

(2022) 11 NCLT CK 0075

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 135/(KB)/2022

RSH Global Private Limited Vs

Date of Decision : 25-11-2022

Acts Referred:

Companies Act, 2013 — Section 230, 230(1), 230(1)(b), 230(3), 230(5), 232, 232(1)

Citation : (2022) 11 NCLT CK 0075

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

Bench : Division Bench

Advocate : Shashi Agarwal

Final Decision : Disposed Of

Judgement

Rohit Kapoor Member (Judicial)

1. This Court is convened 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 ("Act") for orders and directions with regard to dispensation of meeting of shareholders, creditors and notice to creditors as applicable, in connection with the Composite Scheme of Arrangement And Amalgamation of (i) demerger of the Real estate Business Undertakings/Demerger Undertakings of Badau Properties Private Limited, being the Applicant No. 3 abovenamed ("Demerged Company No. 1/ Transferor company No. 1" or "Badau"), Joy Skin Care Private Limited, being the Applicant No. 4 abovenamed ("Demerged Company No. 2/ Transferor company No.2" or "Joy Skin"), Kushal Commercial Private Limited, being the Applicant No. 5 abovenamed ("Demerged Company No. 3/ Transferor company No. 3" or "Kushal"), Right Infrastructure Private Limited, being the Applicant No. 6 abovenamed ("Demerged Company No. 4/ Transferor company No. 4" or "Right"), Sagar Ratna Developers Private Limited, being the Applicant No. 7 abovenamed ("Demerged Company No. 5/ Transferor company No. 5" or "Sagar"), Shreya Marketing Private Limited, being the Applicant No. 8 abovenamed ("Demerged Company No. 6/ Transferor company No. 6" or

"Shreya"), Tirukuta Marketing Services Private Limited , being the Applicant No. 9 abovenamed ("Demerged Company No. 7/ Transferor company No. 7" or "TMS"), Trikuta Financial Services Private Limited, being the Applicant No. 10 abovenamed ("Demerged Company No. 8/ Transferor company No. 8" or "TFS"), Viewpoint Agency Private Limited, being the Applicant No. 11 abovenamed ("Demerged Company No. 9/ Transferor company No. 9" or "Viewpoint"), Basuki Civil Projects Private Limited, being the Applicant No. 12 abovenamed ("Demerged Company No. 10/ Transferor company No. 10 " or "Basuki") into Sarda Tea Industries Private Limited, being the Applicant No. 2 abovenamed ("Resulting Company " or "Sarda") on a going concern basis; and (ii) subject to the Demerger of the Real estate Business Undertakings of "Badau", "Joy Skin ", "Kushal", "Right", "Sagar ", "Shreya", "TMS", "TFS", "Viewpoint", "Basuki" into "SARDA", on a going concern basis; amalgamation of residual Demerged Companies ("Badau","Joy Skin", "Kushal", "Right", "Sagar ", "Shreya", "TMS", "TFS", "Basuki", "Viewpoint"), and Anandamoyee Tracom Private Limited, being the Applicant No. 13 abovenamed ("Transferor company No. 11" or "Anandamoyee"), Betul Commercial Limited, being the Applicant No. 14 abovenamed ("Transferor company No. 12" or "Betul"), Fluke Buildtech Private Limited, being the Applicant No. 15 abovenamed ("Transferor company No. 13" or "Fluke"), Settlement Heights Private Limited, being the Applicant No. 16 abovenamed ("Transferor company No.14" or "Settlement"), into RSH Global Private Limited , being the Applicant No. 1 abovenamed ("Transferee Company" or "RSH") and consequent dissolution of "Badau", "Joy Skin", "Kushal", "Right", "Sagar", "Shreya", "TMS", "TFS", "Viewpoint", "Basuki", "Anandamoyee", "Betul", "Fluke", "Settlement", without winding up.from the Appointed Date, viz 1st Day of April, 2021 in the manner and on the terms and conditions stated in the said Composite Scheme of Arrangement And Amalgamation ("Scheme"). (Referred at Page No. 837-891 of Application)

3. The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 29/03/2022 respectively. (Referred at Page No. 892-907 of Application)

4. It is submitted by Ld. Authorized Representative appearing for the Applicants submit that the shares of the Applicant No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 ,13, 14, 15 and 16 are not listed in any stock exchanges. Further, the Applicants have the following classes of shareholders and creditors: -

Sl. No

Name of Applicant Companies

Equity Shareholders (No.s)

Preference Share- holders

(No.s)

Secured Creditors (No.s)

Unsecured Creditors (No.s)

1

RSH Global Private Limited

25

(Page No.1442-1444

of Application)

NOC- 100%

Nil

Rs. 29,00,29,3

24

NOC-Nil

Rs 68,00,000

NOC – Nil

2

Sarda Tea Industries Private Limited

2

(Page No. 1445-1446 of

Application)

NOC- 100%

Nil

Nil

Nil

3

Badau

10

Nil

Nil

Nil

Properties Private Limited

(Page No. 1447-1448 of Application)

NOC- 100%

4

Joy Skin Care Private Limited

12

(Page No. 1449-1450 of Application)

NOC- 100%

Nil

Nil

Rs 2,70,000/-

(Page No.

1510-1511 of

Application)

NOC – 100%

5

Kushal Commercial Private Limited

20

(Page No. 1451-1453 of Application)

NOC- 100%

Nil

Nil

Rs 4,02,000/-

(Page No.

1512-1515 of

Application)

NOC – 100%

6

Right Infrastructure Private Limited

11

(Page No. 1454-1455 of Application)

NOC- 100%

Nil

Nil

Rs 4,32,000/-

(Page No.

of 1516-

1517 Application)

NOC – 100%

7

Sagar Ratna Developers Private Limited

12

(Page No. 1456-1457 of Application)

NOC- 100%

Nil

Nil

Rs 3,19,680/-

(Page No.

1518-1519 of

Application)

NOC – 100%

8

Shreya Marketing Private

Limited

18

(Page No. 1458-1460 of Application)

Nil

Nil

Rs 3,00,000/-

(Page No.

1520-1521 of

Application)

NOC- 100%

NOC – 100%

9

Tirukuta Marketing Services Private Limited

14

(Page No. 1461-1463 of Application)

NOC- 100%

Nil

Nil

Rs 4,32,000/-

(Page No.

1522-1523 of

Application)

NOC – 100%

10

Trikuta Financial Services Private Limited

15

(Page No. 1464-1465 of

Application)

NOC- 100%

Nil

Nil

Rs 5,57,321/-

(Page No.

1524-1530 of

Application)

NOC – 100%

11

Viewpoint Agency Private Limited

11

(Page No. 1466-1467 of Application)

NOC- 100%

Nil

Nil

Rs 4,05,504/-

(Page No.

1531-1532 of

Application)

NOC – 100%

12

Basuki Civil Projects Private Limited

14

(Page No. 1468-1469 of Application)

NOC- 100%

Nil

Nil

Rs 4,00,000/-

(Page No.

1533-1534 of

Application)

NOC – 100%

13

Anandamoy ee Tracom Private Limited

13

(Page No. 1470-1471 of Application)

NOC- 100%

Nil

Nil

Nil

14

Betul Commercial Limited

15

(Page No. 1472-1473 of Application)

NOC- 100%

Nil

Nil

Nil

15

Fluke Buildtech Private Limited

2

(Page No. 1474-1475 of Application)

NOC- 100%

Nil

Nil

Rs 9,50,000/-

(Page No.

1535-1536 of

Application)

NOC – 100%

16

Settlement Heights Private Limited

2

(Page No. 1476-1477 of Application)

NOC- 100%

Nil

Nil

Rs 9,50,000/-

(Page No.

1537-1538 of

Application)

NOC – 100%

5. It is submitted that all Equity Shareholders of the Applicant Company No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 have already given their consent to the Scheme by way of affidavits (100%) which are annexed to the application.

6. The Applicant Companies state that the Applicant Company No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 have positive Net Worth as on Appointed Date April 01, 2021. Further, the present Scheme is an arrangement between the Applicant Companies and their respective shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with or diminution of liability of any of the Secured Creditors, Unsecured Creditors. Therefore, while no meeting is necessary, this Tribunal hereby directs that notice be given to: -

a) Secured Creditor and unsecured creditor of the Applicant under section 230(3) of the Companies Act, 2013 with a direction that within a period of thirty days from the date of receipt of such notice they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the respective Applicant Companies. The notice be sent by Registered Post AD/Speed Post/Email. It shall be the responsibility of the Applicant Companies to ensure that the said Secured Creditor and unsecured creditor of Applicant Company No. 1 as indicated above are given notice regarding the Scheme, so that they may take informed decision thereon.

7. Directions are also sought for dispensing with meetings of the Equity shareholders of Applicant No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 and unsecured creditors of Applicant No. 4, 5, 6, 7, 8, 9, 10, 11, 12, 15 and 16 who have already given their consent to the Scheme.

8. 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: -

Meetings dispensed: Meetings of the Equity Shareholders of the Applicant No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 and unsecured creditor of Applicant Company No. 4, 5, 6, 7, 8, 9, 10, 11, 12, 15 and 16 are dispensed-with under Section 230(1) read with Section 232(1) of the Act. There is no need to hold meeting of creditor of Applicant No. 2, 3, 13 and 14 as there are no creditor.

9. 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 be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies with whom the Applicant is registered; Official Liquidator; and Income Tax Department having jurisdiction over the Applicant; by sending the same by hand delivery through special messenger, by post and also 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 Authorized Representative of the said Applicant. 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 Composite Scheme of Arrangement. 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.

10. The application being Company Application (CAA) No. 135/(KB)/2022 is disposed of accordingly.