(2020) 12 NCLT CK 0120

In the National Company Law Tribunal

Case No : Company Application No. (CAA)/ 1137/ MB Of 2020

Syncordis Software Services India Private Limited And Ors. Vs

Date of Decision : 04-12-2020

Acts Referred:

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

Citation : (2020) 12 NCLT CK 0120

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

Bench : Division Bench

Advocate : Ajit Singh Tawar, Pallavi Kulkarni-Salunke, Vikas Agarwal, M Swati

Judgement

1. The Court is convened by videoconference today (04.12.2020).

2. The Counsel for the Applicants states that the present Scheme of Amalgamation of wholly owned subsidiaries, viz., Syncordis Software Services

India Private Limited (â??Transferor Company 1â?) and Ruletronics Systems Private Limited (â??Transferor Company 2â?) with its holding

company, Larsen & Toubro Infotech Limited, a public limited company (â??Transferee Companyâ?) and their respective shareholders (â??the

Schemeâ??), is under the provisions of Section 230- 232 of the Companies Act, 2013.

3. The Counsel for the Applicants submits that the Transferor Company 1 is engaged in the business of software designing, development, offers its

clients a unique range of implementation and production support services, including customised services; the Transferor Company 2 is engaged in the

business to provide innovative, strategic, cost effective end-to-end business process management and customer relationship management solutions and

help organizations to build software solutions and products and; the Transferee

Company is engaged in the business of global technology consulting

and digital solutions.

4. The Counsel for the Applicants states that the proposed Scheme has been approved by the Board of Directors of the Applicants in their respective

meetings held on 28th September 2020 (for Transferor Company 1 and Transferor Company 2) and 20th October 2020 (for Transferee Company).

The Appointed Date fixed under the Scheme is 1st April 2021. The Board Resolution approving the Scheme for the Applicants are annexed as

Annexure C, Annexure F & Annexure I to the Company Scheme Application

5. The Counsel for the Applicants further submits the Rationale for the Scheme as under:

Rationale for the Scheme:

The reasons and circumstances leading to and justifying the Scheme of Amalgamation of the Transferor Companies with Transferee Company, which

make it beneficial for all concerned, including the members of Transferor Companies and Transferee Company, are as follows:

a. The Transferor Companies and the Transferee Company are operating in complementary /similar line of business and can be conveniently

combined for mutual benefit as this would increase the profitability of the Transferee Company. The Transferee Company and the Transferor

Companies are in the Information Technology services business which can be carried out more efficiently as one amalgamated entity. The Transferor

Company 1 is engaged in providing core banking implementation services which will help the Transferee Company expand its core banking

implementation capabilities. The Transferor Company 2 is a gold implementation partner of Pega Systems, leader in Intelligent Business Process

Management, Customer Relationship Management and Process Automation which will help the Transferee Company to strengthen its rapidly growing

digital business.

b. The proposed amalgamation will help pool and combine finances and resources into one consolidated entity which will result in administrative and

operations rationalization, organization efficiencies, optimal utilization of various resources, overheads and other expenses and better compliance

management.

c. The proposed amalgamation will help the Transferee Company to achieve financial strength and flexibility aiding in achieving economies of scale,

more focused operational efforts, standardization and simplification of business processes and productivity improvements.

d. The proposed amalgamation will help the Transferee Company to enhance its reach to serve customers better thereby leading to increased business

opportunities and its net worth.

e. The proposed amalgamation will reduce management overlaps, as two of the Key Managerial Personnel of the Transferee Company are Directors

in the Transferor Companies, which will improve efficiency in managing companies.

f. Elimination of multiple entities will help in streamlining the organization structure of the Transferee Company and the proposed amalgamation will

prevent cost duplication and will result in synergies in operations which would increase the operational efficiency and integration of business functions.

g. The proposed amalgamation is commercially and economically viable, feasible, fair and reasonable and is in the interest of the Transferor

Companies, the Transferee Company and their respective stakeholders.

6. The Counsel for the Applicants submit that the meeting of the Equity Shareholders of the Transferor Company 1 be dispensed with in support of the

Company Scheme Application in view of the written consent affidavits procured by the Transferor Company 1 from its shareholder and its nominee

shareholder, which are annexed as Annexure L1 and Annexure L2, respectively, to the Company Scheme Application.

7. The Counsel for the Applicants submit that the meeting of the Equity Shareholders Transferor Company 2 be dispensed with in support of the

Company Scheme Application in view of the written consent affidavits procured by the Transferor Company 2 from its shareholder and its nominee

shareholder, which are annexed as Annexure N1 and Annexure N2, respectively, to the Company Scheme Application.

8. The Counsel for the Applicants submits that there are no secured creditors of the Transferor Company 1 and Transferor Company 2, and therefore

conveying meeting and issue of notices to them does not arise.

9. The Counsel for the Applicants submits that the Transferor Company 1 has eight (8) unsecured creditors and the Transferor Company 2 has seven

(7) unsecured creditors. The Counsel for the Applicants further submits that the present Scheme is an arrangement between the Transferor

Companies, Transferee Company and their respective shareholders as contemplated under Section 230(1)(b) of the Companies Act, 2013 as there is

no compromise or arrangement with any of the creditors and the rights of creditors are not affected and all the unsecured creditors of the Transferor

Company 1 and Transferor Company 2 will be paid off in the ordinary course of business. Therefore, the meeting of the unsecured creditors of the

Transferor Company 1 and Transferor Company 2 be dispensed with. The Transferor Company 1 and Transferor Company 2 undertake to issue

notice of the proposed Scheme to all its unsecured creditors by courier/ registered post/speed post/ email /hand delivery at their last known address as

per the records of the Transferor Company 1 and Transferor Company 2 with a direction that they may submit their representations, if any, within a

period of thirty (30) days from the date of receipt of such intimation, to the Tribunal with copy of such representations to be simultaneously be served

upon the Applicants, failing which, it shall be presumed that they have no representations to make on the proposals. The list of unsecured creditors of

Transferor Company 1 and Transferor Company 2 as on 30th September 2020 is annexed as Annexure O and Annexure P, respectively, to the

Company Scheme Application.

10. The Counsel for the Applicants respectfully submits that

a. Since, the Scheme is a merger of wholly owned subsidiaries 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 the shares

pursuant to the Scheme and there will absolutely be no change in the equity share capital of the Transferee Company. Also, the present Scheme will

not result in any dilution in the shareholding of the shareholders of the Transferee Company.

b. The Scheme does not affect the rights and interest of the members or the creditors of the Transferee Company and does not involve any re-

organisation of the Share Capital of the Transferee Company.

c. There is no compromise or arrangement with any of the creditors of the Transferor Companies and the Transferee Company and the rights of the creditors are not affected, all the unsecured creditors would be paid off in the ordinary course of business. Also, the net worth of the Transferee

Company is and will remain highly positive post the merger.

d. The existence of the Transferee Company will remain as before without any reorganization either in shareholding pattern or debt position pursuant

to the Scheme.

11. The Counsel for the Applicants submits that in view of the above, no reconstruction or arrangement happens with its shareholders or creditors in

the Transferee Company and thus, it does not require to hold either shareholdersâ?? meeting or creditorsâ?? 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

wherein it was held that â??as long as the merger or amalgamation has no bearing internally on creditors/members of the respective company, we

with all humility believe, such company need not propose a meeting with its creditors or members.â? Similar ratio has been laid down by this Tribunal

in CSA No. 915 of 2017 in the matter of Godrej Consumer Products Limited, in CSA No. 899 of 2017 in the matter of Mahindra CIE Automotive

Limited, in CSA No. 1019 of 2017 in the matter of Godrej Properties Limited, in CSA No. 1615 of 2018 in the matter of Dolvi Minerals and Metals

Private Limited, in CSA No. 396 of 2019 in the matter of JSW Logistic Infrastructure Private Limited, in CSA No. 1611 of 2019 in the matter of

CEAT Specialty Tyres Limited, and in CSA No. 3123 of 2019 in the matter of JAI Corp Limited, in CSA No. 4149 of 2019 in the matter of Godrej

Properties Limited and in CA(CAA) No. 634/MB/2020 in the matter of Asian Paints Limited. The Counsel for the Applicants submits that the facts in

the present case are similar to the facts of the above case therefore no meeting of the shareholders and the creditors of the Transferee Company is

required to be convened. This Bench is of the view that the meeting of the equity shareholders of the Transferee Company can be dispensed with

since the Transferor Companies are wholly owned subsidiaries of the Transferee Company. The Counsel for the Applicants further clarifies that the

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

12. The Applicants be are hereby directed to serve notices along with copy of the

Scheme upon the concerned Income Tax authorities under the

jurisdiction the assessments are made, through R.P.A.D/ Speed Post/ Courier/ Email/hand delivery, with a direction that they may submit their

representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal and copy of such representations shall

simultaneously be served upon the Applicants failing with, it shall be presumed that the authorities have no representations to make on the proposals.

The Applicants having the following PAN numbers are directed to serve notices to the concerned Income Tax Authorities on the following addresses:

(i) Syncordis Software Services India Private Limited

PAN: AAWCS0539B

Income Tax Officer, Corporate Circle 3(1) CHE

New Building Chennai, AO Number: 1, AO TYPE C, Range: 251

No.121, Mahatma Gandhi Road, Chennai, Tamil Nadu â?" 600 034;

(ii) Ruletronics Systems Private Limited

PAN: AAGCR9916D

Income Tax Officer, ITO, Ward-1

R.R.Pet Main Road, Powerpet,

Eluru, Andhra Pradesh - 534002;

(iii) Larsen & Toubro Infotech Limited

PAN: AAACL1681P

Income Tax Officer, Circle 2(2)(1),

Aayakar Bhavan, Maharshi Karve Road, Mumbai, Maharashtra â?" 400020

13. The Applicants are further directed to serve notices along with copy of the Scheme upon the Central Government through (i) the office of

Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, and (ii) Registrar of Companies, Mumbai, Maharashtra through

R.P.A.D/ Speed Post/ Courier/Email/hand delivery; pursuant to section 230(5) of the Companies Act, 2013 and as per 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 (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

14. The Counsel for the Applicants submits that the present Scheme solely provides for Amalgamation of wholly owned subsidiaries with its holding

company, no formal approval or â??no objection certificateâ?? is required from Stock Exchanges or SEBI for the Scheme, in terms of provisions of

the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, read with the SEBI Circular No.

CFD/DIL3/CIR/2017/21 dated 10th March, 2017, SEBI Circular No. CFD/DIL3/CIR/2018/2 dated 3rd January, 2018 and other applicable provisions,

if any. The Transferee Company is, therefore, directed to serve the notice along with the Scheme upon (i) Securities Exchange Board of India

(SEBI); (ii) BSE limited; and (iii) National Stock Exchange of India Limited (NSE) through R.P.A.D/ Speed Post/ Courier/Email/hand delivery;

pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations)

Rules, 2016.

15. The Transferor Company 1 and Transferor Company 2 are also directed to serve notice upon Official Liquidator, High Court, Bombay, pursuant to

Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 through

R.P.A.D/ Speed Post/ Courier/Email/hand delivery. The Tribunal is appointing Chartered Accountant, M/s Jacob Koshy & Co., Chartered

Accountants, having their office at 511, Jolly Bhavan No. 1, 10, New Marine Lines, Mumbai - 20 (Email: jkoshy@vsnl.com, Phone: 22076095) to

assist the Official Liquidator to scrutinize the books of accounts of the Transferor Company 1 and Transferor Company 2 for the last 5 years and

submit its report to the Tribunal. The renumeration of Rs. 2,00,000/- to assist the Official Liquidator to scrutinize the books of accounts of the

Transferor Company 1 and Transferor Company 2. If no representation/ response is received by the Tribunal from the Official Liquidator, High Court,

Bombay within a period of thirty (30) days from the date of receipt of such notice, it will be presumed that he has no representation/ objection to the

proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

16. The Applicants shall publish notices as required in terms of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in two

newspapers, viz., Free Press Journal (in English) and Nav Shakti (in Marathi), both circulated in Mumbai, where registered offices of Applicants are

situated.

17. The Transferee Company shall host the notices on its website.

18. The Applicants to file a Compliance Report with the Registry proving dispatch of notices to creditors and regulatory authorities as stated above

and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with. The Compliance Report is in lieu of

customary affidavit of service, due to the lockdown situation prevailing now.