(2023) 05 NCLT CK 0022

In the National Company Law Tribunal

Case No : CSA NO. 174 OF 2022

Paradigm Logistics & Distributionprivate Limited Vs

Date of Decision : 04-05-2023

Acts Referred:
Companies Act, 2013 — Section 230, 232

Citation : (2023) 05 NCLT CK 0022

Hon'ble Judges : H. V. Subba Rao, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Aayesh Gandhi

Final Decision : Disposed Of

Judgement

H.V. Subba Rao, Member (Judicial)

1. The Counsel for the Applicants states that the present Scheme is a Scheme of Arrangement (Demerger) between Paradigm Logistics & Distribution Private Limited ("Demerged Company") and K Rahjea Corp Real Estate Private Limited (Formerly known as Feat Properties Private Limited) ("Resulting Company") and their respective shareholders under the provisions of section 230 to 232 of the Companies Act, 2013.

2. The Counsel for the Applicant Companies states that the Applicant Companies are part of K Raheja Corp Group (KRC Group).

3. The Counsel for the Applicants states that resolutions approving the Scheme were passed by the Board of Directors of the Demerged Company and the Resulting Company at their respective meetings all held on March 15, 2022. The Appointed Date fixed under the Scheme is April 1, 2021.

4. The restructuring, consolidation and streamlining pursuant to this Scheme shall achieve the following benefits:

(i) Considering that access to capital markets, equity and/or debt infusion, etc. is one of the stated rationales for the demerger of the Demerged Undertaking (as defined in the Scheme) into the Resulting Company, the demerger as set out under the Scheme would attract investors seeking to acquire a stake or have exposure in a specialist residential real estate business i.e. the Resulting Company.

(ii) It is aimed to consolidate other residential real estate businesses within the KRC Group into the Resulting Company including through other schemes/ restructuring/transfers filed or to be filed (as applicable and found suitable from time to time) to make the Resulting Company become the flagship residential real estate focussed company in the KRC Group.

(iii) The demerger of the Demerged Undertaking (as defined in the Scheme) of the Demerged Company into the Resulting Company inter alia would enable the Resulting Company to focus more significantly on the residential real estate business.

(iv) It would aid the Demerged Company to focus on the Other Business, post the completion of the Scheme;

(v) It would result in cost saving by reduction of administrative and other overhead costs, avoidance of duplication and consolidation of managerial skill by vesting the Nacharam Residential Real Estate Business into the Resulting Company. It would enable both the Demerged Company and the Resulting Company to focus attention towards their respective businesses and permit the Resulting Company to focus on development of residential real estate, which shall result in operational benefits, rationalization, organizational efficiency, combination and consolidation of synergies and enhanced captive consumption of support services, post the completion of the Scheme;

(vi) It would aid the Resulting Company to become the flagship residential real estate focused company in the KRC Group and aiding scaling, expansion and expertise building to offer specialized, better and competitive residential real estate development and offerings, post the completion of the Scheme;

(vii) It would strengthen the balance sheet of the Resulting Company creating increased opportunities to access capital markets, equity and/or debt infusion, post the completion of the Scheme;

(viii) It would strengthen the brand value and market presence of the Resulting Company as a specialist residential real estate company and bringing in a wider pool of residential real estate projects under its ambit and enabling the Resulting Company to showcase such wider pool of residential real estate projects as its projects ensuring better reach, customer delivery, customer confidence, trust and competitive edge, post the completion of the Scheme;

(ix) It would attract strategic and financial investments and investments from other stakeholders in the future in the Resulting Company, post the completion of the Scheme;

(x) It would attract strategic and financial investments and investments from other stakeholders in the future in the Demerged Company for the Other Business, post the completion of the Scheme;

(xi) It would aid the Resulting Company with the benefits of the Nacharam Residential Real Estate Business including achieving greater efficiencies in business and supporting the overall growth of the business of the Resulting Company, post the completion of the Scheme;

(xii) It would achieve economies of scale with an aim to create long term shareholder value, post the completion of the Scheme;

(xiii) It would result in streamlining of operations, efforts and ensuring more efficient management, control and day to day operations of the Demerged Company and the Resulting Company, post the completion of the Scheme.

5. The Counsel for the Applicants states that the Demerged Company has 2 (two) Equity Shareholders. The Counsel for the Applicants submits that the meetings of the Equity Shareholders of the Applicant Companies be dispensed with in view of the fact that 100% of the Equity Shareholders of the Applicant Companies have given their consent for the said arrangement (Demerger). The Consent Affidavits of the Equity Shareholders of the Demerged Company have been annexed as Exhibit “Y Colly” to Company Scheme Application. Further, the Counsel for the Applicants states that the Demerged Company has 3 (three) Preference Shareholders. The Counsel for the Applicants submits that the meetings of the Preference Shareholders of the Demerged Company be dispensed with in view of the fact that 100% of the Preference Shareholders of the Demerged Company have given their consent for the said arrangement (Demerger). The Consent Affidavits of the Preference Shareholders of the Demerged Company have been annexed as Exhibit “AA Colly” to Company Scheme Application. In view of this fact, the meeting of the Equity Shareholders of the Demerged Company and the Preference Shareholders of the Demerged Company are hereby dispensed with.

6. In so far as the Resulting Company is concerned, the Resulting Company has 2 (two) Equity Shareholders. The Consent Affidavits submitted by Equity Shareholders of the Resulting Company have been annexed at Exhibit “CC Colly” to Company Scheme Application. In view of this fact, the meeting of the Equity Shareholders of the Demerged Company and the Resulting Company are hereby dispensed with.

7. The Counsel for the Applicant Companies states and submits that there are no Preference Shareholders in the Resulting Company and therefore the question of conducting the meeting of Preference Shareholders for the Resulting Company does not arise.

8. The Counsel for the Applicant Companies submit that there is no compromise or arrangement with any creditors and no sacrifice of any amounts due to

creditors is called for. The unsecured creditors of the Applicant Companies will be paid off in due course of business. Thus, the rights of the unsecured creditors of the Applicant Companies will not be prejudicially affected by the Scheme.

9. The Counsel for the Applicants submits that there is 1 (one) Secured Creditor in the Demerged Company as on June 30, 2022, having dues of an amount of Rs. 124,77,91,592/-. The said Secured Creditor has given its consent and/ or no objection to the sanction of the Scheme and the said no objection has been placed on record at Exhibit "B" of the Additional Affidavit dated August 5, 2022. The Counsel for the Applicants therefore submits that the meeting of the Secured Creditor of the Demerged Company be dispensed with in view of the fact that 100% of the Secured Creditor has given its consent for the said arrangement (demerger). In view of this fact, the meeting of the Secured Creditors of the Demerged Company is hereby dispensed with.

10. As regards the Resulting Company, the Counsel for the Applicants submits that there are no Secured Creditors. The question of convening the meeting of Secured Creditors of the Resulting Company does not arise.

11. The Counsel for the Applicants submits that there are 135 (One Hundred and Thirty-Five) Unsecured Creditors of the Demerged Company as on June 30, 2022, out of which the Unsecured Creditor having dues of 96.98% of the total outstanding dues have provide no objection by way of Consent Affidavits. The said Consent Affidavits are placed on record at Exhibit "D Colly" by way of Additional Affidavit dated August 5, 2022. The Counsel for the Applicants therefore submit that the meeting of the Unsecured Creditors of the Demerged Company be dispensed with in view of the fact that 96.98% of the Unsecured Creditors have given their consent for the said arrangement (demerger). In view of this fact, the meeting of the Unsecured Creditors of the Demerged Company is hereby dispensed with.

12. The Counsel for the Applicants submits that there are 4 (Four) Unsecured Creditors of the Resulting Company, out of which the Unsecured Creditor having dues of 99.99% of the total outstanding dues have provided no objection by way of Consent Affidavit. The said Consent Affidavit is placed on record at Exhibit "F" by way of Additional Affidavit dated August 5, 2022. The Counsel for the Applicants therefore submit that the meeting of the Unsecured Creditors of the Resulting Company be dispensed with in view of the fact that 99.99% of the Unsecured Creditors have given their consent for the said arrangement (demerger). In view of this fact, the meeting of the Unsecured Creditor of the Resulting Company is hereby dispensed with.

13. The Applicant Companies to serve a notice along with a copy of the Scheme on: (i) the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai; (ii) Registrar of Companies, Mumbai, (iii) Income Tax Authority (a) Dy. Commissioner of Income-tax, Circle 14 (1) (1) – (PAN –AADCP6903H) and (b) Dy. Commissioner of Income Tax, Circle 8(1), Signature Towers, Hyderabad (PAN

- AABCF1838M), (iv) GST Authority of Maharashtra – registration number – 27AADCP6903H1ZE and 27AABCF1838M1ZFl; and (v) concerned Real Estate Regulatory Authority as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations), Rules, 2016, with an intimation that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice, to the Tribunal and copy of such representations shall simultaneously be served upon the Demerged Company and Resulting Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

14. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.

15. The Applicant Companies to file a joint affidavit of service and report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

