(2022) 11 NCLT CK 0098

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 128/(KB)/2022

Poushali Sales Private Limited Vs

Date of Decision : 30-11-2022

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(1), 230(1)(b), 230(3), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8(2)

Citation : (2022) 11 NCLT CK 0098

Hon'ble Judges : P. Mohan Raj, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Shashi Agarwal

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical):

1. This Court is convened through hybrid mode.

2. The instant application has been filed in the first stage of the proceedings under Sub-section 1 of the Section 230 read with Sub-section 1 of the Section 232 of the Companies Act, 2013 (hereinafter referred as "Act") for orders and directions with regard to dispensation of meeting of shareholders of all applicant companies and creditors of Applicant No. 2 and notice be send to creditors of Applicant No. 1 and 4 as applicable, in connection with the Scheme of Amalgamation of Abhinandan Fintex Private Limited, being the Applicant No. 2 abovenamed (hereinafter referred as "Transferor Company No.1"/"Abhinandan"), Aishani Infotech Private Limited, being the Applicant No. 3 abovenamed (hereinafter referred as "Transferor Company No. 2"/"Aishani") and Chitlangia Timber Products Private Limited, being the Applicant No. 4 abovenamed (hereinafter referred as "Transferor Company No. 3"/"Chitlangia") with Poushali Sales Private Limited, being the Applicant No. 1 abovenamed (hereinafter referred as "Transferee Company"/"Poushali") whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee

Company from the Appointed Date, viz 1st Day of April,2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred as "Scheme"), referred and annexed at Page No. 228-248 of instant application.

3. The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on March 15, 2022 respectively, referred and annexed at Page No. 249-252 of the instant application.

4. It is submitted by Ld. Authorized Representative appearing for the Applicants submit that the shares of the Applicant No. 1, 2, 3 and 4 are not listed in any stock exchanges. Further, it is submitted that the Applicants have the following classes of shareholders and creditors: -

Sl.

No.

Name of

Applicant Companies

Equity

Shareholders (Nos)

Preference

Shareholders (Nos)

Secured

Creditors (Nos)

Unsecured

Creditors (Nos)

1

Poushali

13

NIL

NIL

23

Sales Private

(Page No.

Rs.

Limited

265-293 of

7,70,21,534/-

Application)

NOC –NIL

NOC- 100 %

2

Abhinandan

2

NIL

NIL

NIL

Fintex

(Page No.

Private

294-299 of

Limited

Application)

NOC- 100 %

3

Aishani

6

NIL

NIL

1

Infotech

(Page No.

Rs. 3,50,000/-

Private

300-311 of

(Page No.

Limited

Application)

335-336

NOC- 100 %

of Application) NOC – 100 %

4

Chitlangia Timber Products Private Limited

6

(Page No. 312-323

of Application) NOC- 100%

NIL

NIL

3

Rs 68,10,000/-

(Page No. 337-338A

of Application) NOC -14.68%

5. It is submitted that all Equity Shareholders (100% in value) of the Applicant Company No. 1, 2, 3 and 4 have already given their consent to the Scheme by way of affidavits which are annexed to the application.

6. The Applicant Companies state that the Applicant Company No. 1, 2, 3 and 4 have positive Net Worth as on Appointed Date (01.04.2021). Further, the present Scheme is an arrangement between the Applicant Companies and their respective shareholders as contemplated under Section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with or diminution of liability of any of the Secured Creditors, Unsecured Creditors. Therefore, while no meeting is necessary, this Tribunal hereby directs that notice be given to: -

a. Unsecured creditors of the Applicant Company No. 1.

b. Unsecured creditors of the Applicant Company No. 4. under Sub-section 3 of the Section 230 of the Companies Act, 2013 with a direction that within a period of thirty days from the date of receipt of such notice they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the respective Applicant Companies. The notice shall be sent by Registered Post AD/Speed Post/Email. Directions are also sought for dispensing with meetings of the Equity shareholders of Applicant No. 1, 2, 3, 4 and also of unsecured creditors of Applicant No. 3 who have already given their consent to the Scheme.

7. 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: Meetings of the Equity Shareholders of the Applicant No. 1, 2, 3, 4 are dispensed-with under Sub-section 1 of the Section 230 read with Sub-section 1 of the Section 232 of the Act. Further unsecured creditor of Applicant Company No. 3 is also dispensed-with under Sub-section 1 of the Section 230 read with Sub-section 1 of the Section 232 of the Act. There is no need to hold meeting of creditor of Applicant No. 2 as there are no creditor.

b. Notice to be sent

Notice by registered post and e-mail shall be sent to the following unsecured creditor for taking an informed decision about the scheme and make representation to this tribunal if they so choose on the next date of hearing. This aspect and the next date of hearing shall be clearly mentioned in the notice to be sent to the following :

a. Unsecured creditors of the Applicant Company No. 1.

b. Unsecured creditors of the Applicant Company No. 4.

It shall be the responsibility of the Applicant Companies No. 1 and 4 to ensure that the said creditors of Applicant Company No. 1 and 4 as indicated above have received the notice regarding the Scheme, so that they may take informed decision thereon. An affidavit of service complete with the postal receipt and tracking report shall be placed by the Petitioner(s) before the next date of hearing.

8. Notice under Sub-section 5 of the Section 230 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 with whom the Applicant is registered; Official Liquidator; and Income Tax Department having jurisdiction over the Applicant; by sending the same by hand delivery through special messenger or by post and also 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 Authorized Representative of the said Applicant. 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 Composite Scheme of Arrangement. Such notice shall be sent pursuant to Sub-

section 5 of the Section 230 of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

9. The application being Company Application (CAA) No. 128/(KB)/2022 is disposed of accordingly.

