
(2024) 03 NCLT CK 0038

In the National Company Law Tribunal

Case No : CA (CAA)/No. 11 (MB)/2024

One Global Service Provider Limited Vs

Date of Decision : 13-03-2024

Acts Referred:

Companies Act, 2013 — Section 102, 103, 230, 230(1)(b), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8, 12, 14

Citation : (2024) 03 NCLT CK 0038

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Megha Samdani

Final Decision : Disposed Of

Judgement

1. The Bench is convened by physical mode.
2. Learned Counsel for the Transferor Companies and Transferee Company (collectively referred to as ?Applicant Companies?) stated that the present Scheme is a Scheme of Amalgamation of Plus Care International Private Limited, the Transferor Company with One Global Service Provider Limited, Transferee Company under sections 230 to 232 of the Companies Act, 2013 (?Scheme?).
3. Learned Counsel for the Applicant Companies stated that the Board of Directors of the Transferor Companies and Transferee Company in their meetings conducted on 06th March, 2023 for the Transferor Companies and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is 19th January, 2023.
4. Learned Counsel of the Transferee Company stated that it had duly received an Observation Letter from the Bombay Stock Exchange vide e-letter number DCS/AMAL/TL/R37/2892/2023-24 dated 30th August, 2023 stating that the Stock exchange had no adverse observations having bearing on the listing requirements within the provisions of the Listing Agreement.
5. The rationale for the proposed Scheme was as under:

? Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity;

? The Proposed amalgamation will offer an immense opportunity to consolidate the portfolio of brands and products that are relevant to the ?Health Industry? under a single roof;

? The Proposed amalgamation will enable the merged entity to cater to the needs of entire value chain. This can have a better reach in terms of various customer base and will provide a stronger market position of the company;

? The Proposed amalgamation will result in greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.

? Improved organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.

? Greater access by the amalgamated company to different market segments in the conduct of its business.

? Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.

? Achieving economies of scale.

6. Learned Counsel of the Applicant Companies informed that there are no Secured Creditors in the Transferee Company mentioned in the Application. Hence, no consent/ no objection letter to the proposed Scheme of Amalgamation is required. The meeting of Secured Creditors is hereby dispensed with.

7. Learned Counsel of the Applicant Companies informed that in Transferee Company there are only 64 (Eight) Unsecured Creditors having outstanding value of Rs 14,38,21,543 /- as on 30th June 2023. That the Transferee Company submits that they have not obtained consents from the creditors Learned Counsel of the Applicant Companies informed that the meeting of the unsecured creditors of the Transferee Company for the purpose of considering the proposed Scheme, shall be convened via Video Conferencing / Other AudioVisual Means.

8. Learned Counsel of the Applicant Companies informed that in Transferee company affidavit received from shareholders holding 29.42 % equity shares and consent received from shareholders holding 29.42 % equity shares. Learned Counsel of the Applicant Companies informed that the meeting of the Equity Shareholders of the Transferee Company for the purpose of considering the proposed Scheme, shall be convened via Video Conferencing / Other AudioVisual Means.

9. Learned Counsel of the Applicant Companies informed at least 21 clear days before the said meetings of the Equity Shareholders and Unsecured Creditors of the Transferee Company to be held as aforesaid, a notice convening the said Meetings 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 102 of the Companies Act, 2013, shall be sent by registered post or by email or by courier or by speed post to each of the Equity Shareholders and Unsecured Creditors of the Transferee Company at their respective registered or last known addresses or by e-mail to the Equity Shareholders and Unsecured Creditors as per the records of the Transferee Company and its Registrar and Transfer Agent.

10. The Transferee Company undertook to:

(a) Issue notice convening meetings of the Equity Shareholders and Unsecured Creditors as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

(b) issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;

11. Advertise the notice convening meetings as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

12. That Mr. Sanjay Upadhaya of the Transferee Company be the Chairperson of the meeting of Equity Shareholders and Unsecured Creditors of the Transferee Company. Learned Counsel of the Applicant Companies informed that the meeting of the Equity Shareholders and unsecured creditors of the Transferee Company for the purpose of considering the proposed Scheme, shall be convened via Video Conferencing / Other AudioVisual Means.

The Scrutinizer for the meetings of the Transferee Company shall be CA Rahul Shukla (Membership Number: 046634, proprietor of Rahul Shukla & associates, having its office at 201, Pawan Wing, Indapraस्था Building, Satyanagar, Borivali (West), Mumbai: 400092.

13. The Chairperson appointed for the aforesaid meeting of Equity Shareholders and Unsecured Creditors of the Transferee Company to issue the notices of the meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise 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).

14. The quorum for the aforesaid meetings of the Equity Shareholders and Unsecured Creditors of Transferee Company shall be as prescribed under Section 103 of the Companies Act, 2013.

15. The value and number of the shares of each member shall be in accordance

with the books/ register of all the Transferee Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

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

17. The Chairperson to report to this Tribunal, the result of the aforesaid meetings within thirty days of the conclusion of the meetings, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. That Counsel for Transferee Company submitted that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders and creditors, only a meeting of the Equity Shareholders and Unsecured Creditors are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013.

19. Learned Counsel of the Applicant Companies informed that in Transferor company consent and affidavit received were from all shareholders. That the convening and holding the meeting of the Equity Shareholders of the Transferor Company for the purpose of considering the proposed Scheme of Amalgamation is hereby dispensed with in view of the consent and affidavits given by all the Equity Shareholders of the transferor Company, which are annexed to the Company Scheme Application.

20. Learned Counsel of the Applicant Companies informed that there are no Secured Creditors in the Transferor Company mentioned in the Application. Hence, no consent/ no objection letter to the proposed Scheme of Amalgamation is required. The meeting of Secured Creditors of the Transferor Company is hereby dispensed with.

21. Learned Counsel of the Applicant Companies informed that in Transferor Company there are 242 Unsecured Creditors having outstanding value of Rs. 22,91,36,286 as on 30th June, 2023. That the Transferor Company submits that they have not obtained consents from the creditors Learned Counsel of the applicant companies informed that the meeting of the Unsecured Creditors of the Transferor Company for the purpose of considering the proposed Scheme, shall be convened via Video Conferencing / Other AudioVisual Means.

22. That Mr. Jayant Raghute director of the Transferor Company be the Chairperson of the meeting of Unsecured Creditors of the Transferor Company. The Scrutinizer for the meetings of the Transferor Company shall be CA Rahul Shukla (Membership Number): 046634, proprietor of Rahul Shukla & associates, having its office at 201, Pawan Wing, Indapraस्था Building, Satyanagar, Borivali

(West), Mumbai: 400092.

23. The Chairperson appointed for the aforesaid meeting of Unsecured Creditors of Transferor Company to issue the notices of the meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise 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).

24. That Counsel for Transferor Company submitted that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders and creditors, only a meeting of the Unsecured Creditors are proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act 2013.

25. The quorum for the aforesaid meetings of the Unsecured Creditors of Transferor Company shall be as prescribed under Section 103 of the Companies Act, 2013.

26. Applicant Companies will publish an advertisement for the meeting of their respective Equity Shareholders and Unsecured Creditors in English News Paper Business Standard Mumbai edition and in vernacular language Marathi News Paper Tarun Bharat.

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

28. The Chairperson to report to this Tribunal, the result of the aforesaid meetings within thirty days of the conclusion of the meetings, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

29. The Applicant Companies are directed to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, 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 Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

30. The Applicant Companies are directed to serve the notice upon the Registrar of Companies, 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 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.

31. The Transferor Company is also directed to serve intimations of the Scheme upon Official Liquidator, High Court, Bombay pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

32. The Applicant Companies are also directed to serve intimations of the Scheme upon Income Tax Office pursuant to section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no representation / response is received by the Tribunal from Income Tax Office, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Income Tax Office has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

33. The Transferee Company is also directed to serve intimation of the Scheme upon Bombay Stock Exchange. If no representation / response is received by the Tribunal from Bombay Stock Exchange within a period of thirty days from the date of receipt of such notice, it will be presumed that Bombay Stock Exchange has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

34. The Applicant Companies are also directed to serve intimations of the Scheme upon any other Sectoral Government Authority, if required pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no representation / response is received by the Tribunal from such Sectoral Government Authorities within a period of thirty days from the date of receipt of such notice, it will be presumed that such Sectoral Government Authorities has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

35. The Applicant Companies to file an affidavit of service within 30 working days after serving notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

36. Ordered Accordingly.