(2021) 02 NCLT CK 0107

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 1144/MB-IV Of 2020

Swati Holding And Leasing Private Limited And Ors.	APPELLANT
Vs	
Pristine Water Evo Tech Private Limited	RESPONDENT

Date of Decision : 16-02-2021

Acts Referred:
Companies Act, 2013 — Section 230, 230(5), 231, 232
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8

Citation : (2021) 02 NCLT CK 0107

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Ahmed M. Chunawala, Rajesh Shah

Judgement

1. The Bench is convened by video conferencing today.

2. Ld. Counsel for the Transferor Companies and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Arrangement and Amalgamation of Swati Holding And Leasing Private Limited, the First Transferor/ Demerged Company and Kidoor Chemicals Trading Private Limited, the Second Transferor Company and Saisiddi Chemicals Trading Private Limited, the Third Transferor Company and RVS Organics Private Limited, the Fourth Transferor Company with Pristine Water Evo Tech Private Limited, the Resulting / Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

3. Ld. Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company in their respective meetings conducted on 18th September, 2020 for the Transferor Companies and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2020.

4. The rational of the Scheme is The management is of the opinion that the

merger will lead to synergies of operations and more particularly the following benefits:

i) All the Transferor Companies and the Transferee Company belong to the same Shareholder Family.

ii) Simplification of corporate structure by reducing the number of legal entities and reorganizing the legal entities in the group structure;

iii) Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Kidoor Chemicals Private Limited, Saisiddi Chemicals Trading Private Limited and RVS Organics Private Limited,;

iv) The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.

v) It would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.

vi) The Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of all the companies. The merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme.

vii) The Scheme of arrangement and Amalgamation will result in cost saving for all the companies as they are capitalizing on each other's core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

5. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the three Equity Shareholders of the Applicant Company No.1, which are annexed as 'Exhibit S-1 to S-3' to the Company Scheme Application.

6. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the three Equity Shareholders of the Applicant Company No.2, which are annexed as

'Exhibit T-1 to T-3' to the Company Scheme Application.

7. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.3 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the three Equity Shareholders of the Applicant Company No.3, which are annexed as 'Exhibit U-1 to U-3' to the Company Scheme Application.

8. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.4 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the two Equity Shareholders of the Applicant Company No.4, which are annexed as 'Exhibit V-1 to V-2' to the Company Scheme Application.

9. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.5 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the two Equity Shareholders of the Applicant Company No.5, which are annexed as 'Exhibit W-1 and W-2' to the Company Scheme Application.

10. That the counsel for the Applicant Companies submits that there are no Preference Shareholder in the Applicant Company No. 1 mentioned in Para 43 of the Application.

11. That the counsel for the Applicant Companies submits that there are no Preference Shareholder in the Applicant Company No. 2 mentioned in Para 44 of the Application.

12. That the counsel for the Applicant Companies submits that there are no Preference Shareholder in the Applicant Company No. 3 mentioned in Para 45 of the Application.

13. That the convening and holding the meeting of the Preference Shareholders of the Applicant Company No.4 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the one Preference Shareholder of the Applicant Company No.4, which are annexed as 'Exhibit X-1 to the Company Scheme Application.

14. That the Ld. Counsel for the Applicant Companies submits that there are no Preference Shareholder in the Applicant Company No. 5 mentioned in Para 47 of the Application.

15. That the convening and holding the meeting of the Secured Creditors of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the one Secured Creditors of the Applicant Company No.1, which are annexed as 'Exhibit Y-1 to the Company Scheme Application.

16. That the Ld. Counsel for the Applicant Companies submits that there is no Secured Creditors in the Applicant Company No. 2 mentioned in Para 49 of the Application.

17. That the Ld. Counsel for the Applicant Companies submits that there is no Secured Creditors in the Applicant Company No. 3 mentioned in Para 50 of the Application.

18. That the Ld. Counsel for the Applicant Companies submits that there is no Secured Creditors in the Applicant Company No. 4 mentioned in Para 51 of the Application.

19. That the Ld. Counsel for the Applicant Companies submits that there is no Secured Creditors in the Applicant Company No. 5 mentioned in Para 52 of the Application.

20. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the 95.41% in value of the total Unsecured Creditors in the Applicant Company No.1, which are annexed as 'Exhibit Z-1 to Z-3' to the Company Scheme Application. The Scheme of Amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 5 and hence they will in no way be affected by the Scheme of Amalgamation. It is further submitted that the Applicant Company No.5 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 5 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course.

21. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the 98% in value of the total Unsecured Creditors in the Applicant Company No.2, which are annexed as 'Exhibit AA-1 and AA-2' to the Company Scheme Application. The Scheme of Amalgamation does not envisage any compromise or arrangement

with the Unsecured Creditors of the Applicant Company No. 5 and hence they will in no way be affected by the Scheme of Amalgamation. It is further submitted that the Applicant Company No.5 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 5 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course.

22. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.3 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the 100% in value of the total Unsecured Creditors in the Applicant Company No.3, which are annexed as 'Exhibit AB-1 and AB-2' to the Company Scheme Application.

23. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.4 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of Scheme of Arrangement and Amalgamation of the Applicant Companies, is dispensed with in view of the consent affidavits given by the 100% in value of the total Unsecured Creditors in the Applicant Company No.4, which are annexed as 'Exhibit AC-1 to AC-3' to the Company Scheme Application.

24. That the counsel for the Applicant Companies submits that there is no Unsecured Creditors in the Applicant Company No. 5 mentioned in Para 57 of the Application.

25. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

26. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

27. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction, the Applicant Company No. 1 PAN:-AAACS5235J having his address at the Income Tax Officer, CIRCLE (2)(3)(1),

Aayakar Bhawan, Mumbai-400020. The Applicant Company No. 2 PAN:-AACCK1975B having his address at the Income Tax Officer, WARD 10(1)(1) Aayakar Bhawan, Mumbai- 400020. The Applicant Company No. 3 PAN:-AAHCS5180M having his address at the Income Tax Officer, WARD 13(2)(1), Aayakar Bhawan, Mumbai-400020. The Applicant Company No. 4 PAN:-AACCR6755L having his address at the Income Tax Officer, WARD 13(3)(1), Aayakar Bhawan, Mumbai-400020. The Applicant Company No. 5 PAN:-AAKCP6340H having his address at the Income Tax Officer, WARD 6(2)(1), Aayakar Bhawan, Mumbai-400020. The Applicant Company's assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

28. The Transferor Companies are also directed to serve intimations of the Scheme upon 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. The Tribunal is appointing M/s. Dalal & Kala Associates, Address: 1, Raj Bhawan, Mahila College Chowk, Marve Road, Malad (West), Mumbai-400064, Phone: 9321022319, Email: Dalalkalaca@gmail.com, Chartered Accountant, to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Company for the last 5 years and submit its representation / report to the Tribunal. The aforesaid Companies to pay fees of Rs. 1,00,000/- for this purpose. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

29. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

30. The Appointed Date is 1st April, 2020.