(2023) 06 NCLT CK 0058

In the National Company Law Tribunal

Case No : CA(CAA)/268(MB)2022

Runwal Commercial Assets Private Limited Vs

Date of Decision : 20-06-2023

Acts Referred:
Companies Act, 2013 — Section 103, 230, 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 8

Citation : (2023) 06 NCLT CK 0058

Hon'ble Judges : H.V. Subba Rao, Member (J);Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Tanaya Sethi

Final Decision : Disposed Of

Judgement

H.V. Subba Rao, Member (Judicial)

1. The Learned Counsel for the Applicant Companies states that the pre-sent Scheme is Scheme of Amalgamation of Runwal Commercial As-sets Private Limited (‘the Transferor Company’) with Wheelabrator Al-loy Castings Limited (‘the Transferee Company’) and their respective shareholders (‘Scheme’), under the provisions of Sections 230 to 232 of the Companies Act, 2013.

2. The Learned Counsel for the Applicant Companies states that the reso-lution passed by the Board of Directors of the First Applicant Company and Second Applicant Company in their respective meetings conducted on 23rd November, 2022 have approved the Scheme. The Appointed Date fixed under the Scheme is 30th November, 2022.

3. The Learned Counsel for the Applicant Companies further submits the nature of business of the Applicant Companies and the rationale for the Scheme: -

Runwal Commercial Assets Private Limited

The First Applicant Company is principally engaged in the business of developing residential real estate and deals in real estate apartments.

Wheelabrator Alloy Castings Limited

The Second Applicant Company is principally engaged in the business of developing residential real estate.

Rationale of the Scheme:

The proposed amalgamation will result in organizational efficiencies, reduction in overheads and optimal utilization of various resources.

4. The Learned Counsel for the Applicant Companies further submit that the upon this Scheme becoming effective and in consideration for amal-gamation of the Transferor Company with the Transferee Company, the Transferee Company shall without any further application or deed, is-sue and allot to the shareholders of the Transferor Company, fully paid up equity shares in the following fair share swap ratio:

"1 (One) equity share of Transferee Company of face value INR 100/- each fully paid up for every 10 (Ten) equity shares of Transferor Company of face value of INR 10/- each fully paid up”

5. The Learned Counsel for the First Applicant Company further submits that there are 2 (Two) Equity Shareholders in the First Applicant Com-pany and the consent affidavits of all the Equity Shareholders of the First Applicant Company have been annexed as Annexure ‘F2’ to the Company Scheme Application. In view of the fact that all the Equity Shareholders of the First Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the First Ap-plicant Company is hereby dispensed with.

6. The Learned Counsel for the Second Applicant Company further sub-mits that there are 670 (Six Hundred Seventy) Equity Shareholders in the Second Applicant Company and the consent affidavits from 3 (Three) Equity Shareholders of the Second Applicant Company repre-senting 40.66% have been annexed as Annexure ‘G2’ to the Company Scheme Application. Consent from 1 (One) Equity shareholder repre-senting holding of 57.89% equity shares of the Second Applicant Com-pany is filed by way of Additional Affidavit. In view of the fact that 98.55% of the equity shareholders representing the promoter group of the Second Applicant Company have given their consent to the Scheme.

7. The Learned Counsel for the Second Applicant Company further sub-mits that the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at 4th Floor, Runwal & Omkar Square, opp. Sion Chunabhatti Signal, Sion East, Mumbai, Maharashtra on Wednesday, 26th day of July, 2023 at 11:30 a.m. for the purpose of considering and, if thought fit, approving with or without modifica-tion(s) the proposed Scheme of Amalgamation of Runwal Commercial Assets Private Limited with Wheelabrator Alloy Castings Limited and their respective shareholders.

8. That at least 30 days before the said meeting of the Equity Shareholders of

the Second Applicant Company to be held as aforesaid, a notice con-vening the said meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / Courier / Hand deliv-ery or through Email (to those Equity Shareholders whose email ad-dresses are duly registered with the Second Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholder of the Second Applicant Company, at their last known address or email addresses as per the records of the Second Ap-plicant Company.

9. Notice of the meeting of the Equity Shareholders of the Second Appli-cant Company, indicating the day, date and time aforesaid, shall be advertised in two local newspapers viz. "Business Standard" in English and "Navshakti" in Marathi, both circulated in Mumbai not less than 30 days before the date fixed for the meeting.

10. That Mr. Jiyan Jitendra Shah, Chartered Accountant (Membership No. 175828, FRN No. 145980W) shall be the Chairperson of the afore-said meeting of the Equity Shareholders of the Second Applicant Com-pany and failing him Ms. Kinjal Doshi, Chartered Accountant (Mem-bership No. 609515) shall be the Chairperson of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held at 4th Floor, Runwal & Omkar Square, opp. Sion Chunabhatti Sig-nal, Sion East, Mumbai, Maharashtra on Wednesday, 26th day of July, 2023 or any adjournment or adjournments thereof. The fee of the pro-fessional appointed as chairperson of the aforesaid meeting of the Eq-uity Shareholders of the Second Applicant Company to be held as aforesaid shall be aggregating to INR 20,000/- excluding applicable taxes.

11. That the Chairperson appointed for the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to issue the advertise-ment and send out the notices of the meeting referred to above. The said Chairperson shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meet-ing, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meeting or at any adjournment thereof by any person(s).

12. That the quorum of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.

13. In case if the Quorum as noted above is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the per-sons present and voting shall be deemed to constitute the quorum. For the purpose of quorum, valid proxies will also be shall also be consid-ered, if the proxy in the prescribed form, duly signed by the person signed by the persons entitled to

attend and vote at the meeting is filed with the registered office of the Second Applicant Company at least 48 hours before the meeting.

14. That voting by proxy be permitted, provided that a proxy in the pre-scribed form duly signed by the person entitled to attend and vote at the meeting, are filed with the Second Applicant Company at its Registered Office, not later than 48 hours before the aforesaid meeting.

15. That Mr. Rahul Narayan Atal (Membership No. 134488, FRN No.152180W) of Messrs. A R C H and Associates, Chartered Account-ants and failing him Mr. Harsh Chandrakant Ruparelia (Membership No. 160171, FRN No.152180W) of Messrs. A R C H and Associates, Chartered Accountants are hereby appointed as Scrutinizer of the afore-said meeting of the Equity Shareholders of the Second Applicant Com-pany to be held at 4th Floor, Runwal & Omkar Square, opp. Sion Chu-nabhatti Signal, Sion East, Mumbai, Maharashtra on Wednesday, 26th day of July, 2023 or any adjournment or adjournments thereof. The fee of the professional appointed as Scrutinizer of all the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held as aforesaid shall be aggregating to INR 20,000/- excluding applicable taxes.

16. That the Chairperson to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and the adver-tisement have been duly complied with.

17. That the Chairperson of the meeting to report to this Tribunal, the re-sults of the aforesaid meeting within thirty days of the conclusion of the meeting.

18. The Learned Counsel for the Applicant Companies further submits that there are no Preference Shareholders in the Applicant Companies and therefore the question of issuing notices and convening of meeting of the Preference Shareholders of the Applicant Companies does not arise.

19. The Learned Counsel for the First Applicant Company further submits that there are no Secured Creditors in the First Applicant Company and therefore the question of issuing notices and convening of meeting of the Secured Creditors of the First Applicant Company does not arise.

20. The Learned Counsel for the Second Applicant Company further sub-mits that there is 1 (one) sole Secured Creditor of value INR2,63,72,86,767/- (Indian Rupees Two Hundred Sixty Three Crores Seventy Two Lakhs Eighty Six Thousands Seven Hundred Sixty Seven only) in the Second Applicant Company. The Learned Counsel further submits that the Second Applicant Company has filed the consent affi-davit from the sole Secured Creditor by way of an Additional Affidavit with this Tribunal. In view of above the meeting of the Secured Creditor of Second Applicant Company is hereby dispensed with.

21. The Learned Counsel for the First Applicant Company further submits that there are 4 (Four) Unsecured Creditors of value INR 85,75,385/-(Indian Rupees

Eighty-Five Lakhs Seventy Five Thousands Three Hun-dred Eighty Five only) in the First Applicant Company and the consent affidavits from 2 (Two) Unsecured Creditors of the First Applicant Company representing 99.42% value have been annexed as Annexure - 'I' to the Company Scheme Application. In view of the fact that major-ity of the value of Unsecured Creditors of the First Applicant Company have given their consent to the Scheme, the meeting of the Unsecured Creditors of the First Applicant Company is hereby dispensed with.

22. The Learned Counsel for the Second Applicant Company further sub-mits that there are 2,748 (Two Thousand Seven Hundred Forty-Eight) Unsecured Creditors of value INR 6,60,14,90,096/- (Indian Rupees Six Hundred Sixty Crores Fourteen Lakhs Ninety Thousands Ninety Six only) in the Second Applicant Company. Further the Learned Counsel for the Second Applicant Company further submits that there is no dim-inution of liability of any of the Unsecured Creditors of the Second Ap-plicant Company and that they will be paid off in the ordinary course of business. In view of above, the meeting of the Unsecured Creditors of Second Applicant Company is hereby dispensed with. However, the Second Applicant Company is hereby directed to issue notices to all its Unsecured Creditors, with the direction that they may submit their rep-resentation, if any, to the Tribunal and copies of such representation shall simultaneously be served upon the Second Applicant Company. The notice be sent by Registered Post AD/Speed Post/Email/Cou-rier/Hand delivery as may be feasible.

23. The Applicant Companies are accordingly directed to serve notices along with copy of Scheme upon-

(i) concerned Income Tax Authorities within whose jurisdiction the Applicant Company's assessments are made i.e., for the First Applicant Company, having PAN – AAJCR7366J and address at Ward 15(3)(1), Mumbai Aayakar Bhawan, Mumbai and for the Second Applicant Company, having PAN – AAACW0462F and address at Central Circle 4(1), Mumbai Aayakar Bhawan, Mumbai;

(ii) the Central Government through the office of Regional Direc-tor, Western Region, Mumbai;

(iii) Registrar of Companies, Mumbai;

(iv) The Goods and Service Tax Authorities (Maharashtra). GST registration number for First Applicant Company is 27AAJCR7366J1ZQ and GST registration number for Second Applicant Company – 27AAACW0462F1ZK;

(v) Real Estate Regulatory Authority (only in case of the Second Applicant Company); and

(vi) The Official Liquidator, Bombay (only in case of the First Ap-plicant Company).

pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such repre-sentations shall simultaneously be served upon the Applicant Compa-nies, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

24. The Applicant Companies to file an affidavit of service of the directions given by the Tribunal for proving service of notices have been duly complied with.

25. Ordered accordingly.

