(2020) 07 NCLT CK 0117

In the National Company Law Tribunal

Case No : Company Application No. 22, 23/CAA Of 2020

Padmaja Financial Services Private Limited	APPELLANT
Vs	
Aritha Properties Private Limited	RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:

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

Citation : (2020) 07 NCLT CK 0117

Hon'ble Judges : R. Varadharajan, J;S. Vijayaraghavan, Member (Technical)

Bench : Division Bench

Advocate : Saravanakumar

Final Decision : Allowed

Judgement

R. Varadharajan, J

1. These applications have been filed by the Companies, namely M/s. Padmaja Financial Services Private Limited (for brevity "Demerged Company/1st Applicant") and M/s. Aritha Properties Private Limited (for brevity "Resulting Company/2nd Applicant") under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement (hereinafter referred to as the "SCHEME") proposed by the applicant. The said Scheme is also commonly annexed as Annexure "1" to both the applications.

2. The Applicant Companies in this Company Application has sought for the following reliefs:

Demerged Company/1st Applicant

[CA/22/CAA/2020]

a) It is prayed that necessary directions may be given for dispensing with convening, holding and conducting and holding of meetings of the Equity shareholders of the Demerged Company.

b) It is prayed that necessary directions may be given for dispensing with convening, conducting and holding of meetings of the unsecured Creditors of the Demerged Company.

c) It is prayed that dispense with publication of notices for meeting of the equity shareholders of the demerged company and its unsecured creditors.

d) It is prayed that notices to the statutory authorities may be ordered by this Hon'ble Tribunal as per the provisions of section 230 (5) of the Companies Act 2013 and rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

Resulting Companv/2nd Applicant

[CA/23/CAA/2020]

a) It is prayed that necessary directions may be given for dispensing with convening, holding and conducting and holding of meetings of the Equity shareholders of the Resulting Company.

b) It is prayed that necessary directions may be given for dispensing with convening, conducting and holding of meetings of the unsecured Creditors of the Resulting Company.

c) It is prayed that dispense with publication of notices for meeting of the equity shareholders of the Resulting company and its unsecured creditors

d) It is prayed that notices to the statutory authorities may be ordered by this Hon'ble Tribunal as per the provisions of section 230 (5) of the Companies Act 2013 and rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

3. An affidavit in support of the above application is sworn for and behalf of the Demerged Company and Resulting Company has been filed by one S. Padmanabhan, in the capacity as Director of the Demerged Company and the Resulting Company along with the application and it is also represented that the Registered office of both the Applicant Companies are situated within the territorial jurisdiction of the Bench of this Tribunal and falling within the purview of Registrar of Companies, Chennai.

4. In relation to the Demerged Company, in the Scheme marked as Annexure "1", it is represented that it is having Four (4) Equity Shareholders and all of them have given their respective consents by way of affidavits and sought for dispensation with holding of meeting. The consent affidavits given by all the 4 (Four) equity shareholders are placed at pages 60 to 72 of the typed set filed with the Application. It is further represented by the Counsel for Applicants that the Demerged Company has "NIL" Secured Creditor and 3 (Three) Unsecured

Creditors. The Certificate issued by M/s. M.R Narain & Co., Chartered Accountant to this effect is placed at pages 117 and 48 the typed set filed with the application. In relation to the 3 unsecured creditors of the Demerged Company the said company has filed their respective consent affidavits and had also sought for dispensation with respect to holding of their meeting. The consent affidavits are placed at page 62-68 of the typed set filed with the Application.

5. In relation to the Resulting Company in the Scheme marked as Annexure "1", Learned Counsel represents that company is having 2 (Two) Equity Shareholders and all of them have given their respective consents by way of affidavits and sought for dispensation with holding of meeting. The consent affidavits given by all the 2 (Two) equity shareholders are placed at pages 107 to 109 of the typed set filed with the Application. It is further represented by the Counsel for Applicants that the Resulting Company has "NIL" Secured Creditor and "NIL" Unsecured Creditor. The Certificate issued by M/s. M.R Narain & Co., Chartered Accountant to this effect is placed at pages 83 and 66 the typed set filed with the application.

6. We have perused the applications and the connected documents / papers filed therewith including the Scheme contemplated between the Applicant companies.

7. From the certificate of incorporation filed, it is evident that Demerged Company is a Private limited company incorporated under the provisions of Companies Act, 1956 on 5th December, 1985, with Registrar of Companies, Tamil Nadu. The Authorized Share Capital of the Demerged Company is ` 25,00,00/- (Rupees Twenty Five Lakhs Only) consisting of 25,000 Equity Shares of Rs.100/- each. The Issued, Subscribed and Paid-up Capital of the Demerged Company is ` 5,00,000/- (Rupees Five Lakhs Only) consisting of 5,000 Equity Shares of Rs.100/- each.

8. From the Certificate of Incorporation filed, it is evident that Resulting Company is a Private limited company incorporated under the provisions of Companies Act, 2013 on 13th December, 2018, with Registrar of Companies, Tamil Nadu. The Authorized Share Capital of the Resulting Company is ` 10,00,000/- (Rupees Ten Lakhs Only) consisting of 1,00,000 Equity Shares of Rs.100/- each. The Issued, Subscribed and Paid-up Capital of the Resulting Company is Rs. ` 1,00,000/- (Rupees One Lakhs Only) consisting of 10,000 Equity Shares of Rs.100/- each.

9. The Applicant companies have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last Provisional Balance sheet as 31.01.2019 for Demerged Company and Provisional Balance sheet as 30.09.2019 for Resulting Company.

10. The Board of Directors of the Applicant companies vide meeting held on 25th February 2019, respectively, have unanimously approved the proposed Scheme as contemplated above and copies of resolutions passed thereon have been placed on record by the companies.

11. The Appointed date as specified in the Scheme is 1st March, 2018 subject to the directions of this Tribunal.

12. The Statutory Auditors of the Applicant Companies have examined the Scheme in terms of provisions of Sec. 232 of Companies Act, 2013 and the rules made thereunder and certified that the Accounting Standards is in compliance with Section 133 of the Companies Act, 2013.

13. Taking into consideration the application filed by the Applicant Companies and the documents filed therewith as well as the position of law, this Tribunal propose to issue the following directions and issue of notices including by way of paper publication as follows: -

A) IN RELATION TO THE DEMERGED COMPANY:

(i) With respect to Equity shareholders:

Since it is represented by the Demerged Company that there are 4 Equity shareholders in the Company whose consents by way of affidavits have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

It is represented by the Demerged Company that there are NIL Secured and hence the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Demerged Company that there is only 3 Unsecured Creditor in the Company whose consent by way of affidavit have been obtained and is placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

B) IN RELATION TO RESULTING COMPANY:

(i) With respect to Equity shareholders:

Since it is represented by the Resulting Company that there are 2 Equity Shareholders whose consents by way of affidavits have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

It is represented by the Demerged Company that there are NIL Secured and hence the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

It is represented by the Demerged Company that there are NIL Unsecured and hence the necessity of convening a meeting does not arise.

14. The companies shall individually send notice to concerned Regional Director, MCA, the Income Tax Authorities, Registrar of Companies Chennai, as well as other Sectoral regulators who may have significant bearing on the operation of the applicant companies or the Scheme per se along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

15. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

16. Accordingly, the Applications are allowed. The Demerged Company and Resulting Company are directed to file the Petition(s) on or before 04.08.2020.