(2023) 04 NCLT CK 0050

In the National Company Law Tribunal

Case No : C.A. (CAA)/114/MB /2022

Nowonext Private Limited Vs

Date of Decision : 28-04-2023

Acts Referred:

Companies Act, 2013 — Section 230, 230(1)(a), 230(1)(b), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 04 NCLT CK 0050

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ajit Singh Tawar

Final Decision : Disposed Of

Judgement

Kuldip Kumar Kareer, Member (Judicial)

UPON the application of the Applicant Companies above named by a Company Notice of Admission AND UPON HEARING Mr. Ajit Singh Tawar i/b Ajit Singh Tawar & Co, Advocates for the Applicant Companies AND UPON READING the Application along with the Notice of Admission dated 22nd day of April, 2022 of Mr. Mohan Kavrie, Authorized Signatory of the Applicant Companies, in support of Notice of Admission along with Application and Annexures therein referred to, IT IS ORDERED THAT:

1. This Court is convened by video conferencing.

2. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Merger by Absorption of Nowonext Private Limited (‘First Applicant Company’ or ‘First Transferor Company’) and Nextnowo Private Limited (‘Second Applicant Company’ or ‘Second Transferor Company’) with Supreme Nonwovens Private Limited (‘Third Applicant Company’ or ‘Transferee Company’) and their respective Shareholders.

3. The Learned Counsel for the Applicant Companies submits that the First Applicant Company is engaged in the business of manufacturing, processing,

producing, transporting, developing nonwoven items and to act as management consultant and render engineering, technical management and other skilled services to all types of industry and to carry on business of traders, importers, exporters of goods and services.

4. The Learned Counsel for the Applicant Companies submits that the Second Applicant Company is engaged in the business of manufacturing, buying, selling, importing, exporting of all kinds of automotive trim components and to act as management consultant and render engineering, technical management and other skilled services to all types of industry and to carry on business of traders, importers, exporters of goods and services.

5. The Learned Counsel for the Applicant Companies submits that the Third Applicant Company is engaged in the business of manufacturing, processing, producing, transporting, developing nonwoven items and to act as management consultant and render engineering, technical management and other skilled services to all types of industry and to carry on business of traders, importers, exporters of goods and services.

6. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 05th day of April, 2022 have approved the proposed Scheme with the Appointed Date as 1st April, 2022. The Board Resolution approving the Scheme for the Applicant Companies are annexed as Annexure 'G(Colly)' to the Company Scheme Application.

7. The Appointed Date for the Scheme of Merger by Absorption is 1st day of April, 2022.

8. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31st day of March, 2022 is as under:

i. The Authorized Share Capital of the First Applicant Company is Rs. 5,70,00,000/- divided into 5,70,000 Equity shares of Rs. 100/- each. Issued, Subscribed and Paid-up Share Capital of the First Applicant Company is Rs. 5,46,93,100/- divided into 5,46,931 Equity shares of Rs. 100/- each

ii. The Authorized Share Capital of the Second Applicant Company is Rs. 5,10,00,000/- divided into 5,10,000 Equity Shares of Rs. 100/-each. Issued, Subscribed and Paid-up Share Capital of the Second Applicant Company is Rs. 4,80,70,100/- divided into 4,80,701 Equity Shares of Rs. 100/- each.

iii. The Authorized Share Capital of the Third Applicant Company is Rs. 1,00,00,000/- divided into 1,00,000 Equity Shares of Rs. 100/- each. Issued, Subscribed and Paid-up Share Capital of the Third Applicant Company is Rs. 15,00,000/- divided into 15,000 Equity Shares of Rs. 100/- each.

9. The Learned Counsel for the Applicant Companies further submits that the rationale for the Scheme is as follow:

The Objects/ Rationale of the Scheme is as follows:

The Transferor Companies and Transferee Company are engaged in the similar line of business. Combining of businesses would help in achieving operational efficiency, streamlining the business operations and reduction in compliance cost; hence it is proposed inter-alia to amalgamate the Transferor Companies into the Transferee Company. The proposed amalgamation will also result in following benefits:

a. Consolidation of the Transferor Companies and the Transferee Company will achieve simplified corporate structure, rationalize the number of entities and result in a single entity with combined businesses.

b. Provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, it will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capacities, experience and infrastructure of the Transferor Companies and Transferee Company.

c. Reducing managerial overlaps involved in operating multiple entities, enable cost savings and effective utilization of valuable resources which will enhance the management focus thereby leading to increase in operational and management efficiency; integrate business functions; eliminate duplication and rationalization of administrative expenses.

d. Synchronization of efforts to achieve uniform corporate policy, greater integration and greater financial strength and flexibility for the Transferee Company.

e. Upon completion of the Merger, the Transferor Companies will be dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit compliance requirements, tax filings, company law compliances, etc. and therefore reduction in administrative costs.

10. The Learned Counsel for the Applicant Companies submits that as the Transferor Companies are indirect subsidiaries of the Transferee Company, no consideration shall be payable pursuant to the Merger by Absorption of the Transferor Companies with the Transferee Company.

11. The Learned Counsel for the Applicant Companies submits that as on 31st day of March 2022, there are 2 (Two) equity shareholders in First Applicant Company holding 546931 Equity Shares of Rs. 100/- each amounting to Rs. 5,46,93,100/-, all the Equity Shareholders of the First Applicant Company have given their consent in writing to the proposed Scheme. The Consent Affidavits of the First Applicant Company are annexed as Annexure 'K (COLLY)'' to the Company Scheme Application. In view of the Consent Affidavits filed by all the Equity Shareholders of the First Applicant Company, the meetings of the Equity Shareholders of the First Applicant Company, for the purpose of considering and,

if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with.

12. The Learned Counsel for the Applicant Companies submits that as on 31st day of March 2022, there are 2 (Two) equity shareholders in Second Applicant Company holding 480701 Equity Shares of Rs. 100/- each amounting to Rs. 4,80,70,100/-, all the Equity shareholders of the Second Applicant Company have given their consent in writing to the proposed Scheme. The Consent Affidavits of the Second Applicant Company are annexed as Annexure 'N (COLLY.)' to the Company Scheme Application. In view of the Consent Affidavits filed by all the Equity Shareholders of the Second Applicant Company, the meetings of the Equity Shareholders of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with.

13. The Learned Counsel for the Applicant Companies submits that as on 31st day of March 2022, there are 6 (Six) equity shareholders in Third Applicant Company holding 15000 Equity Shares of Rs. 100/- each amounting to Rs. 15,00,000/-, all the Equity shareholders of the Third Applicant Company have given their consent in writing to the proposed Scheme. The Consent Affidavits of the Third Applicant Company are annexed as Annexure 'Q (COLLY.)' to the Company Scheme Application. In view of the Consent Affidavits filed by all the Equity Shareholders of the Third Applicant Company, the meetings of the Equity Shareholders of the Third Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with.

14. The Learned Counsel for the Applicant Companies submits that the Applicant Companies do not have any Secured Creditors, therefore, the question of convening and holding of the meeting of Secured Creditors of the Applicant Companies does not arise.

15. The Learned Counsel for the Applicant Companies submits that the First Applicant Company has 3 (Three) Unsecured creditors aggregating Rs. 1,08,10,793/- (Rupees One Crore Eight Lakh Ten Thousand Seven Hundred Ninety-Three Only) as on 31st day of March, 2022. As, the present Scheme of Merger by Absorption is contemplated under Section 230(1) (b) and not in accordance with the provisions of Section 230 (1) (a) of the Companies Act, 2013 and there is no Compromise and/or Arrangement with the Unsecured Creditors as no sacrifice is called for, the meetings of the Unsecured Creditors of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. However, the First Applicant Company undertakes to serve notice of application to all its unsecured creditors as on 31st day of March, 2022 and procure the consent of ninety percent in value of the Unsecured Creditors to the Scheme before the final sanction of the Scheme by the Tribunal. The Auditor's Certificate verifying the list of Unsecured Creditors of the First Applicant

Company is annexed as “Annexure L1” to Company Scheme Application.

16. The Learned Counsel for the Applicant Companies submits that the Second Applicant Company has 9 (Nine) Unsecured creditors aggregating Rs. 1,43,15,502.50 (Rupees One Crore Forty-Three Lakhs Fifteen Thousand Five Hundred Two and Fifty Paise) as on 31st day of March, 2022. As, the present Scheme of Merger by Absorption is contemplated under Section 230(1) (b) and not in accordance with the provisions of Section 230 (1) (a) of the Companies Act, 2013 and there is no Compromise and/or Arrangement with the Unsecured Creditors as no sacrifice is called for, the meetings of the Unsecured Creditors of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. However, the Second Applicant Company undertakes to serve notice of application to all its unsecured creditors as on 31st day of March, 2022 and procure the consent of ninety percent in value of the Unsecured Creditors to the Scheme before the final sanction of the Scheme by the Tribunal. The Auditor’s Certificate verifying the list of Unsecured Creditors of the Second Applicant Company is annexed as “Annexure O1” to Company Scheme Application.

17. The Learned Counsel for the Applicant Companies submits that the Third Applicant Company has 6 (Six) Unsecured creditors aggregating Rs. 19,09,29,465 (Rupees Nineteen Crore Nine Lakh Twenty-Nine Thousand Four Hundred Sixty-Five Only) as on 31st day of March, 2022. As, the present Scheme of Merger by Absorption is contemplated under Section 230(1) (b) and not in accordance with the provisions of Section 230 (1) (a) of the Companies Act, 2013 and there is no Compromise and/or Arrangement with the Unsecured Creditors as no sacrifice is called for, the meetings of the Unsecured Creditors of the Third Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. However, the Third Applicant Company undertakes to serve notice of application to all its unsecured creditors as on 31st day of March, 2022 and procure the consent of ninety percent in value of the Unsecured Creditors to the Scheme before the final sanction of the Scheme by the Tribunal. The Auditor’s Certificate verifying the list of Unsecured Creditors of the Third Applicant Company is annexed as “Annexure R1” to Company Scheme Application.

18. The First Applicant Company is directed to serve notice upon the – (1) Central Government through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Income Tax Authority within whose jurisdiction the First Applicant Company is assessed to tax, bearing PAN number AAHCN0174A having IT ward jurisdiction Ward 14(2)(1), Mumbai; (4) Official Liquidator, High Court Bombay and (5) GST Authority within whose jurisdiction the First Applicant Company is assessed to GST, bearing GSTIN 26AAHCN0174A2ZW having jurisdiction Silvassa, pursuant to Section

230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

19. The Second Applicant Company is directed to serve notice upon the –(1) Central Government through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Income Tax Authority within whose jurisdiction the Second Applicant Company is assessed to tax, bearing PAN number AAHCN9904G having IT ward jurisdiction Ward 14(2)(1), Mumbai; (4) Official Liquidator, High Court Bombay and (5) GST Authority within whose jurisdiction the Second Applicant Company is assessed to GST, bearing GSTIN 26AAHCN9904G1Z9 having jurisdiction Daman, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

20. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Transferor Companies.

21. The Third Applicant Company is directed to serve notice upon the –(1) Central Government through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Income Tax Authority within whose jurisdiction the Third Applicant Company is assessed to tax, bearing PAN number AAACS5921R having IT ward jurisdiction Circle 14(1)(2), Mumbai; and (4) GST Authority within whose jurisdiction the Third Applicant Company is assessed to GST, bearing GSTIN 27AAACS5921R2ZS having jurisdiction Navi Mumbai, pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

22. That the Applicant Companies to file Affidavit of Service, with the Registry proving dispatch of notices to creditors and regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

23. Ordered accordingly.

