(2024) 01 NCLT CK 0014

In the National Company Law Tribunal

Case No : C.A(CAA)/254/MB-I/2023

Rosy Blue Diamonds Private Limited Vs

Date of Decision : 03-01-2024

Acts Referred:
Companies Act 2013 — Section 230, 230(3), 230(5), 232

Citation : (2024) 01 NCLT CK 0014

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ahmed Chunawala, Rajesh Shah & Advocates

Final Decision : Disposed Of

Judgement

1. Heard the Learned Counsel for the Applicant Companies.

2. The present Scheme of Merger by absorption ("Scheme") of Rosy Blue Diamonds Private Limited with Rosy Blue (India) Private Limited and their respective shareholders is under sections 232 r/w Section 230 of the Companies Act, 2013 ('Scheme').

3. The Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 22nd September, 2023 have approved the Scheme of Amalgamation. The Appointed Date fixed under the Scheme is October 1, 2023.

4. The rationale for the proposed Scheme is as under:

(a) Applicant Company 1 and Applicant Company 2 are part of the same management group and engaged in similar business activities.

(b) The merger will lead to greater efficiency in combined business including economies of scale, efficiency of operations, cash flow management, increase asset base for the purpose of development of businesses of the combined entity.

(c) The merger will provide for more productive and optimum utilization of various resources by pooling of the resources of the companies which will minimize the administrative compliances and overheads and fuel the growth of the business thereby helping effectively address the ever-growing competition.

(d) The merger shall also result in simplification of the group structure and rationalize the number of entities and result in a single entity with combined businesses. It will also provide an opportunity to leverage combined assets and build a stronger sustainable business.

5. The nature of Business are as follows:

i. The Applicant Company No.1 is engaged in the business of import, export and domestic trade of rough, cut and polished diamonds.

ii. The Applicant Company No.2 has been carrying on the business of manufacturing, trading, assortment, import and export of rough, cut and polished diamonds.

6. The Authorised Share Capital of the Applicant Company No.1, as on the 31st day of March, 2023 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

21,50,000 Equity Shares of Rs. 10/- each.

2,15,00,000

10,00,000 preference shares of Rs. 10/-

each.

1,00,00,000

Total

3,15,00,000

Issued and Subscribed and Paid-up

20,16,355 Equity Shares of Rs. 10/- each

fully paid up.

2,01,63,550

TOTAL

2,01,63,550

As on date there is no change in the capital structure of the Applicant Company No.1

7. That there are 2 (Two) Equity Shareholders in the Applicant Company No.1.

That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Merger by absorption ("Scheme") (more particularly described hereinafter) of Rosy Blue Diamonds Private Limited with Rosy Blue (India) Private Limited and their respective shareholders is dispensed with in view of the consent affidavits given by both the Equity Shareholders of the Applicant Company No.1.

8. The Share Capital of the Applicant Company No.2 as on the 22nd day of September, 2023 is as under:

Particulars

Amount in (Rs.)

Authorised Capital

4,78,80,000 equity shares of Rs.10/- each.

47,88,00,000

2,60,00,000 (0% Convertible or Redeemable Preference Shares of Rs.10/- each).

26,00,00,000

1,50,000 (9.5% Redeemable Preference

Shares of Rs.100/- each)

1,50,00,000

Total

75,38,00,000

Issued, Subscribed and Paid-up

3,91,13,183 equity shares of Rs.10/- each.

39,11,31,830

Total

39,11,31,830

As on date, there is no change in the capital structure of the Applicant Company No.2.

9. That there are 8 (Eight) Equity Shareholders in the Applicant Company No. 2. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Rosy Blue Diamonds Private Limited with Rosy Blue (India) Private Limited and their

respective shareholders is dispensed with in view of the consent affidavits given by the Eight Equity Shareholders Comprising of 100.00% of the shareholding of the Applicant Company No.2. The Consent Affidavit of the remaining two Equity Shareholders filed by way of further affidavit dated 27th October, 2023.

10. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Company No. 1.

11. That there are 6 (Six) secured Creditors in the Applicant Company No. 2 having outstanding amount of Rs. 607,22,10,459/- (Rupees Six Hundred Seven Crores Twenty Two Lakhs Ten Thousand Four Hundred Fifty Nine only) as on 26th September, 2023. That Counsel for the Applicant Company No. 2 submits that since the scheme is an arrangement between the Applicant Company No.2 and their respective shareholders in accordance with the provisions of the Companies Act, 2013, there is no compromise and/or arrangement with creditors of Applicant Company No. 2 and the creditors of Applicant Company 2 are being paid in normal course of business as per the agreed terms and are not called upon to make any sacrifices and furthermore, since all the creditors of Applicant Company 1 are paid off, their interests are not getting affected in any way. Further, the Applicant Company 2 in terms of the Scheme shall takeover all the assets, liabilities, and obligations of Applicant Company 1 and post the Merger, the total assets of the Applicant Company 2 would be more than sufficient to discharge the liabilities of the Applicant Company 1 as well as that of Applicant Company 2. Considering the fact that merger may have bearing on overall debt-equity ratio and security coverage of the merged entity impacting the credit perception of creditors, this Bench considers it appropriate to direct the convening and holding of meeting of secured creditors.

12. That the counsel for the Applicant Companies submits that there are no Unsecured Creditors in the Applicant Company No. 1 mentioned in Para 10 of the Company Scheme Application vide Chartered Accountant Certificate dated 26th September, 2023 attached to Exhibit W to the Company Scheme Application.

13. That there are 288 (Two Hundred Eighty Eight) Unsecured Creditors of Applicant Company No. 2 having outstanding amount of Rs. 654,07,65,163/- (Rupees Six Hundred Fifty-Four Crores Seven Lakhs Sixty Five Thousand One Hundred Sixty Three only) as on 26th September, 2023. The Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/ sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.2 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 2 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. The

Applicant Company submits that there is no arrangement with the creditors and they will be paid in ordinary course of business. Considering the fact that merger may have bearing on overall debt-equity ratio and security coverage of the merged entity impacting the credit perception of creditors, this Bench considers it appropriate to direct the convening and holding of meeting of unsecured creditors. The creditors shall have voting share in proportion to their outstanding, placed before this Bench along with present application.

14. Mr. Abhishek C Bhadang, Advocate, Email: bhadangabhishek@gmail.com, Mobile No.7045404068, is appointed as the Chairperson of the meeting of the secured creditors as well as unsecured creditors of the Second Applicant Company including for any adjournment or adjournments thereof. The Chairperson shall be paid a fee of INR 2,00,000/- (Rupees Two Lakh Only) for conducting and convening the aforesaid meeting.

15. The Chairperson appointed for the aforesaid meeting shall issue the advertisements and send out the notices of the respective meetings referred to above. The Chairpersons are free to avail the services of the respective Applicant Companies or any agency for carrying out the aforesaid directions. The Chairpersons of the meetings shall have all powers under the Articles of Association of the respective Applicant Companies and also under the Merger Rules in relation to the conduct of the meetings, including for deciding any procedural questions that may arise at the meetings or at adjournment or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meetings by any person(s) and also procedural questions in respect of proposed amendment(s) to the aforesaid Scheme or resolution, if any, and to ascertain the outcome of the respective meetings of the equity shareholders (including public shareholders) by remote e-voting and e-voting during the respective VC/ OAVM meetings.

16. The Consideration is as follows:

Since the merger is of a wholly owned subsidiary company i.e., Applicant Company No. 1 into its holding company i.e., Applicant Company No. 2, no consideration shall be payable pursuant to merger of Applicant Company No. 1 with the Applicant Company No. 2 as the entire share capital of the Applicant Company No. 1 is directly held by the Applicant Company No. 2 and its nominees and therefore, no shares of Applicant Company No. 2 would be issued or allotted pursuant to the merger. The Scheme will not result in any dilution in shareholding of the Applicant Company No. 2. The existence of the Applicant Company No. 2 will remain as before without any reorganization to its shareholding pattern and no reconstruction or arrangement will happen with its shareholders.

17. The Applicant Companies shall serve the Notice in terms of Section 230(5) of the Companies Act, 2013, upon -

a. The Central Government, through Regional Director, Everest, 5th Floor, 100 Marine Drive, Mumbai-400002;

b. The Registrar of Companies, Mumbai;

c. GST Department

d. Jurisdictional Income Tax Authorities; within whose jurisdiction; the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3 rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];

e. Official Liquidator, High Court of Bombay.

f. Any other sectoral regulator as may be directed by this Hon'ble Tribunal.

18. The Notice shall be served through by Registered Post-AD, Speed Post and email along with copy of Scheme and state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme". It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

19. The Applicant Companies will submit –

i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.

ii. List of pending IBC cases, if any, along with all other litigation;

iii. pending against the Applicant Companies having material impact on the proposed Scheme.

iv. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

20. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

