
(2020) 02 NCLT CK 0148

In the National Company Law Appellate Tribunal

Case No : Company Application No. CA (CAA) No. 11 (ND) Of 2020

New Modern Overseas Private Limited And Ors

APPELLANT

Vs

Newstar Information Systems Private Limited

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 3(2)

Companies Act, 2013 — Section 133, 230, 230(2), 231, 232

Citation : (2020) 02 NCLT CK 0148

Hon'ble Judges : Dr. P.S.N. Prasad, J; Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Advocate : Rekha Mittal

Judgement

Dr. P.S.N. Prasad, J

1. This is an application filed by the 5(five) applicant companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'The Rules') in relation to the Scheme of Amalgamation (for brevity the "SCHEME") proposed between the applicants.

2. Affidavits in support of the application sworn for and on behalf of the Applicant Companies have been filed by Sarla Gupta, being the authorized representative,

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that the application filed by the applicants is maintainable in terms of Rule 3(2) of the Rules and it is also represented that the registered office of the applicants company are situated within the territorial jurisdiction of this Tribunal and fall within domain of Registrar of Companies, NCT, New Delhi.

4. In relation to the Applicant Company No. 1, it has been represented that company has 4 Equity Shareholders and all have given their consents by way of

deposing individual affidavits. The consent affidavits of each of the members have been placed on record. We are further apprised that the Applicant Company has nil Secured Creditor and nil Unsecured Creditors. Since the transferor company no. 1 has no secured and no unsecured creditor the requirement of convening meeting of Secured and Unsecured creditor does not arise. In relation to the shareholders, the transferor company No. 1 seeks dispensation from convening and holding of their respective meetings, on the ground that all the shareholders have given consent in favour of the Scheme.

5. In relation to the Applicant Company No. 2, it has been represented that company has 7 Equity Shareholders and consent affidavits from all the shareholders have been obtained constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. We are further apprised that the Applicant Company has nil Secured Creditors and 3 Unsecured Creditors. The consent affidavit from all unsecured creditor have also been obtained and have been placed on record. Since the transferor company no. 2 has no secured creditor the requirement of convening meeting of Secured creditor does not arise. In relation to the shareholders and unsecured creditors, the transferor company No. 2 seeks dispensation from convening and holding of their respective meetings, on the ground that all the shareholders as well as all the unsecured creditors have given consent in favour of the Scheme.

6. In relation to the Applicant Company No. 3, it has been represented that company has 12 Equity Shareholders and consent affidavits from all the shareholders have been obtained constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. We are further apprised that the Applicant Company has 1 Secured Creditors and 7 Unsecured Creditors. The consent affidavit from the secured creditor have also been obtained and have been placed on record. With regard to unsecured creditor of the transferee company the proof of payment to all the unsecured creditor is attached with the petition, hence requirement of convening the meeting has been dispensed with. In relation to the shareholders and secured creditor, the transferee company seeks dispensation from convening and holding of their respective meetings, on the ground that all the shareholders as well as the secured Creditor have given consent in favour of the Scheme.

7. The above application has been placed before us and this Tribunal proceeds to entertain the same. The registered offices of all the applicant companies are situated within New Delhi which are subject to the territorial jurisdiction of Registrar of Companies, NCT, New Delhi as well as that of this Tribunal.

8. We have perused the application and the connected documents filed along with the Scheme of Arrangement contemplated between the Companies.

9. Applicant Company No. 1 was incorporated on 14.05.1990 in the state of Delhi under the provisions of Companies Act, 1956. The authorised share capital of the

Company is Rs. 25,00,000 only divided into 2,50,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the Company is Rs. 13,80,000/- only divided into 1,38,100/- equity shares of Rs. 10 each.

10. Applicant Company No. 2 was incorporated on 20.08.2006 in the state of Delhi under the provisions of Companies Act, 1956. The authorised share capital of the Company is Rs. 2,35,00,000/- only divided into 23,50,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the Company is Rs. 2,31,77,500/- only divided into 23,17,750/- equity shares of Rs. 10 each.

11. Applicant Company No. 3 was incorporated on 10.06,1996 in the state of Delhi under the provisions of Companies Act, 1956. The authorised share capital of the Company is Rs. 1,00,00,000/- only divided into 10,00,000/- equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the Company is Rs. 99,07,000/- only divided into 9,90,700/- equity shares of Rs. 10 each.

12. It is seen that the board of directors of all the applicant companies vide meetings held on 27.11.2019 have unanimously approved the proposed Scheme of Amalgamation. Copies of such resolutions passed thereat have been placed on record by the applicant companies.

13. The appointed date for the Scheme of Amalgamation is 01.04.2019. The share exchange ratio as per the Scheme are as:

a. 0.0737 Equity Shares of Rs. 10 each to be issued and allotted by the Transferee Company in lieu of every 1 Equity Share of Rs. 10/- each fully paid up to the shareholders of New Modern Overseas Private Limited, i.e. The Transferor Company No 1.

b. 0.0005 Equity Shares of Rs. 10 each to be issued and allotted by the Transferee Company in lieu of every 1 Equity Share of Rs. 10/- each fully paid up to the shareholders of Indo Global Techno- Trade Limited, i.e. The Transferor Company No, 2.

14. The Applicant Companies has filed the Audited Financial Statements for the financial year ended 31st March, 2019.

15. It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the same if sanctioned by this Tribunal the appointed date as provided in the Scheme shall be 01.04,2019.

16. The applicant company has submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 is pending against any of the applicant companies.

17. Certificate of respective statutory auditors of the applicant companies have been placed on record confirming that the accounting treatment in the scheme is in conformity with Section 133 of the Companies Act, 2013.

18. In the light of the facts and taking into consideration the application filed by the Applicant Companies the following directions are issued; -

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

i. With respect to Shareholders:

It is represented by the Applicant that all the shareholders have already placed their consent-affidavits on record. Therefore the necessity of convening and holding a meeting is obviated.

ii. With respect to Secured Creditors:

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

iii. With respect to Unsecured Creditors:

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

B. In relation to the Applicant Company No. 2:

i. With respect to Shareholders:

It is represented by the Applicant that all the shareholders have already placed their consent-affidavits on record Therefore the necessity of convening and holding a meeting is obviated.

ii. With respect to Secured Creditors:

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

iii. With respect to Unsecured Creditors:

It is represented by the Applicant that the unsecured creditors have already placed their consent-affidavits on record. Therefore the necessity of convening and holding a meeting is obviated.

C. In relation to the Applicant Company No. 3:

i. With respect to Shareholders:

It is represented by the Applicant that all the shareholders have already placed their consent-affidavits on record. Therefore the necessity of convening and holding a meeting is obviated.

ii. With respect to Secured Creditors:

It is represented by the Applicant that the secured creditors have already placed

their consent-affidavits on record. Therefore the necessity of convening and holding a meeting is obviated.

iii. With respect to Unsecured Creditors:

It is represented by the Applicant that all the unsecured creditors have already been paid off. Therefore the necessity of convening and holding a meeting is obviated.

Notice of this Application shall also be served to all concerned regulators, i.e. on the Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhavan, CGO Complex, New Delhi-110 003, Registrar of Companies at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110 019; the Official Liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi -110 001; the office of the Income Tax Department, Income Tax Officer, Ward - 7(4), Central Revenue Building, IP Estate, New Delhi-110 002 and Office of the Income Tax Department, Income Tax Officer, 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 card numbers, ward numbers and assessing officers so that timely and proper reply may be filed,