(2020) 03 NCLT CK 0068

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application (CAA) No. 177(ND) Of 2019

Saruchi Enterprises Private Limited And Ors — APPELLANT

Vs

PSAV Marketing Limited — RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 03 NCLT CK 0068

Hon'ble Judges : Dr. Deepti Mukesh, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Krishna Kumar Singh, Astik Mani Tripathi, Shyam Singh Negi

Final Decision : Allowed

Judgement

Dr. Deepti Mukesh, J

1. This is joint application filed by the applicant companies herein, Saruchi Enterprises Private Limited for ("brevity Transferor Company No. 1"), Evernew Software Solution Private Limited ("brevity Transferor Company No. 2"), Hornbill Breweries Private Limited("brevity Transferor Company No. 3"), San Aerospace Limited ("brevity Transferor Company No. 4"), Saurabh Tradecom Limited ("for brevity Transferor Company No. 5") and PSAV Marketing Limited ("for brevity Transferee Company"), under the provisions of Sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants.

2. Affidavits in support of the above application has been sworn by Ms. Sarika Mundra being the Director on behalf of Transferor Company No. 1 by Mr. Ajay Kumar Lakhotia being the Director on behalf of Transferor Company No. 2, by Mr.

Ajay Kumar Lakhotia being the Director on behalf of Transferor Company No. 3, by Mr. Ajay Kumar Lakhotia being the Director on behalf of Transferor Company No. 4, by Mr. Baghwan Singh being the Director on behalf of Transferor Company No. 5, Mr. Ajay Kumar Lakhotia the Director on behalf of Transferee Company has been placed on record along with corresponding Board Resolution dated 05.10.2019 of respective applicants. It is also represented that the registered office of all the applicant companies are under the domain of Registrar of Companies, NCT of New Delhi & Haryana and within the territorial jurisdiction of this Tribunal.

3. The Transferor Company No. 1 is a private limited company incorporated on 21st September 1995, originally under the name and style of "Saruchi Financiers Pvt. Ltd." under the provisions of Companies Act, 1956 bearing CIN U51103DL1995PTC072629 with registrar of Companies, NCT of Delhi and Haryana and got its name changed to "Saruchi Enterprises Pvt. Ltd." w.e.f 19th Feb 2016 vide certificate of incorporation pursuant to change of name, annexed with the application herein and having its registered office at N-37, Greater Kailash, Part -I New Delhi-110048. The Authorized Share Capital of the Transferor No. 1 Company is Rs. 51,00,000/- and the Paid-up Share Capital is Rs. 46,34,250/-.

4. The Transferor Company No. 2 is a private limited company incorporated under the provisions of Companies Act, 1956 on 10th Feb 2000 vide CIN U72900DL2000PTC103692 with Registrar of Companies, NCT of Delhi & Haryana in the name and style of "Evernew Software Solutions Private Limited" and having its registered office at DT-4, IIIrd Floor, Plot No. 13, Bansal Plaza, Commercial Complex, Sector-6, Dwarka, New Delhi-110075. New Delhi-110048. The Authorized Share Capital of the company is Rs. 5,00,000/- and the Paid-Up Share Capital is Rs. 5,00,000/-.

5. The Transferor Company No. 3 is a private limited company incorporated under the provisions of Companies Act, 1956 on 14th Feb 2008 vide CIN U15531DL2008PTC174057 with Registrar of Companies, NCT of Delhi & Haryana in the name and style of "Hornbill Breweries Private Limited" and having its registered office at DT-4, IIIrd Floor, Plot No. 13, Bansal Plaza, Commercial Complex, Sector-6, Dwarka, New Delhi-110075. New Delhi-110048. The Authorized Share Capital of the company is Rs. 10,00,00,000/-and the Paid-Up Share Capital is Rs. 3,01,00,000/-.

6. The Transferor Company No. 4 is a private limited company incorporated under the provisions of Companies Act, 1956 on 20th September 2011 vide CIN U35990DL2011PLC225232 with Registrar of Companies, NCT of Delhi & Haryana in the name and style of "San Aerospace limited" and having its registered office at N-37, Greater Kailash Part-I, New Delhi-110048. The Authorized Share Capital of the company is Rs. 2,00,00,000/- and the Paid-Up Share Capital is Rs. 2,00,00,000/-.

7. The Transferor Company No. 5 is a private limited company incorporated on 4th June 1993, originally under the name and style of "Saurabh Credit and Securities Limited" under the provisions of Companies Act, 1956 bearing CIN U51900DL1993PLC053918 with registrar of Companies, NCT of Delhi and Haryana and got its name changed to "Saurabh Tradecom Limited" w.e.f 19th Feb 2016 vide certificate of incorporation pursuant to change of name, annexed with the application herein and having its registered office at Ground Floor of N-35, Greater Kailash, Part -I New Delhi-110048. The Authorized Share Capital of the Transferor No. 1 Company is Rs. 1,00,00,000/- and the Paid-up Share Capital is Rs. 41,38,500/-.

8. The Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 01th October 2015 vide CIN U74900DL2015PLC285912 with Registrar of Companies, NCT of Delhi & Haryana in the name and style of "PSAV Marketing Limited" and having its registered office at DT-4, IIIrd Floor, Plot No. 13, Bansal Plaza, Commercial Complex, Sector-6, Dwarka, New Delhi-110075. The Authorized Share Capital of the company is Rs. 5,00,000/- and the Paid-Up Share Capital is Rs. 5,00,000/-.

9. The Transferor Companies as well as the Transferee Company has filed their respective Memoranda and Articles of Association inter alia delineating their object clauses, as well as their last Audited Annual Accounts for the financial 31.03.2019. The provisional balance sheet as on 30th September 2019 is also annexed herewith.

10. All the Applicant companies, vide meeting of Board of Directors held on 05th October 2019 have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record.

11. It is stated that the Transferor Company No. 1 is having 16 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits holding 100% of total value, which are annexed to the application. It is further represented that the Company has nil Secured Creditors and nil Unsecured Creditors, Certificate from Chartered Accountants certifying list of Secured and Unsecured Creditors is annexed. In relation to the shareholders, it seeks dispensing with holding/convening of the meetings as their consents affidavits are placed on record. Since there are no Secured Creditors and Unsecured Creditors therefore the necessity of convening/holding a meeting does not arise. As on 30th September 2019, there are nil statutory and other dues.

12. It is stated that the Transferor Company No. 2 is having 2 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits holding 100% of total value, which are annexed to the application. It is further represented that the Company has nil Secured Creditors and one Unsecured

Creditor, Certificate from Chartered Accountants certifying list of Secured and Unsecured Creditors is annexed. The consent affidavit of the sole Un Secured creditor is annexed. In relation to the shareholders and Unsecured Creditor it seeks dispensing with holding/convening of the meetings as their consents affidavits are placed on record. Since there are no Secured Creditors therefore the necessity of convening/holding a meeting does not arise. It is further stated that as on 30th September 2019, there are nil statutory and other dues.

13. It is stated that the Transferor Company No. 3 is having 2 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits holding 100% of total value, which are annexed to the application. It is further represented that the Company has nil Secured Creditors and one Unsecured Creditor, Certificate from Chartered Accountants certifying list of Secured and Unsecured Creditors is annexed. The consent affidavit of the sole Unsecured Creditor is annexed. In relation to the shareholders and Unsecured Creditor it seeks dispensing with holding/convening of the meetings as their consents affidavits are placed on record. Since there are no Secured Creditors therefore the necessity of convening/holding a meeting does not arise. It is further stated that as on 30th September 2019, there are nil statutory and other dues.

14. It is stated that the Transferor Company No. 4 is having 10 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits holding 100% of total value, which are annexed to the application. It is further represented that the Company has nil Secured Creditors and nil Unsecured Creditor, Certificate from Chartered Accountants certifying list of Secured and Unsecured Creditors is annexed. In relation to the shareholders it seeks dispensing with holding/convening of the meetings as their consents affidavits are placed on record. Since there are no Secured Creditors and Unsecured Creditor therefore the necessity of convening/holding a meeting does not arise. It is further stated that as on 30th September 2019, there are nil statutory and other dues.

15. It is stated that the Transferor Company No. 5 is having 8 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits holding 100% of total value, which are annexed to the application. It is further represented that the Company has nil Secured Creditors and One Unsecured Creditor, Certificate from Chartered Accountants certifying list of Secured and Unsecured Creditors is annexed. The consent affidavit of the sole Unsecured Creditor is annexed. In relation to the shareholders & Unsecured creditor it seeks dispensing with holding/convening of the meetings as their consents affidavits are placed on record. Since there are no Secured Creditors therefore the necessity of convening/holding a meeting does not arise. It is further stated that as on 30th September 2019, there are nil statutory and other dues.

16. It is stated that the Transferee Company is having seven Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and all the shareholders have given their respective consents by way of affidavits which are annexed to the application. It is further represented that the Company has nil Secured Creditor and four Unsecured Creditors, Certificate from Chartered Accountants certifying list of secured and unsecured creditors is annexed. The consent affidavit of the all the Unsecured Creditors is annexed. All the shareholders and Unsecured creditors have given its consent by way of affidavit holding 100% of total value. Therefore, in relation to the shareholder and secured creditor of the Company, it seeks dispensing with holding/convening of the meetings as consent affidavits are placed on record. Since there are no Secured Creditors therefore the necessity of convening/holding a meeting does not arise. It is further stated that as on 30th September 2019, there are nil statutory and other dues.

17. The appointed date as specified in the Scheme is 1st April 2019 subject to the directions of this Tribunal.

18. Taking into consideration the submissions and the documents placed on record, we propose to issue the following directions with respect to convening/ holding or dispensing with the meetings of the Shareholders, Secured and Unsecured Creditors as well as issue of notices including by way of paper publication as follows: -

A. In relation to the Transferor Company No. 1:

a. With respect to Equity shareholders: In view of consent affidavits, from all shareholders the equity shareholders having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b. With respect to Secured Creditors: There are no Secured Creditors; therefore the necessity of convening a meeting does not arise.

c. With respect to Unsecured Creditors: There are no Un- Secured Creditors; therefore the necessity of convening a meeting does not arise.

B. In relation to the Transferor Company No. 2:

a. With respect to Equity shareholders: In view of consent affidavits, from both the equity shareholders having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b. With respect to Secured Creditors: There are no Secured Creditors; therefore the necessity of convening a meeting does not arise.

c. With respect to Unsecured Creditors: In view of consent affidavit, from the sole Unsecured creditor having 100% in total value been filed, convening the meeting of Unsecured creditor is dispensed with.

C. In relation to the Transferor Company No. 3:

a. With respect to Equity shareholders: In view of consent affidavits, from both the equity shareholders having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b. With respect to Secured Creditors: There are no Secured Creditors; therefore the necessity of convening a meeting does not arise.

c. With respect to Unsecured Creditors: In view of consent affidavit, from the sole unsecured creditors having 100% in total value been filed, convening the meeting of Unsecured Creditors is dispensed with.

D. In relation to the Transferor Company No. 4:

a. With respect to Equity shareholders: In view of consent affidavits, from all equity shareholders having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b. With respect to Secured Creditors: There are no Secured Creditors; therefore the necessity of convening a meeting does not arise.

c. With respect to Unsecured Creditors: There are no Unsecured Creditors; therefore the necessity of convening a meeting does not arise.

E. In relation to the Transferor Company No. 5:

a. With respect to Equity shareholders: In view of consent affidavits, from all equity shareholders having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b. With respect to Secured Creditors: There are no Secured Creditors; therefore the necessity of convening a meeting does not arise.

c. With respect to Unsecured Creditors: In view of consent affidavit, from the sole unsecured creditors having 100% in total value been filed, convening the meeting of Unsecured Creditors is dispensed with.

F. In relation to the Transferee Company:

a. With respect to Equity shareholders: In view of consent affidavits, from all equity shareholders having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b. With respect to Secured Creditors: There are no Secured Creditors; therefore the necessity of convening a meeting does not arise.

c. With respect to Unsecured Creditors: In view of consent affidavits, from all unsecured creditors having 100% in total value been filed, convening the meeting of Unsecured Creditors is dispensed with.

19. Notice of this application shall also be served on the following Statutory Authorities:

(i) Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

(ii) Registrar of Companies at 4 floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

(iii)Official liquidator, Lok Nayak Bhavan, 8 Floor, Khan Market, New Delhi-110001;

(iv) Income Tax Department, Income Tax Office, Additional Commissioner Of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.

(v) and any other sectoral regulators required to be served.

The application stands allowed on the aforesaid term and disposed off.