**(2022) 04 NCLT CK 0041**

**In the National Company Law Tribunal**

**Case No :** CA (CAA) No.49/Chd/Hry/2021

**Pyrite Builders & Constructions Private Limited Vs**

**Date of Decision :** 13-04-2022

**Acts Referred:**

Companies Act, 2013 — Section 133, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 232, 232(3)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251
Competition Act, 2002 — Section 6(2)

**Citation :** (2022) 04 NCLT CK 0041

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

**Bench :** Division Bench

**Advocate :** Abhinav Sood

**Final Decision :** Disposed Of

# Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint first motion application filed by Applicant Companies namely; Pyrite Builders & Constructions Private Limited (Transferor Company No.1/ Applicant Company No.1), Webcity Builders & Developers Private Limited (Transferor Company No.2/Applicant Company No.2), and Nadish Real Estate Private Limited (Transferee Company/Applicant Company No.3) under Section 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is also attached as Annexure A-1 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement for convening the meeting of the Equity Shareholders, Secured and Unsecured Creditors of all the applicant companies and of debenture holders of Applicant Comapny Nos. 1 & 3 and also to dispense with the requirement of issue and publication of notices for the same.

 

3. The Applicant Companies are presently engaged in the business to purchase any land, plot(s) of land or immovable property or any right or interest therein either singly or jointly or in Partnership with any person(s) or Body corporate or partnership Firm and to develop and construct thereon residential, commercial complex or complex(es) either singly or jointly or in partnership as aforesaid, comprising offices for sale or self use or for earning rental income thereon by letting out individual units comprised in such building(s) etc.

4. It is submitted that the registered offices of all the applicant companies are situated in the State of Haryana and, therefore, the applicant companies fall within the territorial jurisdiction of this Bench.

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

a. The amalgamation will result in better, efficient and economical management, achieve cost savings, pooling of resources and rationalization of administrative expenses/services. The amalgamation will enable the companies to pool their financial, commercial and other resources and synergy of operations would be achieved.

b. The amalgamation will enable the companies to achieve optimal capital structure and achieve efficiency in terms of operations of the merged entity under the combined entity.

c. The amalgamation will reduce administrative costs and operative and overhead expenses which would further lead to greater and effective executive control, cost efficiency, synergy of operations, and optimum utilization of the resources. It will result in reduction in multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company. With the enhanced resources at its disposal, the Transferee Company will have greater flexibility and strength and will be able to compete more effectively as a combined entity.

d. The Transferee Company as a consolidated entity after amalgamation will have better financial and business prospects. This Scheme would be beneficial to and in the best interest of the respective shareholders of the Transferor Companies and the Transferee Company. The Scheme shall not in any manner be prejudicial to the interests of concerned members/creditors, Directors, Key Managerial Personnel, vendors or general public at large.

e. The amalgamation would be advantageous to combine the activities of the Transferor Companies and the Transferee Company into a single company and consolidate their business and assets.

6. It is stated that the board of directors of the Applicant Company No. 1 to 3 in their respective meetings held on 08.09.2021 have considered and approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The Board Resolutions of the Applicant Companies are attached as Annexure A-4, A-11, and A-17 respectively of the application.

 

7. The appointed date of the Scheme is 01.04.2021 as mentioned in the Clause 12(ii) of Scheme of Amalgamation which is attached as Annexure A-1.

8. It is stated that the Applicant Companies have filed the audited financial statements as on 31.03.2021 and Limited Review Report on financials for the quarter ended on 30.06.2021 as Annexure A-3, A-10 and A-16 respectively of the application. The Applicant Companies have also filed the provisional unaudited financial statements as on 30.09.2021 and 31.12.2021 which are attached as Annexure-B of Diary No.00171 Dated 14.02.2022.

9. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, the Transferor Company No.1 & 2 and Transferee Company have filed the certificates dated 08.09.2021 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 are attached as Annexure A-23 of the application.

10. It is further submitted by the counsel for applicant companies that as per Fair Share Exchange/Valuation Report dated 08.09.2021 submitted by Mr. Romesh Vijay, Registered Valuer (S&FA) Reg. No.IBBI/RV/06/2019/11008 (Annexure A-22 of the application) the following Fair Share Exchange Ratio has been proposed:-

"As consideration for the merger of Pyrite Builders & Constructions Private Limited (Pyrite), Webcity Builders & Developers Private Limited (Webcity) into Nadish Real Estate Private Limited (Nadish):

Nadish will issue 1,005 equity shares of Rs.10/- (Rupees Ten only) each credited as fully paid for 1,000 equity shares of Rs.10/-(Rupees Ten only) each held by the equity shareholders in the Pyrite to the equity shareholders of the Pyrite.

Nadish will issue 1,005 Compulsorily Convertible Debenture of Rs.10/- (Rupees Ten only) each credited as fully paid for 1,000 Compulsorily Convertible Debenture of Rs.10/- (Rupees Ten only) each held by the debenture holders of the Pyrite to the debenture holders of the Pyrite.

Nadish will issue 27,543 equity share of Rs.10/- (Rupees Ten only) each credited as fully paid for 1,000 equity shares of Rs.10/-(Rupees Ten only) each held by the equity shareholders in the Webcity to the equity shareholders of the Webcity."

11. It is submitted that there are no proceedings, pending inquiry or investigation under Sections 206 to 229 of the Companies Act, 2013 against the Applicant Companies. It is further submitted that no corporate debt restructuring has been envisaged in the proposed Scheme of Amalgamation.

12. It is submitted by the learned counsel that the Scheme (Annexure A-1 of the application) also takes care of the interests of the staff/workers and employees of the Transferor Companies. By virtue of Clause 19, it is stated that upon the coming into effect of this Scheme, all the staff, workmen, employees of the

Transferor Companies, if any, who are in their employment as on the Scheme coming into effect, shall become the staff, workmen, employees or other labour of the Transferee Company with effect from the Appointed Date without any break or interruption in service and on terms and conditions as to employment and remuneration not less favourable than those on which they are engaged or employed by the Transferor Companies, whereas there will be no effect on the employees of the Transferee Company.

13. It is deposed by the authorised signatories of the Applicant Companies that no proceeding(s) or investigation(s) under Sections 235 to 251 of the Companies Act, 1956 and/or under Sections 206 to 229 of the Companies Act, 2013 are pending or instituted against the Applicant Companies involved in the Scheme and the requirement of obtaining approval from Competition Commission of India under sub-clause (2) of Section 6 of the Competition Act, 2002 is exempted vide Entry 9 to Schedule 1 in terms of Regulation 4 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. The aforesaid affidavits duly signed by the authorised signatories are part of Annexure-A of Diary No.00171 dated 14.02.2022.

14. The applicant companies have furnished the following documents:

i. Proposed Scheme of Amalgamation (Annexure A-1 of the application).

ii. List of Secured and Unsecured Creditors of all the applicant companies duly certified by the Statutory Auditors (Annexure A-7, A-13 and A-20 respectively of the application).

iii. Certificates of Statutory Auditors to the effect that Accounting treatment proposed in the Scheme is in conformity with Section 133 of Companies Act, 2013 (Annexure A-23 of the application).

iv. Proposed Share Exchange Ratio (Annexure A-22 of the application).

v. Audited Financial Statement as on 31.03.2021 and Limited Review Report on financials for the quarter ended on 30.06.2021 (Annexure A-3, A-10 and A-16 respectively).

vi. Unaudited Financial Statement as on 30.09.2021 and 31.12.2021 (Annexure-B of Diary No.00171 Dated 14.02.2022)

15. The Transferor Company No.1/Applicant Company No.1 i.e. Pyrite Builders & Constructions Private Limited CIN: U70102HR2007PTC093759 is a private limited company incorporated under the Companies Act, 1956 on 25.01.2007. The Certificate of Incorporation along with Memorandum and Articles of Association is attached as Annexure A-2 of the application. The details of the Share Capital Structure of the Transferor Company No.1/Applicant Company No.1 as on 31.03.2021 is given below:-

Particulars

 

Amount in Rupees

Authorised Share Capital

20,000 Equity shares of Rs.10/- each

Rs.2.00 Lakhs

Issued, Subscribed and Paid-up Share Capital

10,000 Equity shares Rs.10/- each fully paid

Rs.1.00 Lakhs

16. The Transferor Company No.2/Applicant Company No.2 i.e. Webcity Builders & Developers Private Limited CIN: U45201HR2005PTC082731 is a private limited company incorporated under the Companies Act, 1956 on 22.08.2005. The certificate of incorporation along with Memorandum and Articles of Association is part of Annexure A–9 of the application. The details of the Share Capital Structure of the Transferor Company No.2/Applicant Company No.2 as on 31.03.2021 is given below:-

Particulars

Amount in Rupees

Authorised Share Capital

3,00,000 Equity shares of Rs.10/- each

Rs.30.00 Lakhs

Issued, Subscribed and Paid-up Share Capital

2,10,000 Equity shares Rs.10/- each fully paid

Rs.21.00 Lakhs

17. The Transferee Company/Applicant Company No.3 i.e. Nadish Real Estate Private Limited CIN: U70101HR2005PTC091960 is a private limited company incorporated under the Companies Act, 1956 on 23.08.2005. The Certificate of Incorporation along with Memorandum and Articles of Association is attached as Annexure A-15 of the application. The details of the Share Capital Structure of the Transferee Company/Applicant Company No.3 as on 31.03.2021 is given below:-

Particulars

Amount in Rupees

Authorised Share Capital

3,00,000 Equity shares of Rs.10/- each

Rs.30.00 Lakhs

 

Issued, Subscribed and Paid-up Share Capital

2,85,000 Equity shares Rs.10/- each fully paid

Rs.28.50 Lakhs

18. The Applicant Companies have furnished the details of the Shareholders. Secured Creditors and Unsecured Creditors which is as follows:

Name of the Applicant

Companies

Shareholders along with their consent on affidavits

Creditors along with their consent on affidavits

Equity

Consent

Debenture

Consent

Secured

Consent

Unsecure

Consent

Shareholder

submitted

Holders

submitted

Creditors

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Affidavit

Affidavit

Affidavit

affidavit

Applicant Company No.1

2

(Two)

100%

in value

1 (One) CCD

Holder

100%

in value

Nil

NA

1

(One)

100%

in value

Applicant Company No.2

2

(Two)

100%

in value

Nil

NA

Nil

NA

1

(One)

100%

in value

Applicant Company  No.3

2

(Two)

100%

in value

1 (One) CCD

Holder

100%

in value

Nil

NA

3

(Three)

100%

in value

19. It is submitted that the list of Equity Shareholders of Transferor Company No. 1/Applicant Company No.1 duly certified by the Statutory Auditors is attached as Annexure A-5 of the application. As per the certificate dated 08.09.2021 issued by Statutory Auditors, there are 2 (Two) Equity Shareholders of the Transferor Company No.1/Applicant Company No.1 as on 08.09.2021 and all the Equity Shareholders of the Transferor Company No.1/Applicant Company No.1 have given their consent by way of affidavits to the proposed scheme which are part of Annexure A-5 of the application. The list of Debenture Holders of Transferor Company No.1/Applicant Company No.1 duly certified by the Statutory Auditors is attached as Annexure A-6 of the application. As per the certificate dated 08.09.2021 issued by Statutory Auditors, there is 1 (One) Compulsorily Convertible Debenture Holder of the Transferor Company No.1/Applicant Company No.1 as on 08.09.2021 and the consent of sole Debenture Holder by way of affidavit to the proposed scheme is part of Annexure A-6 of the application. The list of Secured and Unsecured Creditors of Transferor Company No.1/Applicant Company No.1 duly certified by the Statutory Auditors are attached as Annexure A-7 of the application. As per the certificate dated 31.08.2021 issued by Statutory Auditors, there are Nil Secured Creditors and 1 (One) Unsecured Creditor as on 12.08.2021. The consent of sole Unsecured

 

Creditor by way of affidavit to the proposed scheme is part of Annexure A-7 of the application.

20. It is further submitted that the list of Equity Shareholders of Transferor Company No. 2/Applicant Company No. 2 duly certified by the Statutory Auditors is attached as Annexure A-12 of the application. As per the certificate dated 08.09.2021 issued by Statutory Auditors, there are 2 (Two) Equity Shareholders of the Transferor Company No.2/Applicant Company No.2 as on 08.09.2021 and all the Equity Shareholders of the Transferor Company No.2/Applicant Company No.2 have given their consent by way of affidavits to the proposed scheme which are part of Annexure A-12 of the application. The list of Secured and Unsecured Creditors of Transferor Company No.2/Applicant Company No.2 duly certified by the Statutory Auditors are attached as Annexure A-13 of the application. As per the certificate dated 31.08.2021 issued by Statutory Auditors, there are Nil Secured Creditors and 1 (One) Unsecured Creditor as on 12.08.2021. The Sole Unsecured Creditor of the Transferor Company No.2/Applicant Company No.2 has given their consent by way of affidavit to the proposed scheme and the same is part of Annexure A-13 of the application.

21. It is averred that the list of Equity Shareholders of Transferee Company/ Applicant Company No.3 duly certified by the Statutory Auditors is attached as Annexure A-18 of the application. As per the certificate dated 08.09.2021 issued by Statutory Auditors, there are 2 (Two) Equity Shareholders of the Transferee Company/Applicant Company No.3 as on 08.09.2021 and all the Equity Shareholders of the Transferee Company/Applicant Company No.3 have given their consent by way of affidavits to the proposed scheme which are part of Annexure A-18 of the application. The list of Compulsorily Convertible Debenture Holders of Transferee Company/Applicant Company No.3 duly certified by the Statutory Auditors is attached as Annexure A-19 of the application. As per the certificate dated 08.09.2021 issued by Statutory Auditors, there is 1 (One) Compulsorily Convertible Debenture Holder of the Transferee Company/Applicant Company No.3 as on 08.09.2021 and the consent of sole Compulsorily Convertible Debenture Holder by way of affidavit to the proposed scheme is part of Annexure A-19 of the application. The list of Secured and Unsecured Creditors of Transferee Company/Applicant Company No.3 duly certified by the Statutory Auditors are attached as Annexure A-20 of the application. As per the certificate dated 31.08.2021 issued by Statutory Auditors, there are Nil Secured Creditors and 3 (Three) Unsecured Creditors of Transferee Company/Applicant Company No.3 as on 12.08.2021. The Unsecured Creditors of the Transferee Company/ Applicant Company No.3 have given their consent by way of affidavits to the proposed scheme and the same are attached as Annexure A-20 of the application.

22. This Bench has decided the issue of dispensation of meeting of shareholders in the cases of: CA (CAA) No.2/Chd/Hry/2021 Goibibo Group Private Limited & Ors. Dated 23.12.2021; CA No.189/2021 & CA (CAA) No.41/Chd/Pb/2021 G.N.A Transmissions Pvt. Ltd. & Ors. Dated 23.12.2021; and CA (CAA) No.35/Chd/

 

Hry/2021 NAM Estates Private Limited dated 23.12.2021. In the aforementioned orders, after discussing the differing views of coordinate Benches, this Bench has followed the decisions of the Hon'ble NCLAT in DLF Phase-IV Commercial Developers Limited and others with DLF Limited, (Company Appeal (AT) No. 180 of 2019) dated 19.08.2019 and Alovera Tradelink Pvt. Limited and others Vs. Ostwal Physchem (India) Limited in Company Appeal (AT) No. 178/2019 decided on 06.08.2019 on this issue and has held that "depending on the facts and circumstances of each case, the NCLT has the powers to dispense with the meetings of shareholders and others by using judicial discretion".

23. 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 meeting of the Equity Shareholders of Transferor Company No.1/Applicant Company No.1 are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent by way of affidavits has been received.

b) The meeting of the Compulsorily Convertible Debenture Holders of the Transferor Company No.1/Applicant Company No.1 is dispensed with as it has only 1 (One) Compulsorily Convertible Debenture Holder and the consent of sole Debenture Holder has been received by way of affidavit.

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

d) The meeting of the Unsecured Creditors of the Transferor Company No. 1/ Applicant Company No. 1 is dispensed with as it has only 1 (One) Unsecured Creditor and the consent of the sole Unsecured Creditor has been received by way of affidavit.

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

a) The meeting of the Equity Shareholders of Transferor Company No.2/Applicant Company No.2 are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent by way of affidavits has been received.

b) Since, there are no 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 only 1 (One) Unsecured Creditor and the consent of the sole Unsecured Creditor has been received by way of affidavit.

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

a) The meeting of the Equity Shareholders of Transferee Company/Applicant Company No.3 are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent has been received by way of affidavits.

b) The meeting of the Compulsorily Convertible Debenture Holders of the Transferee Company/Applicant Company No.3 is dispensed with as it has only 1 (One) Compulsorily Convertible Debenture Holder and the consent of sole Debenture Holder has been received by way of affidavit.

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

d) The meeting of the Unsecured Creditors of the Transferee Company/Applicant Company No.3 is dispensed with as it has 3 (Three) Unsecured Creditors and the consent of all the Unsecured Creditors have been received by way of affidavits.

24. 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. The applicant companies shall also file separate affidavits stating the sectoral regulators governing the respective companies while filing second motion petition.