(2020) 06 NCLT CK 0051

In the National Company Law Appellate Tribunal

Case No : Company Petition No. CA (CAA) - 30/ND Of 2020

Skylark Industries Pvt. Ltd APPELLANT

Vs

D. Pal Buildcon Pvt. Ltd RESPONDENT

Date of Decision : 01-06-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(9), 231, 232

Citation : (2020) 06 NCLT CK 0051

Hon'ble Judges : P.S.N. Prasad, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Ashish Middha, Purav Middha

Final Decision : Allowed

Judgement

P.S.N. Prasad, J

1. This application has been jointly filed by the applicant companies under Section 230 to 232 read with Companies (Arrangements, Compromises and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, for seeking appropriate orders/directions for dispensing with the respective meetings of the shareholders, secured and unsecured creditors of the transferor and transferee companies The said Scheme of Amalgamation (hereinafter referred to as the "Scheme") has been placed on record along with the joint application.

2. It is represented that the registered office of both the applicants companies are situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Tribunal.

3. Skylark Industries Private Limited (Transferor Company) is a Private Company incorporated under the Companies Act, 2013 having its Registered Office at 12/5, Pal Mohan Apartments, Punjabi Bagh West, New Delhi-110041. The Transferor Company was incorporated on 07/02/2011 as a Private Limited Company with the Registrar of Companies, N.C.T. of Delhi and Haryana.

4. The present Authorized Share Capital of the Transferor Company is Rs. 1,00,00,000/- (Rupees One crore only) divided into 10,00,000 (ten lakh) equity shares of Rs. 10/- (ten) each. The present issued, subscribed and paid-up share capital of the Company is Rs. 1,00,000/- (Rupees One lacs only) divided into 10,000/- (Ten thousand) equity shares of Rs. 10/- (ten) each fully paid-up as on 31st March, 2019.

5. D Pal Buildcon Private Limited (Transferee Company) is a Private Company incorporated under the Companies Act, 1956 having its Registered Office at 12/5, Pal Mohan Apartments, Punjabi Bagh West, New Delhi-110041. The Transferee Company was incorporated as on 20/09/2007 as a Private Limited Company with the Registrar of Companies, N.C.T. of Delhi and Haryana.

6. The present Authorized Share Capital of the Transferee Company is Rs. 1,50,00,000/- (Rupees One crore fifty lacs only) divided into 15,00,000 (Fifteen Lakh) equity shares of Rs. 10/- (ten) each. The present issued, subscribed and paid-up share capital of the Company is Rs. 1,05,41,000/- (Rupees One crore five lacs forty one thousand only) divided into 10,54,100/- (Rupees Ten lacs fifty four thousand one hundred) equity shares of Rs. 10/- (ten) each fully paid-up as on 31.03.2019.

7. The counsel submitted that the Transferor Company has two (2) equity shareholders. Further the Transferor Company has one (1) Secured Creditor and their consent for dispensation of meeting is given on their letter head. The said list is supported by the certificate of the Chartered Accountant. The Transferor Company has one (1) Unsecured Creditor. The said list has been certified by the Chartered Accountant and is supported by his certificate. The unsecured creditor has given his consents by way of affidavit. Therefore, the requirement of convening meeting of the Unsecured Creditors of the Applicant Companies may be dispensed with.

8. The Counsel submitted that the Transferee Company has four (4) equity shareholders and they have given their Written Consent on affidavits stating No Objections for the proposed Scheme of Amalgamation. The Transferee Company has five (5) Secured Creditors and their consents for dispensation of meeting is given on their respective letter heads. The Transferee Company has eight (8) Unsecured Creditors. The said list has been certified by the Chartered Accountant and is supported by his certificate. All the unsecured creditors have given their consents by way of affidavits. Therefore, the requirement of convening meeting of the Un-secured Creditors of the Applicant Companies may be dispensed with.

9. We have perused the joint application and the connected documents/papers filed with the application including the Scheme of Amalgamation as contemplated between the applicant companies.

10. It is seen that the board of directors of both the applicant companies vide separate meetings, held on 31.08.2019 respectively have unanimously approved the proposed Scheme of Amalgamation. Copies of each resolutions passed by the

board of directors have been placed on record by the applicants.

11. The applicant companies have filed their respective Memorandum and Articles of Association. The applicant companies had filed its latest Audited Balance Sheet as on 31.03.2019.

12. It is submitted that the proposed amalgamation is sought to be made under the provisions of Section 230 and 232 of the Companies Act, 2013 read with Companies (Amalgamations, Compromises and Amalgamations) Rules, 2016 and the same if sanctioned by this Tribunal, the appointed date, as provided in the Scheme of Amalgamation shall be 01.04.2019.

13. All the applicant companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of Companies, Act, 2013 or under the provisions of the Companies Act, 1956 is pending against any of the applicant companies.

14. The certificates of the Statutory Auditors of all the applicant companies have been placed on record conforming that accounting treatment in the Scheme is in conformity with Section 133 of the Companies Act, 2013 and the guidelines issued by ICAI.

15. Further it has been stated in the application that the Scheme will be beneficial to all the applicant companies and their respective shareholders, employees, creditors and other stakeholders.

16. It is pertinent to mention here that in respect of shareholders of both applicant companies the applicant has prayed for dispensation from holding and convening their respective meetings on the ground that the shareholders have given their written consent in favour of the Scheme. The Applicant Companies have also prayed for dispensation from convening of meetings of the Secured and Unsecured creditors of both the companies. It is seen from the record that secured creditors of the companies have not given their consent on affidavits. The consent affidavits of unsecured creditors have been placed on record. Heard the submissions of the Ld. Counsel for the Applicant Companies. In terms of section 230 of the Companies Act, 2013 there are no enabling provision to dispense meetings of shareholders/members of the companies. Additionally in terms of Section 230(9) of the Companies Act, 2013 the meetings of the creditors can be dispensed only if the creditors have given consent by way of affidavits. The Section 230 has been reproduced below:

230. Power to compromise or make arrangements with creditors and members

(1) Where a compromise or arrangement is proposed--

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them, the Tribunal may} on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.......................

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety percent value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.................................

17. Therefore, in light of mandatory statutory provisions of Section 230 of the Companies Act, 2013 we are not able to dispense meetings of shareholders/ members of both the companies. In respect of unsecured creditors since the consent affidavits have been placed on record the prayer is allowed. In respect of secured creditors, since there is no consent affidavit in term of Section 230 (9) of the Companies Act, 2013 the prayer of dispensation of the meetings of secured creditors of both the applicant companies is not legally permissible.

18. Taking into consideration the joint application and the documents filed therewith showing compliance of various provisions of the Companies Act and the rules framed there under, consideration the joint application and the documents filed therewith showing compliance of various provisions of the Companies Act and the rules framed there under, this tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and unsecured Creditors, or dispensing with the same as well as issue of notices including by way of paper publications as follows:-

A) In Relation to the Transferor Company:

I. With respect to Equity Shareholders:

Meeting of the shareholders is directed to be held at on 09.07.2020 at around 9:30 am at registered office of the transferor company subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number or 75% in value.

II. With respect to Secured Creditors:

Meeting of the secured creditor is directed to be held at on 09.07.2020 at around 10:30 am at registered office of the transferor company subject to the notice of the meeting being issued. The quorum of the meeting shall be 1 in number.

III. With respect to Unsecured Creditors:

Since it is represented by the Transferor Company that there is 1 Unsecured Creditor in the Company and the consent by way of affidavit has been duly obtained and has been placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

B) In Relation to the Transferee Company

I. With respect to Equity Shareholders:

Meeting of the shareholders is directed to be held at on 09.07.2020 at around 11:30 am at registered office of the transferee company subject to the notice of the meeting being issued. The quorum of the meeting shall be 2 in number or 75% in value.

II. With respect to Secured Creditors:

Meeting of the secured creditor is directed to be held at on 09.07.2020 at around 12:30 p.m. at registered office of the transferor company subject to the notice of the meeting being issued. The quorum of the meeting shall be 3 in number or 75% in value.

III. With respect to Unsecured Creditors:

Since it is represented by the Transferee Company that there are (8) Unsecured Creditor in the Company and the consent by way of affidavit has been duly obtained and has been placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

C. Rajiv Shankar Divedi (AOR), (Mobile: 9313061263) is appointed as the Chairperson, Adv. Soyansh, (Mobile: 8800879009) is appointed as the Alternate Chairperson and Prasant Kumar Sarkar (CS), (Mobile: 9910079291) is appointed as Scrutinizer for the aforesaid meetings in terms of direction issued herein.

D. In case the quorum as noted above for the above meetings are not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the Applicant Companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with scrutinizer shall ensure that the proxy registers are properly maintained.

E. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/- (One Lakh Fifty Thousand) and the fee of the Alternate Chairperson shall be Rs. 1,25,000/- (One Lakh Twenty Five Thousand) the fee of the Scrutinizer shall be Rs. 1,25,000/- (One Lakh Twenty Five Thousand) in addition to meeting their incidental expenses. The Chairpersons will file their reports within a week from the date of holding of the above said meetings.

F. That individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meetings, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the

Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

G. That the Applicant Companies shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi editions of 'Business Standard' both English and Hindi stating the copies of Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Company-II/Transferee Company.

H. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of the Applicant Companies under the Companies Act, 2013 and rules framed thereunder.

I. The companies shall individually send notice to Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana, Official Liquidator along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

J. The Applicant Companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor of the Applicant Company-II/Transferee Company entitled to attend the meetings as aforesaid.

K. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

L. 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.

The application stands allowed in the aforesaid terms.

Let the copy of the order be served to the parties.