(2022) 04 NCLT CK 0015

In the National Company Law Tribunal

Case No : C.A. (CAA) No. 12/KB/2022

Sobisco Foods Private Limited Vs

Date of Decision : 04-04-2022

Acts Referred:

Companies Act, 2013 — Section 66, 103(1)(a), 103(1)(b), 133, 217, 218, 219, 220, 221, 222, 223, 224, 225, 230, 230(1), 230(5), 232, 230(2)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250m 251
Companies (Compromises, Arrangementsand Amalgamations) Rules, 2016 — Rule 8(2)

Citation : (2022) 04 NCLT CK 0015

Hon'ble Judges : Rohit Kapoor, Member (J);Harish Chander Suri, Member (T)

Bench : Division Bench

Advocate : Madhuri Pandey

Final Decision : Disposed Of

Judgement

Harish Chander Suri, Member (Technical)

1. This is an application under sections 230 (1) and 232 (2) read with section 66 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 filed by the Applicant Companies, namely, Sobisco Foods Private Limited (Transferor Company No. 1), Ashirvad Biscuits Private Limited (Transferor Company No. 2), Unistar Resources And Trades Private Limited (Transferor Company No. 3), Dinesh Confectioners Private Limited (Transferor Company No. 4), Harsh Bakers Private Limited (Transferor Company No. 5), Sobisco Bakers Private Limited (Transferor Company No. 6), Skyline Tracom Private Limited (Transferor Company No. 7), Bajrangbali Vanijya Private Limited (Transferor Company No. 8), and Sona Biscuits Limited (Transferee Company) in connection with a proposed Composite Scheme of Arrangement of the applicant Companies. ("Scheme").

2. The circumstances which justify and necessitate the said Composite Scheme of Arrangement are, inter-alia, as follows:

i. Consolidation of the business carried on by the group under one entity;

ii. Strengthening of financial position with a wider capital base and increased leverage capacity of the merged/combined entity;

iii. Optimum utilization of various resources of the group;

iv. Streamlining the current organization structure, achieving administrative and operational convenience and to realign the shareholding;

v. Synergies arising out of the consolidation of similar businesses, such as enhancement of net-worth of the combined entities/businesses which shall lead to better ability to leverage the business including a reduction in the cost of capital;

vi. Greater administrative efficiency and enhanced productivity;

vii. Reduction in multiplicity of legal and regulatory compliances;

viii. Growth prospectus for personnel and organizations connected with the companies;

3. The Board of Directors of the Applicant Companies at their respective meetings held on 15th December, 2021 and 16th December, 2021 approved the Composite Scheme of Arrangement between the Applicant Companies and their respective shareholders for amalgamation of the Transferor Companies with the Transferee Company, whereby and where under the entire undertaking of the Transferor Companies together with all assets and liabilities relating thereto as going concerns are proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Composite Scheme of Arrangement, a copy whereof is annexed with the Application and marked as "Annexure D".

4. The Board of Directors of the Applicant Companies have, at their respective Board meetings, held on 15.12.2021 and 16.12.2021, by a resolution passed unanimously, approved the Composite Scheme of Amalgamation. The said resolution is annexed with the Application and referred in "Annexure E".

5. The assets of the Applicant Companies are sufficient to meet all their liabilities and the Composite Scheme of Arrangement will not adversely affect the rights of any of the creditors of any of the Applicant Companies in any manner whatsoever. The Applicant Companies have made due provisions for payment of all liabilities as and when the same will fall due.

6. The share exchange ratio for the arrangement has been fixed on a fair and reasonable basis of the Report dated 14th December, 2021 prepared by the registered valuer pursuant to the applicable provisions of the Companies Act, 2013 and such recommendation has been accepted by the Board of Directors of all the Applicant Companies. The said report is annexed with the Application and marked as "Annexure F".

7. The Auditor of the Transferee Company has also confirmed that the accounting

treatment in the said scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013. The said certificate is annexed with the Application and marked as "Annexure- J".

8. The Transferor Company no. 1 has 22 equity shareholders, Transferor Company no. 2 has 13 equity shareholders, Transferor Company no. 3 has 23 equity shareholders, Transferor Company no. 4 has 22 equity shareholders, Transferor Company no. 5 has 7 equity shareholders, Transferor Company no. 6 has 11 equity shareholders, Transferor Company no. 7 has 15 equity shareholders, Transferor Company no. 8 has 13 equity shareholders and Transferee Company has 25 equity shareholders.

9. The list of equity shareholders of each Company as on 30.11.2021 along with the certificate by the Chartered Accountant verifying the correctness of the same as on that date is annexed with the Application and marked as "Annexure G".

10. Shareholders of the Applicant Companies have considered the Composite Scheme of Arrangement and have given their consent in writing agreeing to the Composite Scheme of Arrangement and also consented to waive the holding of the meeting of the shareholders of the concerned Applicant Companies. The copies of the consent affidavit of the equity shareholders of all the Applicant Companies are annexed with the application and collectively marked as "Annexure-G".

11. The Transferor Company No 1 has 2 secured creditor and 167 unsecured creditors, Transferor Company No 2 has no secured creditor and Unsecured Creditors, Transferor Company No 3. has no secured creditor and 35 Unsecured Creditors, Transferor Company No 4 has 1 secured creditor and 7 unsecured creditors, Transferor Company No 5 has no secured creditor and 2 Unsecured Creditors, Transferor Company No 6 has no secured creditor and 13 Unsecured Creditors, Transferor Company No 7. has no secured creditor and 20 Unsecured Creditors, Transferor Company No 8 has 16 secured creditor and 23 Unsecured Creditors and Transferee Company has 10 secured creditor and 17 Unsecured Creditors.

12. The statutory auditors of each of the Applicant Companies have given certificate certifying the list of secured and unsecured creditors in the Transferor Companies and Transferee Company as on 30.11.2021. The copies of such certificate along with the list of secured and unsecured creditors drawn as on the dates mentioned above, are annexed with the Application and marked as "Annexure H".

13. The Secured Creditors of the applicant companies have considered the Composite Scheme of Arrangement and have given their consent in writing agreeing to the Composite Scheme of Arrangement and also consenting to waive the holding of the meeting of the Secured Creditors of their Companies. The copies of the consent affidavits of the Secured creditors of all the Applicant Companies are annexed with the Application and marked as "Annexure I".

14. The Applicant Companies do hereby state that most of the Unsecured Creditors are the sundry creditors in their day-to-day business. The composite scheme of arrangement is in no manner prejudicial to the interest of said creditors. The Applicant Companies have therefore sought an order from this Tribunal directing the Applicant Companies to hold a meeting of unsecured creditors to seek their approval to the Composite Scheme of Arrangement.

15. Copy of Permanent Account Number (PAN) cards of all the Applicant Companies are annexed herewith and marked as "Annexure C".

16. It has also been stated in the Application that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221,224 and 225 of the Companies Act, 2013 against all the Applicant Companies.

17. Heard the learned Counsel for the applicants, perused the records, documents annexed the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed:

i. In view of the fact that the equity shareholders of the Applicant Companies duly consented in writing by way of affidavits, to the proposed Composite Scheme of Arrangement, duly certified by the Chartered Accountants, the requirements of convening and holding of separate meetings of the shareholders of the Applicant Companies to ascertain the wishes of the equity shareholders of all the Applicant Companies for the Composite Scheme of Arrangement, are dispensed with;

ii. In view of the fact that the Secured Creditors of the Applicant Companies duly consented in writing by way of affidavits to the proposed Composite Scheme of Arrangement, duly certified by the Chartered Accountants, the requirements of convening and holding of separate meetings of the Secured Creditors of the Applicant Companies to ascertain the wishes of the Secured Creditors of all the Applicant Companies for the Composite Scheme of Arrangement, are dispensed with;

iii. That a meeting of Unsecured Creditors of all the Applicant Companies shall be convened and held on Tuesday, 7th May, 2022 at the registered office of the Company namely, Sobisco Foods Private Limited situated at 15A, Hemanta Basu Sarani, Continental Chambers, 5th Floor, Kolkata – 700001, West Bengal, India for the purpose of their consenting, and if thought fit, approving with or without modification, the said Composite Scheme of Arrangement of the Transferor Companies with the Transferee Company at the following times respectively:

i. Meeting of the Unsecured Creditors of the Transferor Company No.1 at 10:30 A.M.

ii. Meeting of the Unsecured Creditors of the Transferor Company No.3 at 11:00 A.M.

iii. Meeting of the Unsecured Creditors of the Transferor Company No.4 at 11:30 A.M.

iv. Meeting of the Unsecured Creditors of the Transferor Company No.5 at 12:00 Noon.

v. Meeting of the Unsecured Creditors of the Transferor Company No.6 at 12:30 P.M.

vi. Meeting of the Unsecured Creditors of the Transferor Company No.7 at 1:00 P.M.

vii. Meeting of the Unsecured Creditors of the Transferor Company No.8 at 1:30 P.M.

viii. Meeting of the Unsecured Creditors of the Transferee Company at 2:00 P.M.

iv. That at least 30(thirty) clear days before the meeting to be held as aforesaid, an advertisement convening the same indicating the day, date, time and the venue of the said meeting of Unsecured Creditors of the applicant companies and stating copies of the said Composite Scheme of Arrangement along with the statement required to be furnished pursuant to the provisions of the Companies Act, 2013 disclosing necessary details and a prescribed form of proxy can be obtained free of charge be inserted once each in "Business Standard" in English and "Aajkal" in Bengali as per the requirements of Section 230 of the Companies Act, 2013 in Form No. CAA 2 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directors herein.

v. That at least 30(thirty) clear days before the date of meeting to be held as aforesaid, notice convening the said meeting together with a copy of the said Scheme, a copy of the statement required to be sent under the provisions of the Companies Act, 2013 disclosing necessary details and the prescribed form of proxy shall be sent to each of the said Unsecured Creditors of the applicant companies by post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notice along with accompanying documents shall also be placed on the website of the aforesaid Applicant Companies, if any.

vi. That notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the Scheme, Statement under the provisions of the Companies Act, 2013 disclosing necessary details shall also be served on the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal, Reserve Bank of India, Official Liquidator (Kolkata), Income Tax Assessing Officer, including the Chief Commissioner of Income Tax having jurisdiction over the applicants, and other sectoral regulators or authorities, if any, by sending the same by hand delivery through special messenger, by post & by Email forthwith after the notices are sent to the shareholders in terms of Rule 8(2) of the

Companies (Compromise, Arrangements and Amalgamations) Rules, 2016. 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 authorize representatives of the 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 Composite Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form CAA-3 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with necessary variations, incorporating the directors herein.

vii. That the quorum for the said meeting of Unsecured Creditors of all the applicant companies shall be fixed in accordance with accordance with Section 103(1)(a) and Section 103(1)(b) of the Companies Act, 2013 present either in person or by proxy.

viii. It is however provided that in case the quorum of the meeting is not available on the scheduled time and date, the Chairperson may adjourn such meeting to any date/ time and take a decision on the quorum for the adjourned meeting.

ix. Ms. Prerana Choudhary, Advocate, Mobile No. 8478019289, is appointed as the Chairperson of the said meeting of Unsecured Creditors of all the applicant companies to be held as aforesaid terms of this order. The Chairperson shall be paid a sum of Rs. 60,000/- for conducting the aforesaid meeting as Chairperson.

x. CA Rachna Jhunjhunwala, Mobile No. 9831141167 e-mail. rachnamurarka@rediffmail.com is appointed as the Scrutinizer of the said meeting of Unsecured Creditors of all the applicant companies to be held as aforementioned in terms of this order. The Scrutinizer shall be paid a consolidated sum of Rs. 60,000/- for conducting the aforesaid meeting as Scrutinizer.

xi. The Chairperson appointed for the aforesaid meeting shall issue notices or shall authorize any officer of the Applicant Companies to issue notices of the aforesaid meeting. Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations), Rules 2016 read with the Companies (Management & Administration) Rules, 2014 and other applicable rules and statutory provisions in relation to conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme, if any proposed by any person(s).

xii. The aforesaid Applicant Companies to file an affidavit proving service of notice of meeting and publication of advertisement and compliance of all directors contained herein at least a week before the meeting to be held.

xiii. The Unsecured Creditors of all the applicant companies shall be given the option of voting on the resolution for approval of the Scheme by casting their votes personally or by proxy at the venue of the meeting on 31st day of March, 2022.

xiv. Subject to the directors and matters dealt with herein, the procedure for conducting of voting at the venue of the meeting in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

xv. Voting shall be allowed on the proposed Scheme by proxy at the venue of the meeting of the Unsecured Creditors of all the applicant companies provided that the proxies in the prescribed form duly signed by the persons(s) entitled to attend and vote at the meeting, is filed with the aforesaid Applicant Companies at their respective registered office not later than forty-eight hours before the meeting. In case of a Body Corporate, being unsecured creditor, opting to attend and vote at the venue of the meeting of aforesaid applicant companies, through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at such meeting on its behalf is deposited at the registered office of the aforesaid Applicant Companies not later than 48(forty eight) hours before the time for holding such meeting.

xvi. The votes cast at the meeting shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the report on the meeting along with all papers relating to the voting to the Chairperson of the meeting within 7 days of the conclusion of the meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutinizer to him. The votes cast in all the modes shall be consolidated.

xvii. The value of each Creditors of all the applicant companies as on 30.11.2021 shall be in accordance with the books of the aforesaid Applicant Companies and where, entries in the books are disputed, the chairperson shall determine the number and value, as the case may be, for the purposes of the said meeting.

xviii. That the Chairperson do report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. His report shall be in Form No. CAA-4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2013, verified by affidavit.

a) The Company Application being CA(CAA) No. 12/KB/2022 is disposed of accordingly.

b) Urgent certified copies of order, if applied for, be supplied to the parties upon compliances of all requisite formalities.

