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(2022) 11 NCLT CK 0095

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 143/KB/2022

Rishi Securities And Finance Pvt Ltd Vs

Date of Decision : 28-11-2022

Acts Referred:

Companies Act, 2013 — Section 103, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2)

Citation : (2022) 11 NCLT CK 0095

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Aditi Jhunjhunwala

Final Decision : Disposed Of

Judgement

Rohit Kapoor, Member (Judicial)

1. The Court is congregated through hybrid mode.

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 (hereinafter referred as "Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation between Rishi Securities & Finance Pvt Ltd (Transferee Company or Applicant Company 1) and Fivestar Dealcom Private Limited (Transferor Company 1 or Applicant Company 2), Rama Laminators Private Limited (Transferor Company 2), Happy Suppliers Private Limited (Transferor Company 3 or Applicant Company 3), Kamakhya Packaging Private Limited (Transferor Company 4 or Applicant Company 4), Aastha Vincom Private Limited (Transferor Company 5 or Applicant Company 5) and their respective shareholders. The Scheme provides for merger of Applicants 2 to 5 with the Transferee Company from the Appointed Date, viz 1st April, 2022 in the manner and on the terms and conditions stated in the said Scheme of Arrangement (hereinafter referred as "Scheme").

3. It is submitted by the Ld. Counsel appearing for the Applicants that Rama

Laminators Private Limited (Transferor Company No. 2), bearing CIN U29294OR1989PTC002313 and having its registered office at Power House Road, Rourkela-769004, in the state of Orissa, is within the jurisdiction of National Company Law Tribunal, Cuttack Bench.

4. It is submitted by Ld. Counsel appearing for the Applicants that the Transferee Company / Applicant No 1 is a Non-Banking Financial Company (NBFC) duly Registered with Reserve bank of India and is holding a valid Certificate of Registration.

5. It is submitted by Ld. Authorised Representative appearing for the Applicants that the shares of none of the Applicant Companies are listed on any of the stock exchanges. Further, the Applicants have the following classes of shareholders and creditors: -

PARTICULARS

SHAREHOLDERS AS ON 30TH JUNE, 2022.

CREDITORS AS ON 31ST MAY, 2022.

EQUITY SHARE HOLDERS

PREFERENCE SHARE

HOLDERS

SECURED CREDITORS

UNSECURED CREDITORS

TRANSFEREE COMPANY/

APPLICANT NO 1

14

NIL

NIL

7

TRANSFEROR

COMPANY NO 1 / APPLICANT NO 2

3

NIL

NIL

4

TRANSFEROR COMPANY NO 3 /

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APPLICANT NO 3

7

NIL

NIL

7

TRANSFEROR COMPANY NO 4 /

APPLICANT NO 4

7

NIL

NIL

2

TRANSFEROR COMPANY NO 5 /

APPLICANT NO 5

4

NIL

NIL

1

6. The Board of Directors of the Applicants have, at their Board Meetings held on September 16, 2022, approved and resolved to carry out the Scheme of Arrangement.

7. It is further submitted that all Equity Shareholders of all the Applicants 2 to 5 and 100% in value of Unsecured Creditor of the Applicants 1 to 5 have already given their consent to the Scheme by way of affidavits which are annexed to the Company Application. Ld. Authorized Representative submits that none of the Applicant Companies have secured creditors, hence, the requirement of obtaining consent and/or holding meeting of secured creditors does not arise.

8. It is further submitted that directions be given to convene and hold separate meeting of the Equity Shareholders of the Applicant No 1 for seeking their approval with or without modification(s) the proposed Scheme.

9. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders: -

A. Meetings dispensed:

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(a) In view of the consents given on affidavit form by all the Equity Shareholders of Applicants 2 to 5, meetings of the Equity Shareholders of Applicants 2 to 5 are dispensed with under Section 230(1) read with Section 232(1) of the Act.

(b) In view of the fact that the 100% of the value of Unsecured Creditors of the Applicants 1 to 5 have given their consent, meeting of the Unsecured Creditors of Applicants 1 to 5 is dispensed with.

B. No Requirement of Meeting:

In view of the fact that Applicants 1 to 5 have NIL Secured Creditors, the requirement of holding meetings of the Secured Creditors of such Applicants do not arise.

C. Meeting(s) to be held:

Equity Shareholders: Equity Shareholders of Applicant No 1.

D. Meetings Date and Time:

Equity Shareholders of Applicant No 1 to be convened and held Physical on January 05, 2023, Tuesday at 5.00 P.M., for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement.

E. Venue of Meetings:

The meeting directed by this Tribunal shall be convened and held at the Conference Room of Octavius Centre, 1st Floor, 15B, Hemant Basu Sarani, Kolkata 700001.

F. Advertisement:

At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in the FINANCIAL EXPRESS in English and Bengali translation thereof in AAJKAL as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

G. Individual Notices:

At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), 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 all Equity Shares holders of Applicant No 1 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by speed post or e-mail or through courier or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be posted on the websites of the Applicant(s), if any.

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H. Chairperson:

Mr. Rahul Auddy, Advocate (Mob. No. 9831554957) is appointed as the Chairperson of the meeting(s) to be held, as aforesaid at a consolidated fee of Rs. 60,000/- (Rupees Sixty thousand only) for conducting the aforesaid meeting as Chairperson.

I. Scrutinizer:

Ms. Shruti Singhania PCS (Mobile No. 9874847954) is appointed as Scrutinizer of the meeting(s) to be held as aforesaid, at a consolidated fee of Rs 50,000/- (Rupees Fifty Thousand Only) for acting as Scrutinizer.

J. Quorum and Attendance:

The quorum for the said meeting(s) shall be as laid down in Section 103 of the Companies Act, 2013. In the event no quorum is present at the said meeting(s) within 30 minutes from commencement of meeting then in such event the Equity Shareholders physically present at the venue of such meeting shall constitute the quorum.

K. Mode of Voting:

Voting on the resolution shall be through Ballot Paper at the venue of the meeting and the Applicant Company 1 shall make necessary arrangement for voting accordingly.

L. Voting procedure:

Subject to the directions and matters dealt with herein, the procedure for voting by polling paper/ ballot paper and conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 (hereinafter referred as "the said Rules"), and the forms there under shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

M. Proxies and Board Resolutions:

Voting shall be allowed on the proposed Scheme by proxy at the meeting of the Equity Shares holders of Applicant No. 1, provided that the proxies are in the prescribed form duly signed by the persons(s) entitled to attend and vote at the meeting is filed with the Applicant at its Registered Office not later than forty-eight hours before the meetings. In case of a Body Corporate, being an Equity Shareholder or Unsecured Creditors or both of Applicant No 1 opting to attend and vote at the meeting, as aforesaid, through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at the meeting on its behalf is deposited at the registered office of the Applicant No 1 not later than forty-eight hours before the time for holding the meeting.

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N. Issue of Notice:

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

O. Chairperson Report:

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

10. 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:

(a) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

(b) Registrar of Companies with whom the Applicants are registered;

(c) Official Liquidator;

(d) Income Tax Department having jurisdiction over the Applicants,

(e) Reserve Bank of India

by sending the same by hand delivery through special messenger and by post and by email within two weeks from the date of receiving this order. 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 Authorised 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. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

11. The Applicants to file an affidavit proving service of notices and publication of advertisement and compliance of all directions contained herein at least a week before the meeting(s) to be held.

12. The Application for confirmation and sanction of the Scheme to be filed within 4 weeks from the date of filing of the Report by the Chairperson.

13. The application being Company Application (CAA) No. 143/KB/2022 is disposed of accordingly.

14. Certified copy of the order may be issued, if applied for, upon compliance

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with all the requisite formalities.

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