(2023) 04 NCLT CK 0064

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 19/KB/2023

Shefali Goods Pvt Ltd Vs

Date of Decision : 27-04-2023

Acts Referred:
Companies Act, 2013 — Section 133, 230(1), 230(5), 232(1)

Citation : (2023) 04 NCLT CK 0064

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. The court convened through hybrid mode today. 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 dispensation of meetings of shareholders and creditors in connection with the Scheme of Amalgamation of the following Transferor Companies:

SL. No.

Name of the Companies

Transferor Company Number 1

Nairit Tie-Up Private Limited

Transferor Company Number 2

Nivedan Vyapaar Private Limited

Transferor Company Number 3

Sanee Capital And Leasing Private Limited

with Shefali Goods Private Limited, being the Applicant No. 4 above named

("Transferee Company") whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz. 1st April 2022 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme"). The Copy of the said Scheme of Amalgamation is annexed to the Company Petition being – Annexure –I-1, in Volume II at Page No. 329-349.

2. The Board of Directors of the Applicant Companies at their Board Meetings, held on 30th December 2022 approved and resolved to carry out the said Scheme of Amalgamation. The copies of the resolution passed by the applicant companies are annexed with the Company Petition being- Annexure- I-2 in Volume II at Page No. 350-353.

3. It is further submitted by the Ld. Authorized Representative appearing for the Applicants that the shares of all the Applicants are not listed on the stock exchanges. Further, the applicants have the following classes of shareholders and creditors:

SL.

No.

Name of the Applicant Companies

Equity Sharehol ders

Secured Creditors

Un Secured Creditors

1

Nairit Tie-Up Private Limited

12

Nil

Nil

2

Nivedan Vyapaar Private Limited

11

Nil

5

3

Sanee Capital And Leasing Private Limited

9

Nil

1

4

Shefali Goods Private Limited

5

Nil

6

4. Ld. Authorized Representative appearing for the Applicants submits that 100% of the equity shareholders of all the Applicant Companies have given their consent to the Scheme by way of affidavits which are annexed to the Company Application being Annexure J in Volume-III at Page. No(s). 366-513.

5. Ld. Authorized Representative appearing for the Applicants submits that 100% of the Unsecured creditors of the Applicant Company No. 2 and 4 have given their consent to the Scheme by way of affidavits which are annexed to the Company Application being Annexure M in Volume-IV at Page. No(s). 530– 573.

6. Ld. Authorized Representative appearing for the Applicants further submits that the Unsecured creditor of all the Applicant Company No. 3 has repaid the loan amount and the same has been affirmed by their Chartered Accountant. The Affirmation including the receipt is annexed in the Supplementary Affidavit being Annexure B at Page. No(s). 55– 60.

7. The certificate by the Chartered Accountant in respect of the Transferee Company verifying conformity with Accounting Standard under Section 133 of the Companies Act 2013 is annexed with the application at Annexure-N in Volume-IV Page No. 574.

8. The Ld. Authorized Representative further submits that there are no secured creditors of the Applicant Companies and the Applicants now seek admission of the instant petition presented by them for sanction of the Scheme of Amalgamation. Dispensation of such meetings to consider the Scheme is sought accordingly.

9. The Ld. Authorized Representative for the Applicants further submits that the present Scheme is an arrangement between the Applicant Companies and none of the members, shareholders, and creditors will be affected by the Scheme.

10. Heard the Ld. Authorized Representative for the Applicants and 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: -

a) In view of the consents given through affidavit by all the equity shareholders and unsecured creditors of the Applicant Companies, the meeting of equity shareholders and unsecured creditors are hereby dispensed with.

b) The applicant to serve a 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 also be served on:

i. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

ii. Registrar of Companies, West Bengal, Kolkata with whom the Applicants are registered.

iii. Official Liquidator; High Court at Calcutta

iv. Income Tax Department having jurisdiction over the Applicants.

These notices shall be sent by hand delivery through special messenger, by post and 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 Applicants. 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 Scheme of Amalgamation. 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. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

c) The Applicant Companies shall file an affidavit of service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.

11. The application being CA(CAA) No.19/(KB)/2023 is disposed off accordingly.

12. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.