(2023) 03 NCLT CK 0007

In the National Company Law Tribunal

Case No : C.A.(CAA)/45/MB/2022

Rockhard Tech Solutions Private Limited Vs

Date of Decision : 03-03-2023

Acts Referred:
Companies Act, 2013 — Section 230, 230(5), 232
Companies (Compromises Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 03 NCLT CK 0007

Hon'ble Judges : H.V. Subba Rao, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ajit Singh Tawar, Ravichandra Hegde,

Final Decision : Disposed Of

Judgement

H. V. Subba Rao, Member (Judicial)

1. The Counsel for the Applicant companies states that the present scheme is a Scheme of Amalgamation of Rockhard Tech Solutions Private Limited (First Transferor Company), Shresth Securities Private Limited (Second Transferor Company), Shresth Tech Solutions Limited (Third Transferor Company) with Bang Equity Broking Private Limited (Transferee Company) and their respective shareholders.

2. The Counsel for Applicant Companies further submits that the First Applicant Company is primarily engaged in the business to provide consultancy and other services and to act as developers, consultants and Technical Advisors in the field of Computers, Computer software, hardware information and management systems development and dealing in computer programmes application systems information and management system for facilitating data processing and computer operation and in the field of electronics including all types electronic equipments and appliances ,accessories and components and to impart training conduct seminars workshop, short and long duration courses, maintenance, software development and to depute personnel to develop and process software and hardware and other electronic items in India.

3. The Counsel for Applicant Companies further submits that the Second Applicant Company is primarily engaged in the business to act as brokers and dealers, sub-brokers, underwriters, sub-underwriters and agents for subscribing to and for the sale and purchase of; securities, stock shares, debentures, debentures stocks, bonds and units and while; pursuing these objects as a member of any recognized stock exchange in India, the company will engage itself in only such business which, a member of a recognized stock exchange is permitted to do under the Securities and Contracts (Regulation) Rules 1857, and the rules, bye-laws and regulations of the Stock Exchange.

4. The Counsel for Applicant Companies further submits that the Third Applicant Company is primarily engaged in the business to provide consultancy and other services and to act as developers, consultants and technical advisors in the field of computers, computer software's, hardware's, information and management systems, development and dealing in computer programmers, application systems, information and management systems for facilitating of data processing and computer operation and in the field of electronics including all types of electronic equipment's and appliances, accessories and components and to impart training conduct seminars, workshop, short and long duration, courses, maintenance, software development and to depute personnel to develop and process software and hardware and other electronic items in India.

5. The Counsel for Applicant Companies further submits that the Fourth Applicant Company is primarily engaged in the business of shares & stocks and purchase, sell, subscription, acquisition or dealing in shares, stocks, debentures stocks, bonds, units, negotiable instruments, obligations, mortgages and securities of any kind and to act as a broker and sub-broker of any recognized stock exchanges subject to approval of Securities and Exchange Board of India.

6. The Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 22nd November, 2021 have approved the proposed scheme of amalgamation. The Board Resolution approving the Scheme for the Applicant Companies are annexed as Annexure E1 – E4 to the Company Scheme Application.

7. The Appointed Date for the Scheme of Amalgamation is 1st day of April, 2021.

8. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31st day of March, 2021 is as under:

a. The Authorised of the First Applicant Company is Rs. 50,00,000/-(Rupees Fifty Lakhs only) divided into 5,00,000 (Five Lakhs only) Equity Shares of Rs.10/- each. The Issued, Subscribed and Paid-up Share Capital of the First Applicant Company is Rs 45,00,000/-(Rupees Forty-Five Lakhs only) divided into 4,50,000 Equity Shares of Rs. 10/- (Rupees Ten only) each fully paid-up.

b. The Authorised Share Capital of the Second Applicant Company is Rs. 3,00,00,000/- (Rupees Three Crores only) divided into 50,00,000 (Fifty Lakh) equity shares of Re.1/- (Rupee one only) each, 2,49,00,000 (Two Crore Forty-Nine Lakhs) 7.5% Redeemable Cumulative Preference Shares of Re.1/- (Rupee one only) each and 10,000 (Ten Thousand) 0.1% Non-Cumulative Redeemable Preference Shares of Rs 10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Share Capital of the Second Applicant Company is Rs. 2,22,00,000/- (Two Crore Twenty-Two Lakh only) divided into 46,00,000 equity shares of Re 1/- (Rupee one only) each, 1,75,00,000 7.5% Redeemable Cumulative Preference Shares of Re 1/- each and 10,000 0.1% Non-Cumulative Redeemable Preference Shares of Rs 10/-each.

c. The Authorised of the Third Applicant Company is Rs 5,05,00,000/- (Rupees Five Crores Five Lakhs only) divided into 5,50,000 (Five Lakhs Fifty Thousand only) equity shares of Rs 10/-each and 4,50,000 redeemable preference shares of Rs 100/- each. The Issued, Subscribed and Paid-up Share Capital of the Three Applicant Company is Rs 41,07,000/- (Rupees Forty-One Lakhs Seven Thousand only) divided into 4,10,700 equity shares of Rs 10/- each.

d. The Authorised of the Fourth Applicant Company is Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) divided into 15,00,000 (Fifteen Lakhs) Equity Shares of Rs.10/- each. The Issued, Subscribed and Paid-up Share Capital of the Fourth Applicant Company is Rs 1,49,70,000/- (Rupees One Crore Forty-Nine Lakhs Seventy Thousand only) divided into 14,97,000 equity shares of Rs 10/- each (Rupees Ten only) each.

9. The Counsel for the Applicant Companies further submits that the rationale for the Scheme are as follows:

In order to consolidate and simplify the group structure and effectively manage the Transferor Companies and the Transferee Company as a single entity, which will provide several benefits including streamlined group structure by reducing the number of legal entities, reducing the multiplicity of legal and regulatory compliances, rationalizing costs, it is intended that the Transferor Companies be amalgamated with the Transferee Company. The amalgamation of the Transferor Companies with the Transferee Company would inter alia have the following benefits:

a) The merger will result in economies of scale, reduction in overheads including administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of resources;

b) The merger will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Companies and the Transferee Company;

c) Consolidating and improving the internal control systems and procedures which will bring greater management and operational efficiency due to integration of various similar functions being carried out by the entities such as human resources, finance, legal, management etc;

d) Simplification of group structure.

10. Issue of Shares by Transferee Company:

i. Upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the properties, assets, liabilities and Undertaking of the First Transferor Company in the Transferee Company in terms of this Scheme, the Transferee Company shall, without any further act or deed:

"3 (Rs. 10 paid up) fully paid-up equity shares of BEBPL against 2 (Rs. 10 paid up) fully paid-up equity shares of Rockhard"

ii. Upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the properties, assets, liabilities and Undertaking of the Second Transferor Company in the Transferee Company in terms of this Scheme, the Transferee Company shall, without any further act or deed:

"1 (Rs. 10 paid up) fully paid-up equity shares of BEBPL against 10,000 (Rs. 1 paid up) fully paid-up equity shares of Shresth"

"No consideration shall be paid to the Preference shareholders of the Second Transferor Company."

iii. Upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the properties, assets, liabilities, and Undertaking of the Third Transferor Company in the Transferee Company in terms of this Scheme, the Transferee Company shall, without any further act or deed:

"8 (Rs. 10 paid up) fully paid-up equity shares of BEBPL against 15 (Rs. 10 paid up) fully paid-up equity shares of Shresth Tech"

11. The Counsel for the First Applicant Company states that there are Four Equity shareholders of the First Applicant Company holding 450000 Equity Shares of Rs. 10/- each amounting to Rs. 45,00,000/- and all the Four Equity shareholders have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the First Applicant Company, the meetings of the Equity Shareholders of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. The Consent affidavits are annexed as Annexure H2 (Colly) to the Company Scheme Application.

12. The Counsel for the Second Applicant Company states that there are Five Equity shareholders of the Second Applicant Company holding 4600000 Equity Shareholders of Rs 1/- amounting to Rs. 46,00,000/-and all the Five Equity Shareholders have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the Second Applicant Company, the meetings of the Equity Shareholders of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with.

The Consent affidavits are annexed as Annexure I2 (Colly) to the Company Scheme Application.

13. The Counsel for the Second Applicant Company states that the Second Applicant Company has two 7.5% Redeemable Cumulative Preference Shareholders holding 1,75,00,000 7.5% Redeemable Cumulative Preference Shares of Re 1/- each amounting to Rs. 1,75,00,000/- and two 0.1% Non-Cumulative Redeemable Cumulative Preference Shareholders holding 10,000 0.1% Non-Cumulative Redeemable Cumulative Preference Shares of Rs 10/- amounting to Rs. 1,00,000/-each who has given consent in writing to the proposed Scheme. In view of the consent affidavit filed by all four the Preference Shareholders of the Second Applicant Company, the meeting of the Preference Shareholder of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. The Consent affidavit is annexed as Annexure L2 to the Company Scheme Application.

14. The Counsel for the Third Applicant Company states that there are Seven Equity shareholders of the Third Applicant Company holding 4,10,700 Equity Shares of Rs. 10/- each amounting to Rs. 41,07,000/-and all the Seven Equity Shareholders have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the Third Applicant Company, the meetings of the Equity Shareholders of the Third Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. The Consent affidavits are annexed as Annexure J2 (Colly) to the Company Scheme Application.

15. The Counsel for the Fourth Applicant Company states that there are Four Equity shareholders of the Fourth Applicant Company holding 14,97,000 Equity Shares of Rs. 10/- each amounting to Rs. 1,49,70,000/- and all the Four Equity Shareholders have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the Fourth Applicant Company, the meetings of the Equity Shareholders of the Fourth Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are hereby dispensed with. The Consent affidavits are annexed as Annexure K2 (Colly) to the Company Scheme Application.

16. The Counsel for the Applicant Companies submits that the Applicant Companies do not have any Secured Creditors; therefore, the question of convening and holding of the meeting of Secured Creditors of the Applicant Companies does not arise.

17. The Counsel for the First Applicant Company states that the First Applicant Company has 1 (One) Unsecured Creditor of the valuer of Rs. 50,000/- (Rupees Fifty Thousand Only) who has given the consent in writing to the proposed

Scheme. In view of the consent affidavit filed by the Unsecured Creditor of the First Applicant Company, the meeting of the Unsecured Creditor of the First Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with. The Consent affidavit is annexed as Annexure Q2 to the Company Scheme Application.

18. The Counsel for the Second Applicant Company states that the Second Applicant Company has 1 (One) Unsecured Creditor of the value of Rs.19,80,000/- (Rupees Nineteen Lakh and Eight Thousand Only) who has given the consent in writing to the proposed Scheme. In view of the consent affidavit filed by the Unsecured Creditor of the Second Applicant Company, the meeting of the Unsecured Creditor of the Second Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with. The Consent affidavit is annexed as Annexure R2 to the Company Scheme Application

19. The Counsel for the Third and Fourth Applicant Companies submits that the respective Applicant Company do not have any Unsecured Creditors; therefore, the question of convening and holding of the meeting of Unsecured Creditors of the respective Applicant Companies does not arise.

20. The Transferor Companies to serve notice of the present Application complete with enclosures on – (1) the Regional Director (Western region), Ministry of Corporate Affairs, Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Official Liquidator, High Court Bombay; (4) Income Tax Authority within whose jurisdiction the Transferor Company are assessed to; and (5) GST Authority within whose jurisdiction the Transferor Company are assessed to GST, pursuant to Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

Details of Income Tax

Transferor Company

PAN Number

Address of Income tax

Authority

Rockhard Tech Solutions Private Limited

AAACR3219D

Ward 2(3)(1), Aayakar

Bhawan, Mumbai - 400020

Shresth Securities Private Limited

AAGCS2817Q

Circle 5(3)(1), Aayakar

Bhawan, Mumbai - 400020

Shresth Tech Solutions Limited

AAACS6309K

Ward 2(3)(1), Aayakar

Bhawan, Mumbai - 400020

21. The Official Liquidator to scrutinize the books of accounts of the Transferor Companies for the last five (5) years. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Transferor Companies.

22. The Transferee Company to serve notice of the present Application complete with enclosures on – (1) the Regional Director (Western region), Ministry of Corporate Affairs, Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Income Tax Authority within whose jurisdiction the Transferee Company are assessed to tax, bearing PAN AAACB9961E having IT ward jurisdiction Circle 4(1)(1), Aaykar Bhawan, Mumbai - 400020 ; (4) GST Authority within whose jurisdiction the Transferee Company is assessed to GST, bearing GSTIN 27AAACB9961E1ZL having jurisdiction at Maharashtra, Zone – Mumbai South-East, Division - Fort, Charge - Fort_701; pursuant to Section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

23. The Applicant Companies shall host the notices directed herein, on their respective websites, if any.

24. That the Applicant Companies to file a joint Affidavit of Service with the Registry proving dispatch of notices to regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

25. Ordered accordingly.

