(2020) 12 NCLT CK 0128

In the National Company Law Tribunal

Case No : Company Application No. (CAA)/1151/MB Of 2020

Tek Components Private Limited And Anr. Vs

Date of Decision : 17-12-2020

Acts Referred:

Companies (Management And Administration) Rules, 2014 — Rule 19
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 6, 7, 8, 12
Companies Act, 2013 — Section 13, 61, 230, 230(1), 230(3), 230(4), 230(5), 231, 232, 232(3)(i), 232(6)

Citation : (2020) 12 NCLT CK 0128

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

Bench : Division Bench

Advocate : Ajit Singh Tawar

Judgement

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1. UPON the application of the Applicant Companies above named by a Company Notice of Admission AND UPON HEARING Mr. Ajit Singh,,

Tawar i/b Ajit Singh Tawar & Co, Advocates for the Applicant Companies AND UPON READING the Application along with the Notice of",,

Admission dated 4th day of November, 2020 of Mr. Samir Tembhurnikar, Authorised Signatory of the Applicant Companies, in support of Notice of",,

Admission along with Application and Annexures therein referred to, IT IS ORDERED THAT:",,

2. The Court is convened by videoconference today (17th December, 2020).",,

3. The Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Merger by Absorption of Tek Components Private,,

Limited (â??Transferor Companyâ??) with Transfix India Private Limited (â??Transferee Companyâ??) and their respective shareholders (â??the,, Schemeâ??) under the provisions of Sections 230 to 232 of the Companies Act, 2013.",,

4. The Counsel for the Applicant Companies further submits that the First Applicant Company is engaged in the business of manufacturing Electronic,,

communication equipment including Electronic and Electrical Switches and the Second Applicant Company is engaged in dealing with electric and,,

electronic equipments/components used for or facilitating transmission of electricity, water and gas.",,

5. The Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 29th,,

September 2020 have approved the proposed Scheme. The Board Resolution approving the Scheme for the Applicant Companies are annexed as,,

Annexure H and Annexure I, respectively, to the Company Scheme Application.",,

6. The appointed date for the proposed Scheme of Merger by Absorption is 1st April, 2020.",,

7. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on the Appointed date i.e. 1st April 2020 is as under:",,

a. The Authorised Share Capital of the First Applicant Company is Rs. 10,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each. Issued,",,

Subscribed and Paid-up Share Capital of the First Applicant Company is Rs. 1,66,01,300/- divided into 1,66,013 Equity Shares of Rs. 100/- each.",,

b. The Authorised Share Capital of the Second Applicant Company is Rs. 40,25,00,000/- divided into 4,02,50,000 Equity Shares of Rs.10/- each.",,

Issued, Subscribed and Paid-up Share Capital of the Second Applicant Company is Rs. 40,12,09,990/- divided into 4,01,20,999 Equity Shares of Rs.10/-",,

each.,,

8. The Counsel for the Applicant Companies further submits that the rationale for the Scheme are as follow:,,

a. Consolidation and simplification of group structure;,,

b. Achieving operational and management efficiency;,,

c. Elimination of multiple entities independently undertaking various projects and thereby eliminating duplication of administrative functions and,,

reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Amalgamating Companies;,,

d. Enable pooling of resources of Transferor and Transferee Company to their common advantage, resulting in more productive utilisation of",,

resources and achieving economies of scale.,,

e. Reduction in compliances and statutory filings with various government departments.,,

f. Achieving economies of scale.,,

g. Combined capital resources would strengthen the financial position of the merged entity and result in increasing leveraging capacity of the merged,,

entity i.e. its capacity to borrow funds for business purposes.,,

h. Synchronizing of efforts to achieve uniform corporate policy.,,

i. Ease in decision making.,,

j. To reflect the consolidated net worth of these companies in one balance sheet.,,

9. The Counsel for the Applicant Companies state that as per the valuation report of Mr. Amod Vaze, Registered Valuer (IBBI/RV/06/2019/11825),",,

in consideration of the transfer of and vesting of the Undertaking of the Transferor Company to the Transferee Company in terms of this Scheme, the",,

Transferee Company shall, without any further application, act, instrument or deed, issue and allot to all the shareholders of the Transferor Company",,

whose names are registered in the Register of Members of the Transferor Company on the Record Date or his/her/its legal heirs, executors or",,

administrators or, as the case may be, successors as under:",,

â??215.25 (Two Hundred & Fifteen point two five) equity shares of the face value of Rs.10/- (Rupees Ten only) each of the Transferee,,

Company for every 1 (One) equity share of face value of Rs. 100/- each of the Transferor Company.â??,,

10. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at Plot No E-90, MIDC, Ranjangaon, Village-",,

Karegaon, Shirur, Pune- 412220, on Monday, 1st February 2020 at 11:00 A.M. for the purpose of considering and, if thought fit, approving with or",,

without modification(s) the proposed Scheme of Merger by Absorption and their respective shareholders.,,

11. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at Plot No E-90, MIDC, Ranjangaon,",,

Village-Karegaon, Shirur, Pune- 412220, on Monday, 1st February 2020 at 01:00 P.M. for the purpose of considering and, if thought fit, approving with",, or without modification(s) the proposed Scheme of Merger by Absorption and their respective shareholders.,,

12. That at least thirty (30) clear days before the said meetings of the Equity shareholders of the Applicant Companies to be held as aforesaid, a",,

notice convening the said meetings at the place, day, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all",,

material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and",,

Amalgamations) Rule, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Hand Delivery / Speed Post or through",,

Email (to those shareholders whose email addresses are duly registered with the Applicant Companies for the purpose of receiving such notices by,,

email), addressed to each of the Shareholders of the Applicant Companies, at their last known address or email addresses as per the records of the",,

respective Applicant Company, as on cut-off date determined by the Board of Directors of respective Applicant Company.",,

13. That at least thirty (30) clear days before the meetings of the shareholders of the Applicant Companies to be held as aforesaid, a notice convening",,

the said meetings, indicating the place, day, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the",,

statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises,",,

Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant",,

Companies as aforesaid and / or at the office of its Advocates, M/s. Ajit Singh Tawar & Co., B - 1404, Simran Sapphire CHS, Sector 34C, Kharghar,",,

Navi Mumbai â?" 410210.,,

14. That a composite notice of the aforesaid meetings of the Applicant Companies shall be advertised in two local newspapers viz. â??Business,,

standardâ? in English and translation thereof in â??loksattaâ? in Marathi, both circulated in Pune not less thirty (30) days before the date fixed for the",,

meetings. Considering the lockdown prevailing due to COVID-19 pandemic, the Applicant Companies will have option to publish notices online in the",,

respective e-newspaper editions.,,

15. The Applicant Companies undertake to:,,

i. Issue Notice convening meeting(s) of the shareholders of Applicant Companies in Form No. CAA.2 as per Rule 6 of the Companies (Compromises,",,

Arrangements and Amalgamations) Rules, 2016;",,

ii. Issue Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013;",,

iii. Issue Form of Proxy in Form No. MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and",,

iv. Advertise the composite Notice convening meeting(s) in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and",,

Amalgamations) Rules, 2016.",,

The undertaking is accepted.,,

16. Mr. Samir Tebhurnikar, Authorised Signatory of the Applicant Companies shall be the Chairman of the meetings of the Equity Shareholders of the",,

Applicant Companies to be held as aforesaid or any adjournments thereof.,,

17. The Scrutinizer for the aforesaid meetings shall be CS Devesh Tudekar, Membership No.- 5712, Proprietor, who shall be paid an amount of Rs.",,

5,000/- per meeting of equity shareholders for the services.",,

18. The Chairman of the respective Applicant Company appointed for the aforesaid meeting(s) to issue the advertisement and send out the notices of,,

the meeting(s) referred to above. The said Chairman of the meeting(s) shall have all powers as per Articles of Association and also under the,,

Companies Act, 2013 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the aforesaid",,

meeting(s) or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting(s)",,

by any person(s).,,

19. The quorum of the aforesaid meeting of the Applicant Companies shall be as prescribed under Section 103 of the Companies Act, 2013, present",,

either in person or proxy or by authorized representative. If the quorum is not present within half an hour from the time appointed for the holding of the,,

meeting, the members present shall be the quorum and the meeting shall be held.",,

20. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/authorization",,

duly signed by the person entitled to attend and vote at the meeting, is filed with the respective Applicant Companies at their respective registered",,

offices not later than 48 hours before the aforesaid meeting.,,

21. The value and number of the shares of each shareholder of the Applicant Companies shall be in accordance with the books / register of the,,

Applicant Companies and where the entries in the books / register are disputed, the Chairman of the respective meeting shall determine the value for",,

the purpose of the aforesaid meetings and his decision in that behalf would be final.,,

22. The Chairman for the respective meeting(s) shall file a Compliance Report not less than 7 (seven) days before the date fixed for the holding of the,,

respective meeting(s) of shareholders of the Applicant Companies and do report to this Tribunal that the direction regarding the issue of notices and,,

the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.",,

23. The Chairman of the meetings of the respective Applicant Company to report to this Tribunal, the results of the aforesaid meetings within 30",,

(thirty) days of the conclusion of the meetings.,,

24. The Counsel for the Applicant Companies submits that there is 1 (one) Secured Creditor amounting to☐ 67,36,914/- in the First Applicant",,

Company. Further, the Scheme is an Arrangement between the First Applicant Company and its shareholders as contemplated under Section 230(1)",,

(b) and not in accordance with the provisions of Section. 230(1)(a) of the Companies Act, 2013 and as there is no Compromise and/or Arrangement",,

with the creditors and as no sacrifice is called for, the meeting of the secured creditor is dispensed with. Further, this Bench hereby directs the First",,

Applicant Company to issue notice to its Secured Creditor as specified in section 230(3) of the Companies Act, 2013, with the direction that they may",,

submit their representation, if any, to the Tribunal and copies of such representation shall simultaneously be served upon the First Applicant Company.",,

The notice be sent by Registered Post AD/Speed Post/Email/Courier as may be feasible in view of the lockdown owing to the Covid-19 pandemic. It,,

shall be the responsibility of the First Applicant Company to ensure that the Creditor as indicated above are put on notice regarding the Scheme, so",, that they may take an informed decision thereon.,,

25. The Counsel for the Applicant Companies submits that there is 1 (one) Secured Creditor amounting to☐ 1,27,40,251/- in the Second Applicant",,

Company. Further, the Scheme is an Arrangement between the Second Applicant Company and its shareholders as contemplated under Section",,

230(1)(b) and not in accordance with the provisions of Section. 230(1)(a) of the Companies Act, 2013 and as there is no Compromise and/or",,

Arrangement with the creditors and as no sacrifice is called for, the meeting of the secured creditor is dispensed with. Further, this Bench hereby",,

directs the Second Applicant Company to issue notice to its Secured Creditor as specified in section 230(3) of the Companies Act, 2013, with the",,

direction that they may submit their representation, if any, to the Tribunal and copies of such representation shall simultaneously be served upon the",,

Name of the Applicant Company,PAN,Address

Tek Components Private Limited,AAACT6793L,"Circle 7, PMT Building Commercial

Complex, Shankar Sheth Road, Swargate,

Pune, Maharashtra 411037

Transfix India Private Limited,AADCC1941J,"Ward 7 (5), PMT Building Commercial

Complex, Shankar Sheth Road, Swargate,

Pune, Maharashtra 411037

