(2019) 07 NCLT CK 0025

In the National Company Law Tribunal

Case No : CAS/588 And 589/CAA/2019

S.C.M. International Impex Private Limited — APPELLANT

Vs

TCS Textile And Apparel India Private Limited — RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:
Companies Act, 2013 — Section 230, 230(9), 231, 232

Citation : (2019) 07 NCLT CK 0025

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J

Bench : Single Bench

Advocate : P. Sriram

Final Decision : Allowed

Judgement

Ch. Mohd. Sharief Tariq, J

1. Under consideration are Application Nos. CA/588 & 589/CAA/2019 filed under Sections 230 to 232 of the Companies Act, 2013. The prayer made is to dispense with convening, holding and conducting of the meeting of Equity Shareholders, Secured Loan Creditors, Unsecured Loan Creditors and Unsecured Trade Creditors of the Transferor Company and Transferee Company.

2. M/s. S.C.M. International Impex Private Limited

i. The Transferor Company viz., M/s. S.C.M. International Impex Private Limited, has 5 (Five) Equity Shareholders. The Certificate issued by the Chartered Accountants to this effect is placed at page 111 of the typed set filed with the Application. The consent Affidavits given by the Equity Shareholders are placed at pages 112 to 126 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with convening, holding and conducting the meeting of Equity Shareholders. Therefore, the meeting of the Equity Shareholders of the Transferor Company is allowed to be dispensed with.

ii. There is only 1 (One) Secured Loan Creditor of the Transferor Company. The Certificate issued by the Chartered Accountants in this regard is placed at page 128 of the typed set filed with the Application. The consent Affidavit given by the sole Secured Loan Creditor is placed at pages 129 to 131 of the typed set filed with the Application. Therefore, the meeting of the Secured Loan Creditor of the Transferor Company is allowed to be dispensed with under Clause (9) of Section 230 of the Companies Act, 2013.

iii. There are 3 (Three) Unsecured Loan Creditors in relation to the Transferor Company. The Certificate issued by the Chartered Accountants to this effect is placed at page 132 of the typed set filed with the Application. The consent affidavits given by the 3 Unsecured Loan Creditors constituting 100% in terms of values, is placed at pages 133 to 141 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with the holding of the meeting of Unsecured Loan Creditors. Therefore, the meeting of the Unsecured Loan Creditors of the Transferor Company are allowed to be dispensed with under Clause (9) of Section 230 of the Companies Act, 2013.

iv. There are 47 (Forty Seven) Unsecured Trade Creditors in relation to the Transferor Company. The Certificate issued by the Chartered Accountants to this effect is placed at pages 142 to 144 of the typed set filed with the Application. The consent affidavits given by the 3 Unsecured Trade Creditors constituting 90.47% in terms of values, is placed at pages 145 to 153 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with the holding of the meeting of Unsecured Trade Creditors. Therefore, the meeting of the Unsecured Trade Creditors of the Transferor Company are allowed to be dispensed with under Clause (9) of Section 230 of the Companies Act, 2013.

3. M/s. TCS Textile And Apparel India Private Limited

i. The Transferee Company viz., M/s. TCS Textile And Apparel India Private Limited, has 6 (Six) Equity Shareholders. The Certificate issued by the Chartered Accountants to this effect is placed at page 118 of the typed set filed with the Application. The consent Affidavits given by the Equity Shareholders are placed at pages 119 to 136 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders. Therefore, the meeting of the equity shareholders of the Transferee Company is allowed to be dispensed with.

ii. There is only 1 (One) Secured Loan Creditor of the Transferee Company. The Certificate issued by the Chartered Accountants in this regard is placed at page 137 of the typed set filed with the Application. The consent Affidavit given by the sole Secured Loan Creditor is placed at pages 138 to 140 of the typed set filed with the Application. Therefore, the meeting of the Secured Loan Creditor of the

Transferee Company is allowed to be dispensed with under Clause (9) of Section 230 of the Companies Act, 2013.

iii. There are 3 (Three) Unsecured Loan Creditors in relation to the Transferee Company. The Certificate issued by the Chartered Accountants to this effect is placed at page 141 of the typed set filed with the Application. The consent affidavits given by the 3 Unsecured Loan Creditors constituting 100% in terms of values, is placed at pages 142 to 150 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with the holding of the meeting of Unsecured Loan Creditors. Therefore, the meeting of the Unsecured Loan Creditors of the Transferee Company is allowed to be dispensed with under Clause (9) of Section 230 of the Companies Act, 2013.

iv. There are 69 (Sixty Nine) Unsecured Trade Creditors in relation to the Transferee Company. The Certificate issued by the Chartered Accountants to this effect is placed at pages 151 to 153 of the typed set filed with the Application. The consent affidavits given by the 6 Unsecured Trade Creditors constituting 90.43% in terms of values, is placed at pages 154 to 171 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with the holding of the meeting of Unsecured Trade Creditors. Therefore, the meeting of the Unsecured Trade Creditors of the Transferee Company are allowed to be dispensed with under Clause (9) of Section 230 of the Companies Act, 2013.

4. The Registry is directed to issue notice to the concerned Regional Director, Ministry of Corporate Affairs, RoC concerned and Income Tax Authorities including the Assessing Officer of the I.T. Circle for both the Companies. The notice is also directed to be issued to the Official Liquidator in relation to the Transferor Company separately with the direction to appoint CA for filing the report with regard to the affairs of the Company. In case, the scheme is exempted under the Competition Act, 2002, an affidavit to this effect is to be given. Otherwise, notice to CCI may also be issued. In case, the statutory authorities to whom the notice is issued are desirous of making any objection/ representation, they may do so within 30 days from the date of receipt of the notice. In case no objection/representation is made, it shall be presumed that they/any of them have/has no objection/representation to make.

5. The Applicant Companies are also directed to issue private notice having not less than 30+2 days before the date fixed for filing Petition(s) to the said authorities/regulators by way of speed post/hand delivery separately. The proof of sending and effecting the service of notice upon them along with the newspaper publication shall be submitted with the supporting affidavit to this Bench along with Company Petition(s).

6. The Applicant Companies are directed to effect publication separately in the newspapers one in English "The Hindu" (Chennai Edition) and another in

vernacular "Dinamalar" (Chennai Edition) provided the said newspapers have wide circulation in the State of Tami Nadu, at least a month before the date fixed for filing the Petition(s). The Applicant Companies are also directed to upload the notice on its website and display the notice on the notice board at its Registered Office. The Registry is also directed to display the notice on the notice board of this Bench.

7. Accordingly, the Applications are allowed. The Applicant Companies are directed to file the Petition(s) on or before 30.08.2019.

