(2020) 12 NCLT CK 0118

In the National Company Law Tribunal

Case No : Company Application No. (CAA) 1100/MB-1 Of 2020

Springtide Infotainment Media Private Limited And Ors. Vs

Date of Decision : 08-12-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8
Companies Act, 2013 — Section 180, 230, 230(1)(b), 230(5), 231, 232

Citation : (2020) 12 NCLT CK 0118

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi

Final Decision : Allowed

Judgement

1. The present Scheme is a Scheme of Amalgamation (the Scheme) of the Transferor Company with the Transferee Company under sections 230 to

232 and other applicable provisions of the Companies Act, 2013 (the Act) and their respective Shareholders and creditors.

2. Learned Counsel for the Applicant Companies submits that the First Applicant Company is engaged in the business of broadcasting youth

infotainment content on various media platforms. The Second Applicant Company is primarily engaged in the business of publication of newspapers. It

publishes the highest selling English Broadcast daily in the world i.e., The Times of India, in addition to the newspaper like â??The Economic

Timesâ??, â??Navbharat Timesâ?? and Maharashtra Timesâ?? etc. It also operates television channels like â??Times Nowâ??, â??ET

Nowâ??, â??Zoomâ??, â??MN+â?? and â??Romedy Nowâ??. The Transferee Company has subsidiaries which are engaged in the area of

internet, radio, television, out of home education, etc.

3. That the Board of Directors of the Applicant Companies, in their meetings held respectively on 21st September 2020 and 17th September 2020

have approved the Scheme. The Appointed date of the Scheme is 1st April, 2020.

4. Learned Counsel for the Applicant Companies further submits that the First Applicant Company is a step down wholly owned subsidiary of the

Second Applicant Company and the entire share capital of the First Applicant Company is indirectly owned and controlled by the Second Applicant

Company.

5. That the amalgamation of Applicant Companies is pursuant to Sections 230 - 232 and other applicable provisions of the Act, is with a view to

achieve the following benefits to the stakeholders and the shareholders. It shall have the following benefits.

a. Consolidation of the respective operations of SIMPL and BCCL which will be served through one platform thereby leveraging the capability of the

merged entity;

b. Ensuring a streamlined group structure by reducing the number of legal entities in the group and thereby eliminating administrative duplications and

consequently, reducing the administrative costs of maintaining separate companies;

c. Pooling of assets, proprietary information, personnel, financial, managerial and technical resources of the companies, thereby contributing to the

future growth of the merged entity; and

d. More efficient utilization of capital and resources of SIMPL by BCCL.

6. In the First Applicant Company there are 7 (Seven) Equity shareholders and 1 (One) Preferential shareholder. All the Equity shareholders and

Preferential Shareholders have given their consent affidavits which are annexed as Annexure â?" H (Colly) to the Application.

7. There are no secured creditors in the Transferor Company and Transferee Company.

8. There are 3 (Three) Unsecured Creditors of the value INR 1,95,463/- (Rupees One Lakhs Ninety-Five Thousand Four Hundred and Sixty-Three

Only) in the First Applicant Company. Learned Counsel for the Applicant Companies submits that meeting of the Unsecured Creditors of the First

Applicant Company is not required to be convened, as the present Scheme is an Amalgamation between the Applicant Companies and their respective shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with or diminution of

liability of any of the unsecured creditors.

9. Learned Counsel for the Applicant Companies submits that:

a. Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to

the merger. Accordingly, the rights of members of the Transferee Company are not affected since there will be no issue of shares pursuant to the

Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also, the present Scheme will not result in

any dilution in shareholding of the shareholders of the Transferee Company;

b. The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and the assets of the

Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company is and

will continue to remain highly positive post-merger;

c. The existence of the Transferee Company will remain as before without any change either to its shareholding pattern or debt position pursuant to

the Scheme;

d. No undertaking of the Transferor Company is being parted away or being disposed-off and hence provisions of section 180 of the Companies Act,

2013 are also not applicable.

10. Learned Counsel for the Second Applicant Company submits that in view of above, no reconstruction or arrangement happens with its

shareholders or creditors. Thus, it does not require to hold either shareholders' meeting or creditors' meeting for approval of the proposed Scheme, in

view of ratio laid down by this Tribunal in CSA No. 243 of 2017 in the matter of Housing Development Finance Corporation Limited, in CSA No. 915

of 2017 in the matter of Godrej Consumer Products Limited, in CSA No. 899 of 2017 in case of Mahindra CIE Automotive Limited, in CSA No. 1019

of 2017 in case of Godrej Properties Limited, in CSA No. 1615 of 2018 in case of Dolvi Minerals and Metals Private Limited, in CSA No. 396 of 2019

in JSW Logistic Infrastructure Private Limited, in CSA No. 1611 of 2019 in CEAT Specialty Tyres Limited, in CSA No. 3123 of 2019 in JAI Corp

Limited and in CSA No. 4149 of 2019 in Godrej Properties Limited. The facts in the present case are similar to the facts of above cases. Therefore

no meeting of shareholders and creditors of the Transferee Company is required to be convened. The Counsel for the Applicant Companies further

clarifies that the Transferee Company will file petition and comply with the provisions of service of notices upon all Regulatory Authorities.

11. We have heard the Counsel representing the Companies and have perused the records. In consideration of the materials indicated supra the

following order is passed.

ORDER

(a) The Application be and the same is allowed.

(b) The meetings of the following are dispensed with â?

(i) The Equity Shareholders of the First Applicant Company;

(ii) The Preferential Shareholder of the First Applicant Company;

(iii) The Unsecured Creditors of the First Applicant Company;

(iv) The Equity Shareholders of the Second Applicant Company;

(v) The Creditors of the Second Applicant Company;

(c) The First Applicant Company/Transferor Company to send individual notices to all its Unsecured Creditors, enclosing a copy of the Scheme, with

instructions that they may submit their representations, if any, to the Tribunal within a period of 30 days from the date of receipt of such notice, and

copy of such representations shall simultaneously be served upon the First Applicant Company. In view of the lockdown owing to the Covid-19

pandemic, notices be given to creditors by email to all the creditors at their respective registered e-mail address as per the records of the First

Applicant Company. It shall be the responsibility of the First Applicant Company to ensure that every creditor is put on notice regarding the Scheme,

so that they may take an informed decision thereon.

(d) The Applicant Companies shall serve notice of the Application along with copy of the Scheme upon â?" (i) the Central Government through the

office of Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai; (ii) Registrar of Companies, Maharashtra, Mumbai; (iii)

Concerned Income Tax Authority within whose jurisdiction the Applicant companiesâ?? assessments are made, clearly indicating the PAN of the concerned company (PAN of Transferor Company AAXCS5014Q and PAN of Transferee Company AAACB4373Q) pursuant to section 230(5) of

the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with a direction that they may

submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such

representations shall simultaneously be served upon the Applicant Companies. If no response is received by the Tribunal from such authorities within

30 days of the date of receipt of the notice, it shall be presumed that the Regulatory Authorities have no objection to the proposed Scheme.

(e) The Transferor Company shall serve notice along with a copy of the Scheme upon the Official Liquidator, pursuant to section 230(5) of the

Companies Act, 2013 and as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(f) M/s. Gondalia & Mandviwala, Chartered Accountants, having their office at Hamam House, Ambalal Doshi Marg, Fort, Mumbai â?" 400 023,

Contact No. 9820027981, email ID dgg1512@gmail.com are appointed to assist the Official Liquidator to scrutinize the books of accounts of the

Transferor Company for the last five years and submit its representation / report to the Tribunal. The Transferor Company shall pay Rs.2,00,000/-

(Indian Rupees Two Lacs only) towards fees for this purpose. If no representation/response is received by the Tribunal from Official Liquidator,

within a period of thirty days from the date of receipt of such notice, it will be presumed that the Official Liquidator has no objection to the proposed

Scheme.

(g) The Applicant Companies shall file compliance report with the Registry in regard to the directions given in this Order in lieu of customary affidavit

of service, due to the prevailing lockdown warranted by Covid-19 pandemic, for proving service of notices to the relevant Creditors of the Applicant

Companies and service of notice to the Regulatory Authorities as stated above.

ORDER

The matter is taken up on VC. Heard the Counsel for the Petitioner and Ms. Rupa Sutar, Dy. Director from the office of RD(WR), Mumbai. The

Company Application allowed, vide separate order.

