(2020) 12 NCLT CK 0014

In the National Company Law Appellate Tribunal

Case No : Company Application No. (CAA)-64 (ND) Of 2020

Saurabh Advisors Private Limited And Ors. APPELLANT

Vs

Flowmore Design & Technologies Private Limited RESPONDENT

Date of Decision : 07-12-2020

Acts Referred:

Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 12 NCLT CK 0014

Hon'ble Judges : Dr. Deepti Mukesh, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Praveen Kumar Mital

Final Decision : Disposed Of

Judgement

Sumita Purkayastha, Member (T)

1. This is joint application filed by the applicant companies herein, Saurabh Advisors Private Limited (â??for brevity Transferor Company-1â?), R G

Freelancers Private Limited (â??for brevity Transferor Company-2â?), G G Advisory Services Private Limited (â??for brevity Transferor Company-

3â?), and Flowmore Design & Technologies Private Limited (â??for brevity Transferee Companyâ?), under section 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 â??SCHEMEâ?) proposed between the

applicants.

2. Affidavit in support of the above application sworn by Mr. Saurabh Gupta, the Director of all the applicant companies, who has been authorized

vide board resolutions dated 05.02.2020 for the Transferor Companies and Transferee Company respectively, has been duly filed, along with the

application. It is also represented that the registered office of 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- 1 is a private limited company incorporated on 05.11.2009 under the provisions of Companies Act, 1956 bearing CIN

U74140DL2009PTC195731 with registrar of Companies, NCT of Delhi and Haryana under the name and style of â??Saurabh Advisors Private

Limitedâ? and having its registered office at 1584/113, Ganesh Pura, Tri Nagar, New Delhi 110035. The Authorized Share Capital of the Transferor

Company-1 is Rs.76,00,000/- and the Paid-up Share Capital is Rs. 76,00,000/-

4. The Transferor Company- 2 is a private limited company incorporated on 05.11.2009 under the provisions of Companies Act, 1956 bearing CIN

U74140DL2009PTC195730 with registrar of Companies, NCT of Delhi and Haryana under the name and style of â??R G Freelancers Private

Limitedâ? and having its registered office at 1584/113, Ganesh Pura, Tri Nagar, New Delhi 110035. The Authorized Share Capital of the Transferor

Company-2 is Rs. 76,00,000/- and the Paid-up Share Capital is Rs. 76,00,000/-

5. The Transferor Company- 3 is a private limited company incorporated on 05.11.2009 under the provisions of Companies Act, 1956 bearing CIN

U74900DL2009PTC195724 with registrar of Companies, NCT of Delhi and Haryana under the name and style of â??G G Advisory Services Private

Limitedâ? and having its registered office at 1584/113, Ganesh Pura, Tri Nagar, New Delhi 110035. The Authorized Share Capital of the Transferor

Company-2 is Rs. 76,00,000/- and the Paid-up Share Capital is Rs. 76,00,000/-

6. The Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 29.12.2006 vide CIN

U72300DL2006PTC157170 with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??Flowmore Design & Technologies

Private Limitedâ? and having its registered office at 303, 3rd Floor Plot No. 2068/69 Karol Bagh 38, Nai wala Delhi- 110005. The Authorized Share

Capital of the Transferee company is Rs. 25,00,000/- and the Paid-Up Share Capital is Rs. 1,20,000/-

7. The Transferor Companies as well as the Transferee Company have 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.

8. The Applicant companies, vide their respective meeting of the Board of Directors held on 05.02.2020 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.

9. It is stated that the Transferor Company-1 is having 3 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is

annexed and all of them 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 Creditors and NIL Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors is

annexed. In relation to the shareholders it seeks dispensing with holding/ convening of the meetings as their consent 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.

10. It is stated that the Transferor Company-2 is having 3 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is

annexed and all of them 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 Creditors and NIL Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors is

annexed. In relation to the shareholders it seeks dispensing with holding/ convening of the meetings as their consent 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.

11. It is stated that the Transferor Company-3 is having 3 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is

annexed and all of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented that

the Company has 2 Unsecured Creditors both of them have given their respective consents by way of affidavits. The Company has NIL Secured

Creditors, Certificate from Chartered Accountants certifying list of creditors is annexed. In relation to the shareholders and un-secured creditors it seeks dispensing with holding/convening of the meetings as their consent affidavits are placed on record. Since there are no Secured Creditors

therefore the necessity of convening/holding a meeting does not arise.

12. It is stated that the Transferee Company is having 3 Shareholders, Certificate from Chartered Accountants certifying list of shareholders is

annexed and all of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented that

the Company has 2 Unsecured Creditors all of them have given their respective consents by way of affidavits. The Company has NIL Secured

Creditors, Certificate from Chartered Accountants certifying list of creditors is annexed. In relation to the shareholders and Unsecured Creditors it

seeks dispensing with holding/convening of the meetings as their consent affidavits are placed on record. Since there are no Secured Creditors and

therefore the necessity of convening/holding a meeting does not arise.

13. The appointed date as specified in the Scheme is 31st December, 2019 subject to the directions of this Tribunal.

14. Taking into consideration the submissions and the documents filed therewith, 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-1:

a) With respect to Equity shareholders: In view of consent affidavits, from 3 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-2:

a) With respect to Equity shareholders: In view of consent affidavits, from 3 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.

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

C. In relation to the Transferor Company-3:

c) With respect to Equity shareholders: In view of consent affidavits, from 3 equity shareholders having 100% voting share been filed, convening

the meeting of shareholders/members is dispensed with.

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

e) With respect to Unsecured Creditors: There are 2 Un-secured Creditors, who have filed their respective consent affidavits, hence convening

the meeting of the un-secured creditors has been dispensed with.

D. In relation to Transferee Company:

a) With respect to Equity shareholders: In view of consent affidavits, from 3 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 2 Un-secured Creditors, who have filed their respective consent affidavits, hence convening

the meeting of the un-secured creditors has been dispensed with.

15. Notice of this application shall also be served on the following:

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.

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