It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

19. The Applicant Companies will submit –

a. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.

b. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.

c. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

20. The Applicant Companies to file affidavit of service within 15 (fifteen) days from the last of the compliances as stated in above paragraphs are made and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

