**(2020) 07 NCLT CK 0120**

**In the National Company Law Tribunal**

**Case No :** Company Application (CAA) No. 38/Nclt/Ahm Of 2020

Prerna Infrastructure P. Ltd — APPELLANT

Vs

Aditya Timpack P. Ltd — RESPONDENT

**Date of Decision :** 02-07-2020

**Acts Referred:**

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 3, 6, 6 (1), 7, 8, 8(2), 12, 14, 230(3)
Companies Act, 2013 — Section 102, 133, 230, 230(3), 230(5), 232

**Citation :** (2020) 07 NCLT CK 0120

**Hon'ble Judges :** Manorama Kumari, J;Chockalingam Thirunavukkarasu, Member (Technical)

**Bench :** Division Bench

**Advocate :** Kunjan Dalal

**Final Decision :** Allowed

# Judgement

Manorama Kumari, J

1. The instant joint application is filed under sections 230-232 of the Companies Act, 2013 ("the Act") read with rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("the Rules"), seeking directions of this Tribunal for dispensation of meeting of the equity shareholders of both the applicant-companies and convening the meeting of unsecured creditors of applicant transferee company for the purpose of considering and if thought fit, approving with or without modification, the scheme of amalgamation between Prerna Infrastructure P. Ltd. ("applicant-transferor company") and Aditya Timpack P. Ltd. ("applicant-transferee company").

2. Applicant-company No. 1, namely, Prerna Infrastructure P. Ltd. ("hereinafter referred as transferor company") is primarily engaged in the business of acquiring, altering, buying, dealing, selling, hire, allow, occupy, control, maintain, operate, any leasehold and freehold lands, movable or immovable properties and applicant-company No. 2, namely, Aditya Timpack P. Ltd. ("hereinafter referred

 

as transferee company") is engaged in the business of manufacturing, importing, exporting, buying, selling, trading, processing, cutting, pressing, finishing, polishing and dealing in all kind of articles foe packing and in particular wooden boxes, teakwood boxes, plastic and rubber boxes industrial and household and consumer goods product in packing.

Both transferor company and transferee company are collectively referred to as the private limited companies.

3. The registered offices of both the applicant-companies are situated in the State of Gujarat and are under the jurisdiction of the National Company Law Tribunal, Bench at Ahmedabad.

4. It is stated by the applicant-companies that proposed amalgamation of the applicant-transferor company with the applicant-transferee company pursuant to this scheme shall be in the interest of both the applicant-company, viz., transferor company and the transferee company and all their concerned stakeholders including shareholders, creditors, employees and the general public in the following ways:

(i) Enable consolidation of the business of transferor company into transferee company which will facilitate in focused growth, operational efficiencies, business synergies and better supervision of the business of the group.

(ii) Pooling of resources (including manpower, management and administration and marketing resources) of the aforesaid companies resulting in, synergies of operations and optimization of logistics, resulting in more productive utilization of said resources, saving in cost and operational efficiencies.

(iii) Strengthening financial position and increased leverage capacity of the merged entity.

(iv) Concentrated management focus, improved organizational capacity, integration rationalization and streamlining of the management structure of the merged entity, seamless implementation of policy changes at a higher level from a management perspective and shall also help enhance the efficiency and control of the entities.

(v) Avoiding duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances.

5. A copy of the scheme is attached to the application at pages 205-225 of the application. Further the copy of necessary board resolution proposing and considering scheme is annexed at pages 77 and 78 of the application.

6. The applicant-transferor company, namely, Prerna Infrastructure P. Ltd., was originally incorporated on September 16, 2008 as Prerna Infrastructure P. Ltd., and registered with the Registrar of Companies, Gujarat under the provisions of the Companies Act, 1956. The company is a private limited company limited by shares. The applicant-transferor company has annexed with the application, a

copy of the memorandum and articles of association of the applicant-transferor company is annexed as annexure 1A colly. The authorised share capital of the applicant-transferor company is Rs. 2,00,000 and the paid-up share capital is Rs. 1,00,000 as on March 31, 2019.

The applicant-transferor company has annexed with the application, a copy of the audited balance-sheet as of March 31, 2019 is annexed as annexure 4 at pages 79-89. It is stated by the applicant-transferor company that subsequent to the above date and till the date of filing the scheme, there is no change in the issued, subscribed and paid-up capital of the applicant-transferor company. The board of directors of the applicant-transferor company approved the scheme of amalgamation by passing a resolution in its meeting, a copy of the board resolution dated February 25, 2019 is annexed as annexure 3 at page 77 of the application.

7. The applicant-transferee company was originally incorporated as Registrar of Companies, Gujarat under the provisions of the Companies Act, 1956. The applicant-transferee company has annexed with the application, a copy of the memorandum and articles of association of the applicant-transferee company at pages 53-74. The authorised share capital of the applicant-transferee company is Rs. 3,75,00,000 and paid-up capital is Rs. 3,63,60,000 as on September 30, 2019. The applicant-transferee company has annexed with the application, a copy of the audited balance-sheet as at March 31, 2019 at page 100. It is stated by the applicant-transferee company that subsequent to the above date and till the date of filing the scheme, there is no change in the issued, subscribed and paid-up capital of the second applicant-company. The board of directors of the second applicant-company approved the scheme of amalgamation by passing a resolution in its meeting, a copy of the board resolution dated February 25, 2020 is annexed with the application at page 78 of the application.

8. It is stated by the applicant-companies that the accounting treatment specified in the scheme of amalgamation is in conformity with the Accounting Standards as prescribed by the Central Government in terms of section 133 of the Companies Act, 2013. Certificate dated March 2, 2020 issued under section 133 of the Companies Act, 2013 by the chartered accountant annexed at pages 200 and 201 of the application.

9. It is stated by the applicant-companies that no investigation or proceedings under the Companies Act, 1956, Companies Act, 2013 have been instituted or are pending in relation to the applicant-companies.

10. It is further stated by the applicant-companies that no winding up petition is pending against the applicant-companies.

11. It is stated that both the applicant-companies are empowered by their respective memorandum of association to enter in the scheme of arrangement. Copies of memorandum of association are annexed with the application as annexures 1A and 1B respectively. Similarly, audited financial statements of both

 

the applicant-companies and provisional financial statements of both the companies as on January 31, 2020 are also annexed with the application as annexures 4, 9 and 15 respectively.

12. It is stated that the scheme of amalgamation has been approved by the respective board of directors of the applicant-companies. The copies of the board resolution are annexed with the application as annexure 3 colly.

13. It is stated that applicant-companies are unlisted private limited' com-parties. The transferor company is wholly owned subsidiary of transferee company. The amalgamation do not involve issue of shares to the shareholders of the transferor company and hence no valuation report is required.

14. It is stated that none of the applicant-companies is registered with Reserve Bank of India (RBI) and none of the shareholders or creditors is a non-resident or Foreign National and RBI Act is not applicable. All the applicant-companies are unlisted entities and Securities and Exchange Board of India (SEBI) Act and Regulations are not applicable to the applicant-companies. The applicant-companies do not meet the threshold limits relating to assets and turnover as mentioned in the Competition Act, 2002 for the purpose of combination and there is no other sectoral regulator regulating the affairs of the applicant-companies.

15. It is stated that proposed amalgamation is in the interest of share-holders, creditors and other stakeholders of both the companies. The rational for the scheme is described in paragraph 24 of the application.

16. It is stated that the transferor company is a closely held unlisted private company and has two equity shareholders. The equity shareholders have given their consent on affidavit approving the proposed scheme. The consent affidavit are annexed with the application and marked as annexure 6. The transferor company has no secured and unsecured creditors and the auditor certificate in this regard is annexed with the application and marked as annexures 7 and 8 respectively. It is prayed that the meeting of equity shareholder be dispensed with. Since there are no creditors, question of convening of meeting and/or dispensation of the meeting does not rise at all.

17. It is submitted that the transferee company is a closely held unlisted private company and has eight equity shareholders. The equity shareholders have given their consent on affidavit approving the proposed scheme. The consent affidavit are annexed with the application and marked as annexure 11. The transferee company has one secured creditor and the consent letter approving the proposed scheme has been obtained and annexed with the application and marked as annexure 13. The transferee company has 147 unsecured creditors as on January 31, 2020. The list of unsecured creditors duly certified by chartered accountant is annexed with the application and marked as annexure 14. It is prayed that the meeting of equity shareholder and secured creditors of transferee company be dispensed with. It is further prayed that directions be

 

issued for convening meeting of unsecured creditors of transferee company.

18. Having perused the application and the documents annexed therewith, this Tribunal passes the following order:

(i) Meetings of equity shareholders, of the applicant-transferor company are hereby dispensed with. There are no secured and unsecured creditors.

(ii) Meetings of equity shareholders and secured creditors of the applicant transferee company are hereby dispensed with.

(iii) Meeting of unsecured creditors of the applicant-transferee company shall be convened and held at the registered office of the transferee company at Kapdai Faliya, Gandevi Road, Devsar, Taluka-Gandevi, Bilimora District, Navsari-396380 on August 10, 2020 at 11.00 a.m. for the purpose of considering and if thought fit approving the proposed scheme of amalgamation with or without modifications.

(iv) At the aforesaid meetings of unsecured creditors of the applicant transferee company voting shall be carried out through ballot/polling paper at the venue of the meeting.

(v) At least one month before the date of aforesaid meeting a notice in Form No. CAA-2 convening the aforesaid meeting indicating the day, the date, the place and the time as aforesaid together with the copy of the scheme of the amalgamation, copy of explanatory statement required to be sent under section 102 of the Act read with sections 230 and 232 of the Act and rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the prescribed form of proxy shall be sent to each of the unsecured creditors of the applicant-transferee company at their respective or last known address either by registered post, speed post or by courier or by e-mail. The notice shall be sent to unsecured creditors as per annexure 14 of the application.

(vi) At least one month before the date of meeting publication about convening and holding of the aforesaid meeting indicating the day, the date, the place and the time as aforesaid shall be made once in English daily Times of India and Gujarati daily, Gujarat Mitra having circulation in the area of registered office of the transferee company. The publication shall also indicate that the statement required to be furnished pursuant to section 102 of the Act, read with sections 230 and 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the applicant-transferee company or at the office of Mr. Kunjal Dalai, Practising Company Secretary, 205, Pawanhans Complex, Behind Chamunda Restaurant, Subjail Charrasta, Ring Road, Surat-395002 in accordance with the second proviso to sub-section (3) of section 230 and rule 7 of the Companies (CAA) Rules, 2016.

(vii) Mr. Parsotambhai Tejalal Patel, or failing him Mr. Vasantkumar Tejabhai Patel, directors of the company shall be the chairman of the meeting of the unsecured creditors of the applicant-transferee company to be held on August

 

10, 2020 and in respect of any adjournments) thereof.

(viii) Mr. Manish Ravjibhai Patel, practising company secretary, having Membership No. A19885 shall act as the scrutinizer of the aforesaid meeting.

(ix) The chairman appointed for the aforesaid meeting shall publish and send out notices of the meeting referred above. The chairman of the aforesaid meeting shall have all the powers under the articles of association of the applicant-transferee company and also under applicable rules, including for deciding any procedural question(s) that may arise at the meeting and to ascertain decision of the meeting.

(x) The quorum for the meeting of unsecured creditors of the transferee company shall be five unsecured creditors present in personal or proxy or by authorized representative.

(xi) Voting by proxy/authorized representative is permitted, provided that proxy in the prescribed form/authorization in duly signed by the person entitled to and vote at the aforesaid meeting is filed with the applicant-transferee company at its registered office not later than 48 hours before the aforesaid meeting.

(xii) The number and value of each unsecured creditor of the applicant-transferee company shall be in accordance with the entries in the books of account of the applicant-transferee company and where the entries in the records are disputed the chairman of the aforesaid meeting shall determine the value for the purpose of the meeting.

(xiii) The chairperson to file an affidavit not less than 7 days before the date fixed for holding of meeting and to report to this Tribunal that directions regarding issuance of notices and advertisements of the meeting have been duly complies with as per rule 12 of the Companies (CAA) Rules, 2016.

(xiv) It is further ordered that chairman shall report to this Tribunal result of the meeting in Form No. CAA-4 verified by his affidavit as per rule 14 of the Companies (CAA) Rules, 2016 within 7 days after conclusion of the meeting.

(xv) In compliance with sub-section (5) of section 230 of the Act and rule 8 of the Rules, all the applicant-companies shall send a notice under sub-section (3) of section 230 read with rule 6 of the Rules with a copy of the scheme of amalgamation, the explanatory statement and the disclosures mentioned in rule 6 to (1) Central Government through the Regional Director, North Western Region, (2) the Registrar of Companies, (3) the Income-tax Authorities concerned and (4) the official liquidator, only in respect of the applicant-transferor company. The said notices be sent either by registered post or by speed post or by courier or by hand delivery at the offices of the aforesaid statutory authorities as required by sub-rule (2) of rule 8 of the Rules. The aforesaid statutory authorities, who desire to make any representation under sub-section (5) of section 230 shall send the same to this Tribunal within a period of 30 (thirty) days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

19. This company application is allowed and disposed of accordingly.

 