
(2022) 02 NCLT CK 0074

In the National Company Law Tribunal

Case No : CA (CAA) No. 204/ KB/ 2021

P S Group Realty Private Limited Vs

Date of Decision : 25-02-2022

Acts Referred:

Companies Act, 2013 — Section 103, 230(1), 230(5), 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2)

Citation : (2022) 02 NCLT CK 0074

Hon'ble Judges : Rohit Kapoor, Member J; Harish Chander Suri, Member, T

Bench : Division Bench

Advocate : Dhirendranath Sharma, Pritha Basu, Aryaa Chatterjee

Final Decision : Disposed Of

Judgement

Harish Chander Suri, Member (Technical)

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 ("Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Arrangement between P S Group Realty Private Limited, being the Applicant Company No.1 abovenamed ("Demerged Company" or "Applicant Company No.1") and Bailey Properties Private Limited, being the Applicant Company No.2 abovenamed ("Resulting Company" or "Applicant Company No.2") whereby and whereunder "Property Undertaking-Patna" of P S Group Realty Private Limited ('Demerged Company') is proposed to be demerged into Bailey Properties Private Limited ('Resulting Company') from the Appointed Date, viz. April 1, 2021 in the manner and on the terms and conditions stated in the said Scheme of Arrangement ("Scheme").

2. It is submitted by Ld. Counsel appearing for the Applicants that the shares of the Applicants are not listed on the BSE or NSE. Further, the Applicants have the following classes of shareholders and creditors:-

(a) Applicant No.1:

NO. OF

EQUITY

SHAREHOLD

NO. OF

PREFERENCE

SHAREHOLD

PAID UP CAPITAL

SHARE

SECURED

CREDITO

RS

UNSECURED

CREDITORS

ERS

ERS

13

NIL

Rs. 17,08,45,400/-

4

338

(b) Applicant Company No.2:

NO. OF EQUITY

SHARE HOLDERS

NO.

PREFERENCE

OF SHARE HOLDERS

PAID UP

SHARE

CAPITAL

SECURED

CREDITORS

UNSECURED

CREDITORS

2

NIL

Rs.1,00,00,000/

NIL

5

8. It is further submitted that each and every shareholders of both the Applicant Companies has considered the proposed Scheme and have given their consent by way of affidavits which are annexed to the application.

9. There are 5 Unsecured Creditors in the Applicant Company No. 2 which is evident from the Certificate of the Statutory Auditors of the Applicant No. 2 which are annexed to the application. Each and every Unsecured Creditors of Applicant Company No. 2 have given their consent by way of affidavits which are annexed to the application.

10. There is no Secured Creditor in the Applicant Company No.2. The Statutory Auditors of the Applicant Company No.2 have given their Certificate confirming that there are no secured creditors in Applicant Company No.2 which is annexed to the Application.

11. There are 338 Unsecured Creditors in the Applicant Company No.1. The Statutory Auditors of the Applicant Company No. 1 have given their Certificate certifying the numbers of unsecured creditors in the Applicant Company No. 1 which are annexed to the Application.

12. There are 4 Secured Creditors in the Applicant Company no.1. The Statutory Auditors of the Applicant Company No.1 have given their Certificate confirming that there are 4 Secured creditors in the Applicant Company No.1 which is annexed to the Application.

13. Directions are sought accordingly for (a) dispensing with meetings of the Equity Shareholders of the Applicant Company Nos. 1 & 2 (b) dispensing with meetings of the Unsecured Creditors of the Applicant Company No. 2 who have already given their consent to the Scheme (c) recording that there are no Secured Creditors in the Applicant Company No. 2, (d) convening of meetings of the Unsecured Creditors of the Applicant Company No.1 for considering the Scheme under Section 230(1) of the Act and (e) convening of meetings of the Secured Creditors of the Applicant Company No.1 for considering the Scheme under Section 230(1) of the Act.

14. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders:

(a) Meetings dispensed: (i) Meetings of the Equity Shareholders of the Applicant Company No. 1 & 2 are dispensed with under Section 230(1) read with Section 232(1) of the Act in view of the fact that all such shareholders have already given their consent to the Scheme. (ii) Meeting of the Unsecured Creditors of the Applicant Company No. 2 is dispensed with under Section 230(1) read with Section 232(1) of the Act in view of the fact that all such creditors have already given their consent to the Scheme. (iii) It is recorded that there are no Secured Creditor in the Applicant No. 2.

(b) Meetings to be held | Date and Times: The following meetings shall be convened and held at the following times on April 12, 2022 for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification:-

i. Meeting of the Unsecured Creditors of Applicant Company No.1 at 11 am

ii. Meeting of the Secured Creditors of Applicant Company No.1 at 1 pm

In the event any meeting, as aforesaid, spills over and is concluded after the time fixed for commencement of the succeeding meeting, such succeeding meeting shall be held immediately after such conclusion of the prior meeting.

(c) Mode of meetings: The meetings, as above, shall be held physically at 1002, E M Bypass, Front Block, Kolkata- 700105, subject to the orders of the Government with regard to restrictions due to Covid then in force permitting the same. In the event, the meetings cannot be held physically due to the said restrictions or considering the unprecedented COVID-19 pandemic, the meetings, as above, shall be convened and held virtually via video conferencing or other audio visual mode ("Virtual Mode"). The mode of meetings shall be fixed accordingly by the Applicants at the time of issuance of the notice of meetings and such mode shall be specified in the notice. Subject to the directions and matters dealt with herein, if meetings are held virtually, as above then such meetings shall be held in accordance with the framework provided therefor in the Ministry of Corporate Affairs General Circular No.14/2020 dated 8th April, 2020, as clarified / extended from time to time, including by General Circulars bearing No.17/2020 dated 13 April 2020, No.22/2020 dated 15 June 2020, No.33/2020 dated 28 September 2020 and No.39/2020 dated 31 December 2020 and No.10/2021 dated 23 June, 2021 ("Virtual Meeting Circulars"). It is clarified that the framework provided in such Virtual Meeting Circulars for general meetings shall in such event be followed with necessary variations for the class meetings directed to be held by this order.

(d) Advertisement: At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published

once each in the 'Financial Express' in English and 'Aajkal' in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(e) Individual Notices: At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the Unsecured Creditors of the Applicant Company No. 1 and the Secured Creditors of the Applicant Company No.1 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by post or air mail or courier or electronic mail ("email") or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

(f) Chairperson: Mr. Sughosh Subramnyam, B.A. LLM (CANTAB) 6 AC, Rajat Flora NSC Bose Rd., Narendrapur, Kolkata 700103, Mobile No. 8178879503 E-mail: sughosh.sn@yahoo.com is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 75,000/- for conducting the aforesaid meeting(s) as Chairperson.

(g) Scrutinizer: CA Pawan Kumar Agrawal, Club Town Greens, Block-3 Unit: SE, 167 Jessore Road, Kolkata 700055, Mobile No. 9830069317 E-mail: pawankolkata@gmail.com is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 60,000/-for acting as Scrutinizer.

(h) Quorum and Attendance: The quorum for the said meeting(s) of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. For the meeting(s) to be held physically, only attendance of such persons physically at the venue shall be counted for quorum. For the meeting(s) to be held in the Virtual Mode, attendance of such persons in Virtual Mode shall be counted for the purpose of quorum. Attendance at such meeting(s) shall be recorded in the minutes of the meeting(s) instead of taking physical attendance slips. As per lists of shareholders and creditors annexed to the application, the Applicant Company No.1 has 338 Unsecured Creditors & 4 Secured Creditors. Accordingly, the quorum for the said meeting(s) shall be the following number of creditors respectively present in person or by proxy:-

i. Meeting of Unsecured Creditors of Applicant Company No.1:- Quorum of 5 (five).

ii. Meeting of Secured Creditors of Applicant Company No.1:- Quorum of 2 (two).

In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to

any date/time and take a decision on the quorum for the adjourned meeting. It is clarified that if the meetings are held in Virtual Mode, attendance of such persons in Virtual Mode shall be counted for the purpose of quorum. Attendance at such meetings shall be recorded in the minutes of the meetings instead of taking physical attendance slips.

(i) Mode of Voting: At the venue of the meetings held physically, voting shall be conducted physically by polling paper. In the event the said meetings are held in Virtual Mode, voting in the meetings shall be by e-voting only.

(j) Cut-off date: The cut off date for determining the eligibility to vote and value of votes shall be March 28, 2022, [not earlier than 15 days from date of creditors meeting(s)] for the meeting(s) of creditors. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

(k) Voting procedure: Subject to the directions and matters dealt with herein, the procedure for voting and conduct of voting, in so far as the same is prescribed by the Virtual Meeting Circulars and Companies (Management & Administration) Rules, 2014 ("the said Rules"), and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

(l) Proxies & Board Resolutions: A person, including a Body Corporate, entitled to attend and vote at a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorising its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the concerned Applicant Company not later than 48 (forty eight) hours before the time for holding such meeting. If the meetings are held in virtual mode, the board resolutions and authorisations may be deposited by the concerned shareholders and creditors within the prescribed time physically at the registered office of the concerned Applicant Company, as aforesaid, or scanned copies thereof may be sent by them by email to the concerned Applicant Company.

(m) That the Chairperson appointed for the said meeting(s) or any person authorised by the Chairperson do issue and send the notices of the aforesaid meeting(s). Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meetings, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meetings, including an amendment to the Scheme, if any proposed by any persons.

(n) The votes cast shall be Scrutinised by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meeting(s) along with all

papers relating to the voting to the Chairperson of the meeting(s) at the Scrutinizer's earliest convenience and in any case within 3 days of the conclusion of the meeting(s). The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer. The declaration of results by the Chairperson shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

(o) The value of each of the Unsecured Creditors and Secured Creditors of the Applicant Company No.1 shall be in accordance with the books and records of the Applicant Company No.1 and, where entries in the books are disputed, the Chairperson shall determine the value for purposes of the said meeting(s).

(p) The resolution for approval of the Scheme of Arrangement put to a meeting shall, if passed by a majority in number representing three-fourths in value of the respective creditors casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

(q) The Chairperson do report to this Tribunal the results of the said meeting(s) within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

15. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies, West Bengal; Official Liquidator, High Court at Calcutta, Kolkata and Income Tax Department having jurisdiction over the Applicants, by sending the same by hand delivery through special messenger, by post & by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Advocates of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations incorporating the directions herein.

16. The Applicants to file an affidavit proving service of notices of meeting(s) and publication of advertisement and compliance of all directions contained herein atleast a week before the meeting(s) to be held.

17. The Application for confirmation and sanction of the Scheme to be filed within 4 weeks from the date of filing of the Report by the Chairperson.

18. The application being Company Application No. 204/KB/2021 is disposed of accordingly.