

(2021) 09 NCLT CK 0005

In the National Company Law Tribunal

Case No : CAA- 84 /PB/2021 Connected with CA (CAA)-05(PB)/2021

Nirjara Enterprise Limited Vs

Date of Decision : 09-09-2021

Acts Referred:

Companies Act, 2013 — Section 230, 230(4), 230(7), 232, 323(3)
Companies (Compromise, Arrangements, Amalgamation) Rules, 2016 — Rule 15(1)

Citation : (2021) 09 NCLT CK 0005

Hon'ble Judges : Bhaskara Pantula Mohan, Member (J); Hemant Kumar Sarangi, Member (T)

Bench : Division Bench

Advocate : Ashutosh Gupta, Gaurav Rana, Harshit Garg

Judgement

Bhaskara Pantula Mohan, Hon'ble ACTG. President

1. This Company Petition for second motion has been jointly filed by the Petitioner Companies, under the provisions of Sections 230-232 of the Companies Act, 2013 read with Rule 15(1) of the Companies (Compromise, Arrangements, Amalgamation) Rules, 2016 for the Scheme of Arrangement (for brevity "The Scheme") praying for fixing a date of hearing of the main Company Petition for approving the scheme of arrangement by way of amalgamation as well as for issuance of directions concerning publication of notices in press to be carried and notices to be issued to the authorities concerned including regulators, if any.

2. From the records, it is seen that the First Motion application was filed before this Tribunal vide CA (CAA)- 05(PB)2021 and based on such application moved, under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal for the meeting of the Equity Shareholders of all the Transferor Companies, vide order dated 10.05.2021. A copy of the Chairperson's report dated 12.07.2021, along with e-filing receipt has been annexed. In view of the absence of any Secured Creditors for all the Transferor Companies and the Transferee Company, the necessity of convening their respective meetings did not arise. In relation to the Unsecured Creditors for all the Transferor Companies

and the Transferee Company, the Transferor Company-3 has only 1 (One) Unsecured Creditor and the consent affidavit was given by the Sole Unsecured Creditor constituting 100% in terms of value. In view of the same, the meeting of the Unsecured Creditors was dispensed with vide order dated 10.05.2021. This petition was filed on 19.07.2021 as chairperson report filed on 12.07.2021, hence the second motion petition is filed within time.

3. Taking into consideration the submissions made and documents placed on record, it is hereby ordered as follows:

i. Notice of the hearing shall be advertised in the English Daily, newspapers namely, "Business Standard" (English, Delhi edition) and "Business Standard" in (Hindi, Delhi Edition) not less than 10 days before the aforesaid date fixed for hearing.

ii. In addition to the above public notice, each of the Petitioners shall serve the notice of the Petitioner on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the Income Tax Department, through the Income Tax Cell at DCIT (High Court Cell), Lawyer's Chamber, Block No. 1, Room No. 428 & 429, Delhi High Court, New Delhi, and the Official Liquidator along with full details of assessing officer and PAN numbers of all the applicant companies; and to such other Sectoral Regulatory Authorities who may govern the working of the respective companies involved in the Scheme at least 30 days before the date fixed for hearing of the above Petition.

iii. Further, notices shall also be served to Objector(s) or to their representative, if any, as contemplated under Sub- Section (4) of Section 230 of the Act, who may have made representation and who have desired to be heard in their representation, along with a copy of the Petition and the Annexures filed therewith, at least 15 days before the date fixed for hearing.

iv. All the Applicants, at least 7 days before the date of hearing of the Petition, shall file an affidavit of service in relation to publication effected in the newspapers, as well as service of notices on the Authorities specified above, including the Sectoral regulators as well as to Objectors, if any.

v. Objections to the Scheme, if any, contemplated by the authorities, to whom notices have been given, may be filed on or before the date of hearing fixed herein, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities and subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed there under.

vi. Each of the Petitioner Companies shall individually comply with proviso to sub section (3) of Section 232 or proviso to sub section (7) of Section 230, of the Act, 2013, as may be applicable, under the circumstances on or before the date

fixed for hearing by filing the certificate of statutory auditors of the Petitioner Companies.

vii. The next date of hearing of the Petition shall be on 22.10.2021 for the consideration of the approval of the Scheme of Arrangement as contemplated between the Petitioner Companies.