(2022) 02 NCLT CK 0073

In the National Company Law Tribunal

Case No : CA (CAA) No. 218 /(KB)/2021

Rashmi Ispat Limited Vs

Date of Decision : 25-02-2022

Acts Referred:

Companies Act, 2013 — Section 230(1), 230(5), 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2)

Citation : (2022) 02 NCLT CK 0073

Hon'ble Judges : Rohit Kapoor, Member J;Harish Chander Suri, Member, T

Bench : Division Bench

Advocate : Shashi Agarwal

Final Decision : Disposed Of

Judgement

Harish Chander Suri, Member (Technical)

1. The court convened by video conference on 15.02.2022.

2. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 ("Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation of Neelkamal Tradelink Private Limited, being the Applicant No. 2 abovenamed ("Transferor Company No. 1" or "Neelkamal") , Neha Advisory Services Private Limited, being the Applicant No. 3 abovenamed ("Transferor Company No. 2" or "Neha") and Ramkrishna Ispat Private Limited, being the Applicant No. 4 abovenamed ("Transferor Company No. 3" or "Ramkrishna") with Rashmi Ispat Limited, being the Applicant No. 1 abovenamed ("Transferee Company" or "Rashmi") whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1.4.2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

2. It is submitted by Ld. counsel appearing for the Applicants that the shares of

the all Applicant Companies are not listed on any stock exchanges. Further, the Applicant(s) have the following classes of shareholders and creditors:-

Sl.

No.

Name Of The Company

Equity Shareholders

(Nos)

Preference Shareholders

(Nos)

Secured Creditors

(Nos)

Unsecured Creditors

(Nos)

1

Rashmi Ispat

Limited

7

Nil

5

108

2

Neelkamal Tradelink Private

Limited

3

Nil

Nil

1

3

Neha Advisory Services Private

Limited

4

Nil

Nil

1

4

Ramkrishna Ispat

Private Limited

3

Nil

Nil

2

3. It is further submitted that all Equity Shareholders of Applicant No. 1, Applicant No. 2, Applicant No. 3, Applicant No. 4, and over 90% in value of Unsecured Creditors of the Applicant Companies No. 2, 3 and 4 as applicable, have already given their consent to the Scheme by way of affidavits which are annexed to the application. Applicant Companies No. 2, 3 and 4 have no secured creditors.

4. Directions are sought accordingly for (a) dispensing with meetings of the shareholders of Applicant No. 1, Applicant No. 2, Applicant No. 3, Applicant No. 4 and unsecured creditors of Applicant Companies No. 2, 3 and 4, who have already given their consent to the Scheme and (b) convening of meetings of Secured Creditors and unsecured creditors of Applicant No. 1 to consider the Scheme under Section 230(1) read with Section 232(1)] of the Act.

5. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

(a) Meetings dispensed: Meetings of the Equity Shareholders of Applicant No. 1, Applicant No. 2, Applicant No. 3, Applicant No. 4, and Unsecured Creditors of Applicant Companies No. 2, 3 and 4, are dispensed-with under Section 230(1) read with Section 232(1) of the Act.

(b) Meetings to be held | Date and Times: The following meeting shall be convened and held at the following time on 11th April, 2022 for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification:-

i. Meeting of Secured Creditors of Applicant No. 1 at 4.00 P.M.

ii. Meeting of Unsecured Creditors of Applicant No. 1 at 5.00 P.M.

(c) Mode of meetings: The meetings, as above, shall be held physically at "Ashoka House", 3A, Hare Street, 4th Floor, Room No: 401 & 402 Kolkata - 700001.

(d) Advertisement: At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting be published once each in the Financial Express in English and Aajkaal in Bengali language as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(e) Individual Notices: At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notices convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the said Secured Creditors and unsecured creditors of the Applicant No. 1 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by post, air mail or courier or email or through personal messenger at their respective or last known addresses.

(f) Chairperson: Mr. Abhishek Sikdar, Advocate, Mobile No 9831865139 E-mail: sikdar.advocates@gmail.com is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 75,000/- for conducting the aforesaid meeting(s) as Chairperson.

(g) Scrutinizer: CMA Sheikh Abdul Salam, Mobile No 7318868526 E-mail: salam10695@gmail.com is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 60,000/- for acting as Scrutinizer.

(h) Quorum and Attendance: The quorum for the said meeting of persons entitled to attend the same shall be 2 (Two) for Secured Creditors and 2 (Two) for unsecured creditors. For the meeting, only attendance of such persons physically at the venue shall be counted for quorum. In case the quorum is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.

(i) Mode of Voting: At the venue of the meeting held physically, voting shall be conducted physically by polling paper.

(j) Cut-off date: The cut off date for determining the eligibility to vote, value of votes and issuance of notice shall be 1st February,2022 for the meeting of Secured Creditors and Unsecured Creditors. The value of the votes cast shall be reckoned and scrutinize with reference to the said dates.

(k) Voting procedure: Subject to the directions and matters dealt with herein, the procedure for voting by polling paper and conduct of voting, and Companies (Management & Administration) Rules, 2014 ("the said Rules"), and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

(l) Proxies & Board Resolutions: A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the concerned Applicant Company not later than 48 (forty eight) hours before the time for holding such meeting.

(m) That the Chairperson appointed for the said meeting or any person authorized by the Chairperson do issue and send the notices of the aforesaid meeting.

(n) The votes cast shall be Scrutinized by the Scrutinizer. Votes cast in all the modes shall be consolidated. The Scrutinizer shall prepare and submit the respective reports on the meeting along with all papers relating to the voting to the Chairperson of the meeting within 3 days of the conclusion of the meeting. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer.

(o) The value of each Secured Creditors and unsecured creditors shall be in accordance with the books and records of the Applicant No. 1 and, where entries in the books are disputed, the chairperson shall determine the value for purposes of the said meeting.

(p) The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of the Secured Creditors and unsecured creditors casting their votes, as aforesaid, respectively shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

(q) The Chairperson do report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form No. CAA-4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

6. Notice under Section 230(5) 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 also be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies with whom the Applicants are registered; Official Liquidator; and Income Tax Department having jurisdiction over the Applicants, by sending the same by hand delivery through special messenger, by post & by email forthwith after the notices are sent to the Secured Creditors and Unsecured

Creditors, as aforesaid. 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 Applicants. 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 Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

7. The Applicants to file an affidavit proving service of notices of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the meetings to be held.

8. The application being Company Application (CAA) No. 218 /(KB)/2021 is disposed of accordingly.

