(2021) 04 NCLT CK 0014

In the National Company Law Appellate Tribunal

Case No : Company Application (CAA) No. 49/ND Of 2021

Open Solutions Software Services Private Limited APPELLANT

Vs

FISERV CE Private Limited RESPONDENT

Date of Decision : 13-04-2021

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(2), 230(5), 231, 232
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 6(i), 8, 14

Citation : (2021) 04 NCLT CK 0014

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

Bench : Division Bench

Advocate : Abhishek Seth, Devika Chopra

Final Decision : Allowed

Judgement

1. This is a joint First Motion application filed by the 2 applicant companies under sections 230-232 and other applicable provisions of the Companies Act, 2013 (for brevity the 'Act'), read with Companies (Compromises, Arrangements, Amalgamations) Rules 2016 (for brevity the 'Rules') for sanctioning the proposed Scheme of Arrangement (for short the `Scheme').

2. An Affidavit in support of the application sworn for and on behalf of both the Applicant Companies has been filed by Mr. Piyush Kewalramani being the authorized signatory of both the companies.

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. Learned Counsel has taken us through the averments made in the application as well as the typed set of documents annexed there with. As per averment, the registered office of the 2 Transferor Companies namely "CD1 Bluepay Private Limited" and "First Data Development Private Limited" and the transferee company namely "Fisery India Private Limited" is situated in Maharashtra, hence National Company Law Tribunal, Mumbai Bench have the jurisdiction to entertain the

same. However, the registered office of the 2 Transferor namely "Open Solutions Software Services Private Limited" and "Fisery CE Private Limited" are situated within the territorial jurisdiction of this Tribunal and fall within domain of Registrar of Companies, NCT, New Delhi.

4. The Applicant Company No.1 was incorporated under Companies Act, 1956 in the NCT of Delhi on the14.06.2005. Its authorized capital is Rs. 5,00,000 /- comprising of 50,000 Equity Shares of Rs. 10/ each, and Issued, subscribed & paid-up share capital of Rs. 1,04,610/- comprising of 10,461/- Equity Shares of Rs. 10/- each.

5. In relation to the Applicant Company No.1, it has been represented that company has 2 shareholders. We are further apprised that the Applicant Company No.1 has nil Secured Creditors and 6 Unsecured Creditors including Trade Creditors of the aggregate value of INR 3,19,582.50/-. In relation to the Equity Shareholders and Unsecured Creditors Applicant Company No.1 seeks a direction for convening and holding of meetings for the purpose of obtaining their approval to the proposed Scheme. Further there being no secured creditor in the applicant company no.1, the requirement of convening the meeting of Secured creditor does not arise.

6. The Applicant Company No.2 was incorporated under Companies Act, 1956 in the NCT of Delhi on 12.12.2003. Its authorized capital is Rs. 25,00,000 /- comprising of 2, 50,000 Equity Shares of Rs. 10/ each, and Issued, subscribed & paid-up share capital of Rs. 23,54,630/- comprising of 2,35,463/- Equity Shares of Rs. 10/- each.

7. In relation to the Applicant Company No.2, it has been represented that company has 2 shareholders. We are further apprised that the Applicant Company No.2 has nil Secured Creditors and 5 Unsecured Creditors including Trade Creditors of the aggregate value of INR 3,83,633.74/-. In relation to the Equity Shareholders and Unsecured Creditors Applicant Company No.2 seeks a direction for convening and holding of meetings for the purpose of obtaining their approval to the proposed Scheme. Further there being no secured creditor in the applicant company no.2, the requirement of convening the meeting of Secured creditor does not arise.

8. The objects of the Applicant Companies are set out in the Memorandum of Association which have been filed along with the petition. The statutory auditor's certificate of Applicant Companies certifying that the accounting treatment proposed under the Scheme is in compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013 has also been tiled with the petition.

9. It is stated that the Board of Directors of the Applicant Companies on 23.03.2021 has unanimously approved the Scheme subject to sanctioning of the same by this Tribunal. The copies of such Board Resolutions passed therev at have been placed on record by the Applicant Companies.

10. Further, it is also stated that no investigation or proceedings under the Companies Act, 1956/Companies Act, 2013 have been instituted or are pending against any of the Applicant Companies.

11 .Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued:

A. In relation to the Applicant Company No.1

i. The Meeting of Equity Shareholder of the Applicant company No.1 is directed to be held online on 22.05.2021 at 1:00pm. The quorum of the meeting shall be 75% in value.

ii. The Meeting of Secured Creditor is dispensed with because there is so secured creditor in the company, therefore the requirement of convening the meeting of Secured Creditor does not arise.

iii. The Meeting of Unsecured Creditors of the applicant company is directed to be held online on 22.05.2021 at 2:00pm. The quorum of the meeting shall be 75% in value.

B. In relation to the Applicant Company No.2

i. The Meeting of Equity Shareholder of the Applicant company No.2 is directed to be held online on 22.05.2021 at 3:00pm. The quorum of the meeting shall be 75% in value.

ii. The Meeting of the Secured Creditor is dispensed with because there is no secured creditor in the company, therefore the requirement of convening the meeting of Secured Creditor does not arise.

iii. The Meeting of the Unsecured Creditors of the applicant company is directed to be held online on 22.05.2021 at 4:00pm. The quorum of the meeting shall be 75% in value.

C. In case the quorum of the aforesaid meetings, as noted above is not present, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purposes of constituting the quorum, the valid proxies shall also be considered if the proxy is in prescribed form, duly signed by the person entitled to attend and vote at the meeting, filed with the registered office at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy register is properly maintained.

D. Ms. Deepa Krishan (Former Member NCLT), Mobile: 9818369200 is appointed as the Chairperson for the meetings to be called under this Order. He shall be paid a lumpsum fee of Rs. 1,25,000/- (One Lakh Twenty-Five Thousand) plus incidental for his services as the Chairperson.

E. Adv. S.Babbar (Mobile No.8800879009) is appointed as the Alternate Chairperson for the meetings to be called under this Order. He shall be paid a lumpsum fee of Rs. 1,00,000/- (One Lakh Only) plus incidental for his services as the Alternate Chairperson.

F. Mr., Nitin Agarwal, C.A (Mobile No. 9999451339) is appointed as the Scrutiniser for the meetings to be called under this Order. Fle shall be paid a lumpsum fee of Rs. Rs. 1,00,000/- (One LaIch Only) plus incidental for his services as the Scrutiniser.

G. It is further directed that individual notices of the said meetings, shall be sent by the Applicant Companies to all the shareholders and creditors as per the list filed with the joint application, through email as per record of the respective Applicant Company at least 30 days in advance before the scheduled date of meeting indicating the Date, Time and VC Details (Link) of the meeting, together with the copy of the Scheme, Explanatory Statement required to be sent under the Companies Act, 2013 and the Companies (Compromise, Arrangements and Amalgamations), Rules, 2016 along with Proxy Forms and other documents as prescribed under the Act and the Rules.

H. The Applicant Company shall jointly publish advertisement in the Indian Express (English, Delhi Edition) and Jansatta (Hindi, Delhi Edition), at least 30 clear days in advance before the aforesaid meeting, in the form prescribed under the Companies (Compromise Arrangement and Amalgamation) Rules, 2016. It be stated in the advertisements that copy of the Scheme, the Explanatory Statement required to be published pursuant to Sections 230-232 of the Act and the forms of proxy shall be provided free of charge at the registered office of the Applicant Companies. The Applicant Company shall also publish the notice on the respective websites, if any.

I.1t shall be the responsibility of the Applicant Company to ensure that the notices are sent under the signature and supervision of the authorized representative of the company on the basis of Board resolutions.

J. The Applicant Company shall provide the unsecured creditors the remote e-voting or e-voting facility to cast their votes. Voting shall be allowed in person or by proxy and the same will be considered for the purpose of counting of quorum of the aforesaid meetings, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting or by his authorized representative is filed with the registered office of the Applicant Company.

K. The Chairperson shall file a report regarding the result of the meetings in form No. CAA4, as per Rule 14 of the Rules within 3 days of the conclusion of the meetings.

L. Voting will be made through remote e-voting process in compliance with the guidelines issued by the Ministry of Corporate Affairs in this regard.

M. The Applicant Company shall individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016 send notices in Form CAA3 along with the copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the Rules to (i) the Central Government, through the Regional Director, Ministry of Corporate Affairs, Northern Region; (ii)the Registrar of Companies, NCT of Delhi & Haryana; (iii) Official Liquidator attached to Delhi High Court; (iv) Income Tax Authorities, and to such other regulators having significant bearing on the operation of the Applicant Company stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

N. The Applicant Company shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by any creditor shareholder entitled to attend the meetings as aforesaid.

O. The authorized representatives of the Applicant Company shall furnish affidavit of service of notices of meeting and publication of advertisement in newspapers and all directions contained herein at least 7 days before the date of the meeting.

P. All the directions shall be complied in accordance with the Companies Act, 2013 r.w. Companies (Compromise Arrangement and Amalgamation) Rules, 2016 and the formats prescribed thereunder.

The application stands allowed in the aforesaid terms.

