(2022) 02 NCLT CK 0065

In the National Company Law Tribunal

Case No : C.A.(CAA)/10/MB /2022

Netscribes (India) Private Limited Vs

Date of Decision : 25-02-2022

Acts Referred:

Companies Act, 2013 — Section 103, 230, 230(5)
Companies (Management and Administration) Rules, 2014 — Rule 19
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 8, 7, 12

Citation : (2022) 02 NCLT CK 0065

Hon'ble Judges : P. N. Deshmukh, Member, J;Shyam Babu Gautam, Member, T

Bench : Division Bench

Advocate : Akshay Petkar, Aniket Malu, Rinku Ambekar, Piyush Landge

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member Technical

1. This Court convened through video conference.

2. Counsel for the Applicant Companies states that the present Scheme is a Scheme of Merger by Absorption ("Scheme") amongst Netscribes (India) Private Limited ("Transferor Company") and NS Oxymoron Advisors Private Limited ("Transferee Company") and their respective shareholders and creditors.

3. A meeting of the Equity Shareholders of the First Applicant/Transferor Company be convened and held at Office No. 504, 5th Floor, Lodha Supremus, Lower Parel, Mumbai – 400 013 on 31st day of March, 2022 at 11:00 AM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme amongst Netscribes (India) Private Limited, NS Oxymoron Advisors Private Limited and their respective shareholders and creditors.

4. A meeting of the Unsecured Creditors of the First Applicant/Transferor Company be convened and held at Office No. 504, 5th Floor, Lodha Supremus, Lower Parel, Mumbai – 400 013 on 31st day of March, 2022 at 11:30 PM for the

purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme amongst Netscribes (India) Private Limited, NS Oxymoron Advisors Private Limited and their respective shareholders and creditors.

5. A meeting of the Equity Shareholders of the Second Applicant/Transferee Company be convened and held at Office No. 504, 5th Floor, Lodha Supremus, Lower Parel, Mumbai – 400 013 on 31st day of March, 2022 at 12:00 AM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme amongst Netscribes (India) Private Limited, NS Oxymoron Advisors Private Limited and their respective shareholders and creditors.

6. A meeting of the Secured Creditors of the Second Applicant/Transferee Company be convened and held at Office No. 504, 5th Floor, Lodha Supremus, Lower Parel, Mumbai – 400 013 on 31st day of March, 2022 at 1:00 PM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme amongst Netscribes (India) Private Limited, NS Oxymoron Advisors Private Limited and their respective shareholders and creditors.

7. A meeting of the Unsecured Creditors of the Second Applicant/Transferee Company be convened and held at Office No. 504, 5th Floor, Lodha Supremus, Lower Parel, Mumbai – 400 013 on 31st day of March, 2022 at 1:30 PM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme amongst Netscribes (India) Private Limited, NS Oxymoron Advisors Private Limited and their respective shareholders and creditors.

8. All the above said meeting of the Equity Shareholders of the Joint Applicant Companies may be held either in “physical mode” OR in “audio visual mode along with provision of E-Voting facility” to the respective Equity Shareholders of the Joint Applicant Companies in accordance with the provisions of the Companies Act and related Rules. If meeting held in audio visual mode & by electronic means, then the business of these Convened Meetings shall be transacted through e-Voting Services.

9. All the above said meeting of the Secured and Unsecured Creditors of the Joint Applicant Companies may be held in “physical mode” OR in “audio visual mode along with provision of E-Voting facility” to the respective Secured Debenture Holders in accordance with the provisions of the Companies Act and related Rules. If meeting held in audio visual mode & by electronic means, then the business of these Convened Meetings shall be transacted through e-Voting Services.

10. In case of the above said Convened Meetings held in audio visual mode along with provision of E-Voting facility, then the Equity Shareholders/Secured Creditors/Unsecured Creditors shall be provided with the facility for voting either

through electronic voting system or polling paper at these Convened Meetings and Equity Shareholders/Secured Creditors/Unsecured Creditors attending the meeting who have not already cast their vote by remote e-voting are eligible to exercise their right to vote at the meeting through ballot paper. Equity Shareholders/Secured Creditors/Unsecured Creditors who have cast their vote by remote e-voting, prior to these Convened Meetings are also eligible to attend the meeting but shall not be entitled to cast their vote again. Members can opt for only one mode of voting, i.e. either by e-voting or at these Convened Meetings through polling paper.

11. At least 30 clear days before the said meeting of the Equity Shareholders/ Secured Creditors/Unsecured Creditors of the Joint Applicant Companies to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by speed post or by courier or by hand delivery to each of the Equity Shareholders/Secured Creditors/Unsecured Creditors of the Joint Applicant Companies at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders/Secured Creditors/ Unsecured Creditors as per the records of the respective Joint Applicant Companies.

12. At least 30 clear days before the Meeting of the Equity Shareholders of the Joint Applicant Companies to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the Registered Office of the respective Applicant Companies, shall be published once each in ‘Free Press Journal’ in English and ‘Navshakti’ in Marathi, both circulated in Mumbai.

13. The Applicant Companies is directed to:

i. Issue Notice convening meeting of the Equity Shareholders in Form No.CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;

iii. Issue Form of Proxy in Form No.MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and

iv. Advertise the Notice convening meeting in Form No.CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

14. Mr. M.A. Kuvadia, former Regional Director of Ministry of Corporate Affairs, R/ o 402, Arvind Centre, Prabhat colony, Santa Cruz, (East), Mumbai – 400055,

Mobile No. 9320220229 is appointed as the Chairperson for the meeting of the Equity Shareholders of the Transferor Company. Mr. M.A. Kuvadia, is appointed as the Chairperson for the meeting of the Unsecured Creditors of the Transferor Company. Mr. M.A. Kuvadia, is appointed as the Chairperson for the meeting of the Equity Shareholders of the Transferee Company. Mr. M.A. Kuvadia, is appointed as the Chairperson for the meeting of the Secured Creditors of the Transferee Company. Mr. M.A. Kuvadia, is appointed as the Chairperson for the meeting of the Unsecured Creditors of the Transferee Company. The chairman shall be paid Rs. 3,00,000/- fee for conducting and convening the aforesaid meetings. The Scrutinizer for the above meetings of the above Joint Applicant Companies shall be Mr. Yuvraj Gharat. The Scrutinizer shall be paid fee of Rs. 1,50,000/- for the said meetings.

15. The Chairperson appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (or any re-enactment thereof upon effectiveness of Companies Act, 2013) in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

16. The quorum for the aforesaid meetings of the Equity Shareholders/Secured Creditors/Unsecured Creditors shall be as prescribed under Section 103 of the Companies Act, 2013.

17. The voting by proxy or authorized representative in case of body corporate shall be permitted, provided that a proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the meetings, is filed with the respective Applicant Company at its Registered Office, not later than, 48 hours before the aforesaid meetings as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The value and number of the shares of each member shall be in accordance with the books/register of the respective Applicant Company or depository records and where the entries in the books register/depository records are disputed, the Chairperson for the respective Meeting shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

19. The Chairperson or the respective meeting to file an affidavit not less than seven days before the date fixed for the holding of the respective meeting of Equity Shareholders/Secured Creditors/Unsecured Creditors do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The Chairperson for the respective meeting to report to this Tribunal the result of the aforesaid meetings of equity shareholders within 7 days after the conclusion of the meeting of Equity Shareholders/Secured Creditors/Unsecured Creditors and the said report shall be filed as per Form CAA 4 under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21. The Applicant Companies to serve the notice upon the concerned Regional Director, Western Region, Mumbai pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

22. The Applicant Companies to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

23. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to the following jurisdictional Income Tax Authority.

Sr.

No.

Name of the Applicant

Companies

PAN No.

Address

1.

Netscribes (India) Private Limited

Transferor Company

AABCN1298F

The Income Tax Authorities / Commissioner of Income Tax Aaykar

Bhavan, Marne Lines,

Mumbai – 400002.

2.

NS Oxymoron

Advisors Private Limited

Transferee Company

AACCN7742F

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If no response is received by the concerned Tribunal from the above said Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The Applicant Companies to serve the notice on the GST Authority.

24. The Applicant Companies to serve the notice upon the concerned office of the Official Liquidator, pursuant to Section 230 (5) of the Companies Act, 2013 a per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Office of the Official Liquidator within 30 days of the date of the receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

25. The Transferee Company to serve the notice upon the concerned office of the Securities and Exchange Board of India, (SEBI) pursuant to Section 230 (5) of the Companies Act, 2013 a per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Office of SEBI within 30 days of the date of the receipt of the notice it will be presumed that SEBI has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

26. The Applicant Companies to file an Affidavit of Service of the directions given by the Tribunal not less than seven days before the date fixed for holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.