(2022) 03 NCLT CK 0067

In the National Company Law Tribunal

Case No : CA (CAA) No. 196/ KB/ 2021

Suman Boutique Private Limited Vs

Date of Decision : 25-03-2022

Acts Referred:
Companies Act, 2013 — Section 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2)

Citation : (2022) 03 NCLT CK 0067

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

Bench : Division Bench

Advocate : Manoj Kumar Banthia

Final Decision : Disposed Of

Judgement

Rohit Kapoor, Member (Judicial)

1. 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 orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation of Suman Boutique Private Limited, being the Applicant Company No.1 above named ("Transferee Company" or "Applicant No. 1"), Aerocity Complex Private Limited, being the Applicant Company No.2 above named ("Transferor Company No.1" or "Applicant No. 2"), Aerocity Infra Projects Private Limited, being the Applicant Company No.3 above named ("Transferor Company No.2" or "Applicant No. 3"), Aerocity Realcon Private Limited, being the Applicant Company No.4 above named ("Transferor Company No.3" or "Applicant No. 4"), Ishwar Distributors Private Limited, being the Applicant Company No.5 above named ("Transferor Company No.4" or "Applicant No. 5"), Rakman Commotrade Private Limited, being the Applicant Company No.6 above named ("Transferor Company No.5" or "Applicant No. 6"), Roselily Infratech Limited, being the Applicant Company No.7 above named ("Transferor Company No.6" or "Applicant No. 7") and Swal Dealtrade Limited, being the Applicant Company No.8 above named ("Transferor Company

No.7” or “Applicant No. 8”) whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1st April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).

2. It is submitted by the Ld. Practising Company Secretary appearing for the Applicants that the shares of the Applicant Companies are not listed in any stock exchange. Further, the Applicants have the following classes of shareholders and creditors:-

a. Applicant No.1

Number of Equity Shareholders: 5 as on 31st March, 2021

Number of Secured Creditors: 1 as on 31st March, 2021

Number of Unsecured Creditors: 206 as on 31st March, 2021

b. Applicant No.2

Number of Equity Shareholders: 2 as on 31st March, 2021

Number of Secured Creditors: NIL as on 31st March, 2021

Number of Unsecured Creditors: 3 as on 31st March, 2021

c. Applicant No.3

Number of Equity Shareholders: 4 as on 31st March, 2021

Number of Secured Creditors: NIL as on 31st March, 2021

Number of Unsecured Creditors: 1 as on 31st March, 2021

d. Applicant No.4

Number of Equity Shareholders: 2 as on 31st March, 2021

Number of Secured Creditors: NIL as on 31st March, 2021

Number of Unsecured Creditors: 2 as on 31st March, 2021

e. Applicant No.5

Number of Equity Shareholders: 7 as on 31st March, 2021

Number of Secured Creditors: NIL as on 31st March, 2021

Number of Unsecured Creditors: 2 as on 31st March, 2021

f. Applicant No.6

Number of Equity Shareholders: 8 as on 31st March, 2021

Number of Secured Creditors: NIL as on 31st March, 2021

Number of Unsecured Creditors: 3 as on 31st March, 2021

g. Applicant No.7

Number of Equity Shareholders: 7 as on 31st March, 2021

Number of Secured Creditors: NIL as on 31st March, 2021

Number of Unsecured Creditors: 1 as on 31st March, 2021

h. Applicant No.8

Number of Equity Shareholders: 7 as on 31st March, 2021

Number of Secured Creditors: NIL as on 31st March, 2021

Number of Unsecured Creditors: 1 as on 31st March, 2021

3. It is further submitted that all the Equity Shareholders of all the Applicant Companies and the Unsecured Creditors of the Applicant Company No. 2, Applicant Company No. 3, Applicant Company No. 4, Applicant Company No. 5, Applicant Company No. 6, Applicant Company No. 7 and Applicant Company No. 8 have already given their consent to the Scheme by way of affidavits which are annexed to the application.

4. Directions are sought accordingly for :

a. Dispensing with meetings of the Equity Shareholders of all the Applicant Companies

b. Dispensing with meetings of the Creditors of the Applicant Company No. 2, Applicant Company No. 3, Applicant Company No. 4, Applicant Company No. 5, Applicant Company No. 6, Applicant Company No. 7 and Applicant Company No. 8

c. Convening of meeting of the secured creditor of Applicant Company No. 1

d. Convening of meeting of the unsecured creditors of Applicant Company No. 1

5. 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) Meetings dispensed:

Meetings of Equity Shareholders of all the Applicant Companies, and Unsecured Creditors of the Applicant No.2, Applicant No. 3, Applicant No. 4, Applicant No. 5, Applicant No. 6, Applicant No. 7 and Applicant No. 8 are dispensed with under Section 230(1) read with Section 232(1) of the Act.

b) Meetings called:

i. The meeting of the secured creditor of the Applicant No. 1 being the Transferee Company shall be convened and held physically at the registered office of the Transferee Company at 107/1, Park Street, Kolkata-700016, on 16th April, 2022 at 11am for the purpose of considering, and, if thought fit, approving the said

Scheme, with or without modification.

ii. The meeting of the unsecured creditors of the Applicant No. 1 being the Transferee Company shall be convened and held physically at the registered office of the Transferee Company at 107/1, Park Street, Kolkata-700016, on 16th April, 2022 at 12 Noon for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification.

c) Advertisement: At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting, stating that copies of the Scheme and the statement containing necessary details required to be filed pursuant to section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is being sent with the notice of meeting, be published once each in the "Business Standard" in English and "Aajkal" in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

d) Individual Notices: At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Companies Act, 2013, disclosing necessary details and the prescribed form of proxy, shall be sent to each of the creditors of the Applicant No. 1 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by post or air mail or courier or email or through personal messenger at their respective or last known addresses.

e) Chairperson :_Mr. Phiroze Edulji, Advocate, Mobile No. 9038080136, is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a sum of Rs. 75,000/- for conducting the aforesaid meeting as Chairperson.

f) Scrutinizer :_Mr. Suranjan Dasgupta, Advocate, Mobile No. 9831047504 is appointed as the Scrutinizer of the meetings to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 60,000 /- for acting as Scrutinizer.

g) Quorum and Attendance: The quorum for the said meeting of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. For the meeting to be held physically, only attendance of such persons physically at the venue shall be counted for quorum. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn and hold the meeting to any other date and time and take a decision on the quorum in the adjourned meeting.

h) Mode of Voting: At the venue of the meeting held physically, voting shall be conducted physically by polling paper, shall be in accordance with 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.

i) Proxies & Board Resolutions: A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the Applicant Company No. 1 not later than 48 (forty eight) hours before the time for holding the meeting.

j) That the Chairperson appointed for the said meeting or any person authorized by the Chairperson do issue and send the notices of the aforesaid meetings.

k) The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the report on the meeting held along with all papers relating to the voting to the Chairperson of the meeting within 3 days of the conclusion of the meeting.

l) The resolution for approval of the Scheme put to meeting shall, if passed by a majority in number representing three-fourths in value of the creditors of the Applicant No. 1 casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

m) 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. Such report shall be in Form No. CAA-4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

6. 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 the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies with whom the Applicants are registered; the Official Liquidator, High Court, Calcutta and the Income Tax Department having jurisdiction over the Applicants stating the PAN Numbers of the Applicants, by sending the same hand delivery through special messenger by post & by email within two weeks from the date of receiving the order. The notice shall state 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.

7. The Applicants to file an affidavit proving service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the meeting to be held.

8. The application being Company Application (CAA) No.196/ KB/ 2021 is disposed of accordingly.

