(2022) 05 NCLT CK 0064

In the National Company Law Tribunal

Case No : CA (CAA) No.21/Chd/Hry/2022 (First Motion)

Preen Securities Private Limited Vs

Date of Decision : 26-05-2022

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232, 232(3)

Citation : (2022) 05 NCLT CK 0064

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Mohammad Nazim Khan

Final Decision : Allowed

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint first motion application filed by Applicant Companies namely; Preen Securities Private Limited (Transferor Company No.1/Applicant Company No.1); Mallard Securities Private Limited (Transferor Company No.2/Applicant Company No.2); with Calyx Securities Private Limited (Transferee Company/ Applicant Company No.3) under Sections 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure-5 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders and Secured anf Unsecured Creditors of the Applicant Companies.

3. The Applicant Companies are presently engaged in the business to invest, buy, sell, transfer, pledge, hypothecate, deal in and dispose of any shares, stocks, bonds, debentures, whether perpetual, redeemable debenture, debenture stocks, units, securities, including securities of any govt. and local authority.

4. It is submitted that the registered offices of Applicant Companies are situated

in the State of Haryana, therefore, the territorial jurisdiction of both the applicant companies falls with this Bench.

5. The rationale of the Scheme is given below:-

i. The Merger will enable the Companies to consolidate their business operations and provide significant impetus to their growth since all the Companies are engaged in the same line of business i.e. trading of shares and other securities.

ii. The Merger will result in reduction of cost of overheads, administrative, managerial and other expenditure, and bring about operational rationalization, efficiency and optimal utilization of various resources.

iii. The Merger will also consolidate the managerial expertise of both the Companies thereby giving additional strength to the operations and management of the Transferee Company.

6. It is stated that the Board of Directors of the Applicant Companies in their meeting held on 01.02.2022 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the board resolutions of the Applicant Companies are part of Annexure-5 of the application.

7. The appointed date of the Scheme is 01.04.2022 as mentioned in Part- I Clause 1.2 of Scheme of Amalgamation which is attached as Annexure-5 of the application.

8. It is stated that the Applicant Companies have filed the Audited Financial Statements as on 31.03.2021 and Provisional Balance Sheet as on 31.12.2021 as Annexures-10 and 11 respectively of the application.

9. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, the Applicant Companies have filed certificates, all dated 02.03.2022 issued by Statutory Auditors of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same is attached as Annexure-13 of the application.

10. It is further submitted by the counsel for applicant companies that the Valuation Report dated 03.01.2022 has been submitted by Mr. Krishna Kumar Mittal, Registered Valuer (S&FA) Reg. No.IBBI/RV/05/2019/11462 which is attached as Annexure-9 of the application. As per the Valuation Report, dated 03.01.2022, the following Share Entitlement Ratio has been proposed:-

S. N

Name of Company

For every Share

Amalgamated Company

1.

CALYX SECURITIES PRIVATE

LIMITED

Amalgamating Companies

10000

2.

Preen Securities Private Limited

7993

3.

Mallard Securities Private Limited

7992

11. It is submitted that the Scheme [Annexure A-5 of the application] also takes care of the interests of the staff/workers and employees of the Companies by virtue of Part II Clause 9.

12. It is further deposed by the authorized representative of Applicant Companies that the Applicant Companies does not fall under the above-mentioned threshold limits so the notification of Merger is not mandatory to the Competition Commission of India and there is no sectoral regulator of the Applicant Companies and hence, does not require any Sectoral Regulator for the Merger. The aforesaid affidavits duly signed by the authorized representatives of applicant companies have been attached as Annexure-14 of the application.

13. It is deposed by the authorised signatories of the Applicant Companies that no enquiry, investigation and prosecution including any material litigation are pending against the Applicant Companies under the Companies Act, 2013. The aforesaid affidavits duly signed by the authorised signatories are attached as Annexure-12 of the application.

14. The applicant companies have furnished the following documents:-

i. Proposed Scheme of Amalgamation (Annexure-5 of the application)

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexure-3 of the application).

iii. List of Equity Shareholders of the Applicant Companies as on 31.12.2021 duly certified by the Statutory Auditors (Annexure-4 of the application).

iv. List of Secured and Unsecured Creditors of the Applicant Companies as on 31.12.2021 duly certified by the Statutory Auditors (Annexure-7 of the application).

v. Consent Affidavits of Equity Shareholders of the applicant companies (Annexure-6 of the application).

vi. Consent Affidavits of Unsecured Creditors of the applicant companies (Annexure-8 of the application).

vii. Certificates of Statutory Auditors to the effect that Accounting treatment proposed in the Scheme is inconformity with Section 133 of Companies Act, 2013 (Annexure-13 of the application).

viii. Proposed Entitlement Ratio (Annexure-9 of the application).

ix. Audited Financial Statement as on 31.03.2021 of the applicant companies (Annexure-10 of the application).

x. Provisional Balance Sheets as on 31.12.2021 of the applicant companies (Annexure-11 of the application)

xi. Affidavit with regard to the Sectoral Regulator (Annexure-14 of the application).

15. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors along with consent on affidavits which is as follow:

Name of the

Applicant

Companies

Shareholders

along with their

consent on

affidavits

Creditors along with their consent

on affidavits

Equity

Shareholder

Consent

submitted on

Affidavit

Secured

Creditors

Consent

submitted

on

Affidavit

Unsecured

Creditors

Consent

submitted on

affidavit

Applicant

Company No.1

6

(Six)

100%

in value

Nil

NA

1

(One)

100% in

value

Applicant

Company No.2

6

(Five)

100%

in value

Nil

NA

1

(One)

100%

in value

Applicant

Company No.3

5

(Five)

100%

in value

Nil

NA

1

(One)

100%

in value

16. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Transferor Company No.1/Applicant Company No.1:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b. Since there are Nil Secured Creditors in the Transferor Company No.1/ Applicant Company No.1. Therefore, there is no scope for any meeting.

c. The meeting of the Unsecured Creditors of the Transferor Company No.1/ Applicant Company No.1 is dispensed with as it has 1 (One) Unsecured Creditor and the consent of the sole Unsecured Creditor holding 100% in value has been received by way of affidavit.

II. In relation to the Transferor Company No.2/Applicant Company No.2:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b. Since there are Nil Secured Creditors in the Transferor Company No.2/ Applicant Company No.2. Therefore, there is no scope for any meeting.

c. The meeting of the Unsecured Creditors of the Transferor Company No.2/

Applicant Company No.2 is dispensed with as it has 1 (One) Unsecured Creditor and the consent of the sole Unsecured Creditor holding 100% in value has been received by way of affidavit.

III. In relation to the Transferee Company/Applicant Company No.3:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b. Since there are Nil Secured Creditors in the Transferee Company/Applicant Company No.3. Therefore, there is no scope for any meeting.

c. The meeting of the Unsecured Creditors of the Transferee Company/Applicant Company No.3 is dispensed with as it has 1 (One) Unsecured Creditor and the consent of the sole Unsecured Creditor holding 100% in value has been received by way of affidavit.

17. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies, (c) the Official Liquidator and (d) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.