(2020) 02 NCLT CK 0047

In the National Company Law Appellate Tribunal

Case No : Company Application No. CA (CAA) - 03/(ND) Of 2020

Priyavrat Infrastructure Private Limited And Ors APPELLANT

Vs

Pramanand Commercial Private Limited RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 3(2)
National Company Law Tribunal Rules, 2016 — Rule 16(d)
Companies Act, 2013 — Section 133, 230, 230(2), 231, 232

Citation : (2020) 02 NCLT CK 0047

Hon'ble Judges : Dr. Deepti Mukesh, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Abhishek Nehta, Sameer Gupta

Final Decision : Disposed Of

Judgement

Hemant Kumar Sarangi, Member (T)

1. This is a First Motion application jointly filed by the Applicant companies herein, M/s. Priyavrat Infrastructure Private Limited, M/s. Mehful Finvest Private Limited, M/s. Jubilant E & P Ventures Private Limited, M/s. Diamond Rock Private Limited, M/s. Diligent Services Private Limited with M/s. Pramanand Commercial Private Limited, and their respective Shareholders and Creditors under sections 230-232 of the Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME"), proposed between the applicants. The said Scheme is annexed with this application.

The applicants above named have preferred the instant application for the following reliefs namely:

i. Dispense with convening separate meetings of the Equity and Preference Shareholders of the Applicant Transferor Company and the Applicant Transferor Company and the Applicant Transferee Company as all the shareholders of all the Transferor and Transferee Company have given their consent in writing on affidavits for the proposed Scheme of Amalgamation.

ii. Dispense with convening separate meetings of the Secured Creditors of the Applicant Transferor Company and the Applicant Transferee Company as there are NIL Secured Creditors in both the Transferor and Transferee Company respectively.

iii. Dispense with convening separate meetings of the Un-secured Creditors of the Applicant Transferor Company as there are NIL unsecured creditors in both the Transferor and Transferee Company respectively.

iv. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

2. An affidavit in support of the above application sworn by and on behalf of Applicant Company No. 1, by Mr. Virendrea Kumar Charoria, on behalf of Applicant Company No. 2 to 6, by Mr. Naresh Kumar Gupta, the authorised persons of all the companies, have been filed. The corresponding affidavit of authorizations by all companies are also placed on record.

3. All The Applicant Companies have filed their Memorandum and Articles of Association as well as last available audited Financial Statements as on 31.03.2019 along with the provisional financial statements as on 30.09.2019.

4. It is submitted that Transferor Company 1, 3, 4 and 5 had filed an application No. CA-2698(PB)2019 under Rule 16(d) of the NCLT Rules, 2016 before the Hon'ble Principal Bench, New Delhi on 03.12.2019 in which the following order has been passed:

"CA-2698(PB)2019 The Transferee Company namely Pramanand Commercial is registered with the RoC, Delhi whereas the Transferor Company No. 1, 3, 4, & 5 are registered elsewhere. Although the transferor company No. 6 & 2 are also registered with RoC, Delhi. The joint prayer made in the application is to permit filing of joint application at the NCLT, New Delhi Bench on the ground that the registered office of the Transferee Company is in Delhi. We accept the prayer made and permit filing of joint petition by all the transferor as well as transferee companies at NCLT, New Delhi. The application stands disposed of."

5. The Transferor Company No. 1, was incorporated under the provisions of the Companies Act, 2013, as a private limited company, with the name and style as 'M/s. Priyavrat Infrastructure Private Limited' on 12th February 2015 with the ROC, NCT Delhi & Haryana, having CIN No. U45400UP2015PTC068918 and having registered office at Hindustan times House, 25, Ashok Marg, Lucknow, Uttar Pradesh 226001. The Authorised Share Capital of the Transferor Company is Rs. 1,00,000/- and Paid Up Share Capital is Rs. 1,00,000/-.

6. The Transferor Company No. 2, was incorporated under the provisions of the Companies Act, 1956, as a private limited company, with the name and style as 'Mehul Finvest Private Limited' on 30th June, 1995, having CIN No. U65100 DL1995 PTC070362 and having registered office at 9th Floor, Hindustan Time House, 18-20 Kasturba Gandhi Marg, New Delhi-110001. The Authorised Share Capital of the Transferor Company is Rs. 1,30,00,000/- and Paid Up Share Capital is Rs. 1,29,02,000/-.

7. The Transferor Company No. 3, was incorporated under the provisions of the Companies Act, 1956, as a private limited company, with the name and style as '"Jubilant E & P ventures Private Limited" on 16th September, 2006 having CIN No. U11103 UP2006 PTC043500 and having registered office at Plot No. 1A, Sector 16A, Noida Uttar Pradesh - 201301. The Authorised Share Capital of the Transferor Company is Rs. 9,00,00,000/- and Paid Up Share Capital is Rs. 70,50,000/-.

8. The Transferor Company No. 4, was incorporated under the provisions of the Companies Act, 1956, as a private limited company, with the name and style as 'Diamond Rock Private Limited' on 15th March, 1991, having CIN No. U51109 WB1991 PTC051138 and having registered office at 31 B.B.D. Bagh, Hongkong House, Kolkata West Bengal - 700001. The Authorised Share Capital of the Transferor Company is Rs. 25,00,000/- and Paid Up Share Capital is Rs. 18,30,000/-.

9. The Transferor Company No. 5, was incorporated under the provisions of the Companies Act, 1956, as a private limited company, with the name and style as 'Diligent Services Private Limited' on 13th September, 1995, having CIN No. U74899 UP1995 PTC 049530 and having registered office at Chamber No. 5, Kamadgiri Apartment, Kaushambi Uttar Pradesh - 201010. The Authorised Share Capital of the Transferor Company is Rs. 9,20,00,000/- and Paid Up Share Capital is Rs. 4,54,43,000/-.

10. The Transferee Company was incorporated under the provisions of the Companies Act, 1956, as a private limited company, with the name and style as "Pramanand Commercial Private Limited" on 16th February, 1996 having CIN No. U65100 DL1996 PTC258053 and having registered office at Lower Ground Floor, Hindustan Times, House 18-20, Kasturba Gandhi Marg, New Delhi - 110001. The Authorised Share Capital of the Transferor Company is Rs. 3,95,00,000/- and Paid Up Share Capital is Rs. 3,91,87,400/-.

11. In relation to M/s. Priyavrat Infrastructure Private Limited, being the Transferor Company No. 1, it is submitted that the Company has Two Equity Shareholders and both the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of both the members have been placed on record. It is further represented that the Transferor Company No. 1 has 'no' Secured and Unsecured Creditors, certificate from Chartered Accountant certifying list of

creditors is annexed. In relation to the shareholders and creditors, the Transferor Company seeks dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

12. In relation to M/s. Mehul Finvest Private Limited, being the Transferor Company No. 2, it is submitted that the Company has Five Equity Shareholders and all the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of all the members have been placed on record. It is further represented that the Transferor Company No. 2 has 'no' Secured and Unsecured Creditors, certificate from Chartered Accountant certifying list of creditors is annexed. In relation to the shareholders and creditors, the Transferor Company seeks dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

13. In relation to M/s. Jubilant E & P Ventures Private Limited, being the Transferor Company No. 3, it is submitted that the Company has Two Equity Shareholders and One Preference Shareholder and both the equity shareholders and the sole Preference Shareholder have given their consents by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of each members have been placed on record. It is further represented that the Transferor Company No. 3 has 'no' Secured and Unsecured Creditors, certificate from Chartered Accountant certifying list of creditors is annexed. In relation to the shareholders and creditors, the Transferor Company seeks dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

14. In relation to M/s. Diamond Rock Private Limited, being the Transferor Company No. 4, it is submitted that the Company has Two Equity Shareholders and both the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of both the members have been placed on record. It is further represented that the Transferor Company No. 4 has 'no' Secured and Unsecured Creditors, certificate from Chartered Accountant certifying list of creditors is annexed. In relation to the shareholders and creditors, the Transferor Company seeks dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

15. In relation to M/s. Diligent Services Private Limited, being the Transferor Company No. 5, it is submitted that the Company has Two Equity Shareholders and One Preference Shareholder and both the equity shareholders and the sole Preference Shareholder have given their consents by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of each members have been placed on record. It is further represented that the Transferor Company No. 5 has 'no' Secured and Unsecured Creditors, certificate from Chartered Accountant certifying list of creditors is annexed. In relation to the shareholders and creditors, the Transferor Company seeks

dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

16. In relation to M/s. Pramanand Commercial Private Limited, being the Transferee Company, it is submitted that the Company has Seven Equity Shareholders and One Preference Shareholder and all the equity shareholders and the sole Preference Shareholder have given their consent by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of each members have been placed on record. It is further represented that the Transferee Company has 'no' Secured and Unsecured Creditors, certificate from Chartered Accountant certifying list of creditors is annexed. In relation to the shareholders and creditors, the Transferor Company seeks dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

17. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that the application filed by the applicant is maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016. Learned Counsel also submits that the registered offices of all the Applicant Companies are situated within the territorial jurisdiction of this tribunal and fall within the territorial jurisdiction of the Registrar of Companies, NCT, and New Delhi.

18. The appointed date as specified in the Scheme is 22.11.2019 subject to the directions of this Tribunal.

19. The Board of Directors of the Applicant No. 1, 2, 3, 4, 5 Transferor Companies and the Applicant No. 6/Transferee Company vide Board Resolutions passed on 22.11.2019 have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions have also been placed on record by the Applicant Companies herein.

20. The Certificates of statutory auditors of all the applicant companies, confirming that the accounting treatment in the scheme is in conformity with the Companies (Accounting Standards) Rules, 2016 and Generally Accepted Accounting Principles in India (India GAAP) and is in conformity with Section 133 of the Companies Act, 2013 have been placed on record.

21. We have perused the Application and the connected documents/papers filed along with the Scheme of Amalgamation contemplated amongst the Applicant Companies.

22. Taking into consideration the joint application and the documents filed therewith, showing compliance of various provisions of the Companies Act and the rules framed there under, we propose to issue the following directions with respect to convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same as follows: -

A. Applicant Company No. 1/Transferor Company

? With respect to Equity Shareholders

The Transferor Company has Two Equity Shareholders and both the equity shareholders have given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number which are on record, hence the necessity of convening a meeting of the Equity Shareholders is dispensed with.

? With respect to Secured Creditors

The Transferor Company has no Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

? With respect to Unsecured Creditors

The Transferor Company has no unsecured Creditor, hence the necessity of convening a meeting of the unsecured Creditors is obviated.

B. Applicant Company No. 2/Transferor Company

? With respect to Equity Shareholders

The Transferor Company has Five Equity Shareholders and all the equity shareholders have given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number which are on record, hence the necessity of convening a meeting of the Equity Shareholders is dispensed with.

? With respect to Secured Creditors

The Transferor Company has no Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

? With respect to Unsecured Creditors

The Transferor Company has no unsecured Creditor, hence the necessity of convening a meeting of the unsecured Creditors is obviated.

C. Applicant Company No. 3/Transferor Company

? With respect to Equity Shareholders

The Transferor Company has two Equity Shareholders and One Preference Shareholder and both the equity shareholders and the sole Preference Shareholder have given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number which are on record, hence the necessity of convening a meeting of the Equity Shareholders is dispensed with.

? With respect to Secured Creditors

The Transferor Company has no Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

? With respect to Unsecured Creditors

The Transferor Company has no unsecured Creditor, hence the necessity of convening a meeting of the unsecured Creditors is obviated.

D. Applicant Company No. 4/Transferor Company

? With respect to Equity S hareholders

The Transferor Company has two Equity Shareholders and both the equity shareholders have given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number which are on record, hence the necessity of convening a meeting of the Equity Shareholders is dispensed with.

? With respect to Secured Creditors

The Transferor Company has no Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

? With respect to Unsecured Creditors

The Transferor Company has no unsecured Creditor, hence the necessity of convening a meeting of the unsecured Creditors is obviated.

E. Applicant Company No. 5/Transferor Company

? With respect to Equity Shareholders

The Transferor Company has two Equity Shareholders and One Preference Shareholder and both the equity shareholders and the sole Preference Shareholder have given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number which are on record, hence the necessity of convening a meeting of the Equity Shareholders is dispensed with.

? With respect to Secured Creditors

The Transferor Company has no Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

With respect to Unsecured Creditors

The Transferor Company has no unsecured Creditor, hence the necessity of convening a meeting of the unsecured Creditors is obviated.

F. Applicant Company No. 6/Transferee Company

? With respect to Equity Shareholders

The Transferee Company has Seven Equity Shareholders and all the shareholders have given their consent affidavits in support of the Scheme constituting 100% in value and 100% in number which are on record, hence the necessity of convening a meeting of the same is dispensed with.

? With respect to Secured Creditors

The Transferor Company has no Secured Creditor, hence the necessity of convening a meeting of the Secured Creditors is obviated.

? With respect to Unsecured Creditors

The Transferor Company has no unsecured Creditor, hence the necessity of convening a meeting of the unsecured Creditors is obviated.

The application stands allowed on the aforesaid terms and is disposed of.

