(2021) 11 NCLT CK 0047

In the National Company Law Tribunal

Case No : Company Application No. CA (CAA) -78 (PB) 2021

Skylark Industries Private Limited APPELLANT

Vs

Their Respective Shareholders And Creditors RESPONDENT

Date of Decision : 18-11-2021

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

Citation : (2021) 11 NCLT CK 0047

Hon'ble Judges : Bhaskara Pantula Mohan, Member (J);Hemant Kumar Sarangi, Member (T)

Bench : Division Bench

Advocate : Ashish Middha, Purav Middha

Final Decision : Dosposed Of

Judgement

Bhaskara Pantula Mohan, Member (Judicial)

1. This is joint application filed by the applicant companies herein, Skylark Industries Private Limited ("brevity Transferor Company No. 1"), with D Pal Buildcon Private Limited("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. It is represented that the registered office of all the applicant companies is situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Bench.

3. The Transferor Company No.1 is a private limited company incorporated on 7thFebruary, 2011 under the name and style of "Skylark Industries Private Limited." under the provisions of Companies Act, 1956 bearing CIN U17223DL2011PTC213441with registrar of Companies, NCT of Delhi and

Haryana, having its registered office at 12/5, Pal Mohan Apartments, Punjabi Bagh, West New-Delhi-110041. The Authorized Share Capital of the Transferor Company is Rs. 100,00,000/- divided into 10,00,000 equity shares of Rs. 10/- each, while its issued, subscribed and paid-up capital is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each3lst March, 2020.

4. The Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 20th September 2007, vide CIN U45400DL2007PTC168493with Registrar of Companies, NCT of Delhi &Haryana in the name and style of "D Pal Buildcon Private Limited" and having its registered office at 12/5, Pal Mohan Apartments, Punjabi Bagh, West New-Delhi- 110041.The Authorized Share Capital of Transferee Companyis of Rs. 1,50,00,000/- divided into 15,00,000 equity shares of Rs. 10/- each, while its issued, subscribed, and paid-up share capital of Rs. 1,05,41,000/- divided into 10,54,100 equity shares of Rs. 10/- eachup as on 31.03.2020.

5. The Transferor Companies as well as the Transferee Company have filed their respective Memoranda and Articles of Associations, inter alia delineating their object clauses, as well as their latest Audited Annual Accounts for the financial Years 2018-19 The provisional balance sheets of all applicant companies, as on 31.03.2019is also annexed herewith.

6. All the Applicant companies, vide meeting of Board of Directors held on 10.03.2021 have unanimously, approved the proposed Scheme of Amalgamation as contemplated above. Copies of respective resolutions passed in the said respective board meetings have been placed on record.

7. With regards the Transferor Company No.1 it is stated as under:

a) The company has 2 Equity Shareholders, certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consent by way of affidavits holding 100% of voting share.

b) The Company has (01) Secured Creditor, Certificate from Chartered Accountants certifying list of Secured Creditor is annexed. Hence, the issue of obtaining consent does not arise.

c) The company has (01) Unsecured Creditor, Certificate from Chartered Accountants certifying list of Unsecured Creditors is annexed. Hence, the issue of obtaining consent does not arise.

In relation to the equity shareholders, secured and unsecured Creditors, it seeks dispensing with holding/convening of the meetings as 100% consent affidavits are placed on record.

8. With regards to the Transferee Company it is stated as under:

a) The company has (04) Equity Shareholders, certificate from Chartered

Accountants certifying list of shareholders is annexed and all of them have given their respective consent and no objection by way of affidavits holding 100% of total value.

b) The Company has (05) Secured Creditor; Certificate from Chartered Accountants certifying list of Secured Creditors is annexed and all the creditors has given consent by way of affidavit holding 100% of total value.

c) The company has (08) Unsecured Creditors, Certificate from Chartered Accountants certifying list of Unsecured Creditors is annexed and all the creditors has given consent by way of affidavit holding 100% of total value.

In relation to the equity shareholders, secured creditors and unsecured creditors it seeks dispensing with holding! convening of the meetings as their consent affidavits are placed on record.

9. The appointed date as specified in the Scheme is 18t April 2020 subject to the directions of this Tribunal.

10. Taking into consideration the submissions and the documents placed on record, we issue the following directions with respect to convening/holding or dispensing with the meetings of the Equity Shareholders, Secured and Unsecured Creditors as follows:

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

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 Creditor: In view of consent affidavits, submitted from one secured creditor having 100% value been filed, convening the meeting of secured creditors/members is hereby dispensed with.

c. With respect to Unsecured Creditors: In view of consent affidavits, submitted from one unsecured creditor having 100% value been filed, convening the meeting of unsecured creditors/members is hereby dispensed with.

B. In relation to the Transferee Company:

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

b. With respect to Secured Creditors: In view of consent affidavits, submitted from one secured creditor having 100% value been filed, convening the meeting of secured creditors/members is hereby dispensed with.

c. With respect to Unsecured Creditors: In view of consent affidavits, submitted from one unsecured creditor having 100% value been filed, convening the meeting of unsecured creditors/members is hereby dispensed with.

11. The applicants are directed to serve the notice of the proposed Scheme on the Regional Director, Ministry of Corporate Affairs, B-2, Wing. 2nd Floor, Paryavaran Bhawan, CGO Complex, New Delhi - 110003, Registrar of Companies at 4th Floor, IFCI Tower, 61 Nehru Place, New Delhi -110019, The Official Liquidator, Lok Nayak Bhawan, 8th Floor, Khan Market, New Delhi - 110001, the Office of the Income Tax Department, Income Tax Officer, Ward - 7 (4), Central Revenue Building, IP Estate, New Delhi -110002 and the Office of the Income Tax, Additional Commissioner of Income Tax, Special Range-4, Central Revenue Building, IP Estate, New Delhi - 110002. The notice to Income Tax Authorities shall disclose sufficient details like PAN Card numbers, ward numbers and assessing officers so that the proper reply may be filed.

12. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

13. The application stands allowed on the aforesaid terms and disposed of.