(2023) 05 NCLT CK 0013

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 38/KB/2023

Umang Commercial Co Private Limited Vs

Date of Decision : 01-05-2023

Acts Referred:

Companies Act, 2013 — Section 103, 133, 230(1), 230(5), 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7, 8(2)

Citation : (2023) 05 NCLT CK 0013

Hon'ble Judges : Bidisha Banerjee, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : D.N.Sharma, Aniket Agarwal

Final Decision : Disposed Of

Judgement

Balraj Joshi, Member (Technical)

1. The court convened through hybrid mode today. 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 dispensation ofmeetings of shareholders and creditors in connection with the Scheme of Amalgamation of the following Transferor Companies:

SL. No.

Name of the Companies

Transferor Company Number 1

Birla Family Investments Private

Limited

Transferor Company Number 2

Birla TMT Holdings Private Limited

Transferor Company Number 3

Umang Commercial Company Private

Limited

Transferor Company Number 4

Aditya Birla Online Fashion Private

Limited

Transferor Company Number 5

Infocyber India Private Limited

Transferor Company Number 6

Sunbeam Trading and Investments

Private Limited

with Birla Group Holdings Private Limited, being the above named "Transferee Company" whereby and whereunder the Transferor Companiesare proposed to be amalgamated with the Transferee Company from the Appointed Date, viz. 1st April 2022in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”). The Copy of the said Scheme of Amalgamation is annexed to the Company Petition being – Annexure –A, in Volume I at Page No.32-50.

2. The Board of Directors of the Applicant Companies at their Board Meetings, held on 22nd February 2023 approved and resolved to carry out the said Scheme of Amalgamation. The copies of the resolution passed by the applicant companies are annexed with the Company Petition being-Annexure- W in Volume IV at Page No. 507-541.

3. Ld.Counsel appearing for the Applicant Company/Transferor Company No. 3 submits that the registered office of this company is situated within the jurisdiction of the Hon’ble Bench. The registered office of the Transferor Company No. 1,2,4,5,6 and the registered office of the Transferee Company is situated at Mumbai and the said companies have accordingly filed similar proceedings before the Hon’ble Mumbai Bench of the National Company Law Tribunal.

4. It is further submitted by the Ld. Counsel appearing for the Applicants that the shares of all the Applicants are not listed on the stock exchanges. Further, the applicants have the following classes of shareholders and creditors:

SL.

No.

Name of the Applicant Companies

Equity Sharehol ders

Preference Shareholde rs

Un Secured Creditors

1

Umang Commercial Company Private Limited

27

5

16

5. Ld. Counsel appearing for the Applicants submits that separate meetings of the Equity Shareholders, Preference Shareholders and Unsecured Creditors of the Applicant be called to consider, and, if thought fit, to approve the said Scheme of Amalgamation with or without modification pursuant to Section 230(1) read with Section 232(1) of the Companies Act, 2013.

6. The certificate by the Chartered Accountant in respect of the Transferee Company verifying conformity with Accounting Standard under Section 133 of the Companies Act 2013 is annexed with the Company Petition being-Annexure-Y at Page No. 567-571.

7. The Ld. Counsel further submits that the Applicants now seeks admission of the instant petition presented by them for sanction of the Scheme of Amalgamation.

8. Directions are sought accordingly for (a) holding of meeting of the Equity Shareholders of the Applicant, (b) holding of meeting of the Preference Shareholders of the Applicant Company, (c) holding of meeting of the Unsecured Creditors of the Applicant.

9. The Ld. Counsel for the Applicants further submits that the present Scheme is an arrangement between the Applicant Companies and none of the members, shareholders, and creditors will be affected by the Scheme.

10. Heard the Ld. Counsel for the Applicants and 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 to be held/ Date and Times: The following meetings shall be convened and held at the following time on 14th June 2023 for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification: -

i. Meeting of Equity Shareholders of Applicant Company at 11:00 AM.

ii. Meeting of Preference Shareholders of Applicant Company at 11:45 AM.

iii. Meeting of Un Secured Creditors of Applicant Company at 12:30 PM.

In the event, any meeting, as aforesaid, spills over and is concluded after the time fixed for the commencement of the succeeding meeting, such succeeding meeting shall be held immediately after such conclusion of the prior meeting.

(a) Mode of meetings: The meetings, as above, shall be held physically at Emerald House, 1B, Old Post Office Street, Kolkata 700001.

(b) Notice for the meeting

a. Advertisement: At least 30(thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in "Financial Express" in English and "Aajkal" in Bengali as per Rule 7 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

b. Individual Notices: At least 30(thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), 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 Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the said unsecured creditors of the Applicant Company 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. The said notices along with accompanying documents shall also be posted on the websites of the Applicants.

(c) Chairperson: Shreya Chaudhary[Contact No.: 9836543806;7003307421; Email id:choudharyshreya87@gmail.com] is appointed as the Chairperson of the meeting to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 75,000/- for conducting the aforesaid meeting as Chairperson.

(d) Scrutinizer: Kovid Mukherjee [Contact No.: 9874628702; Email id:kovid700@gmail.com] is appointed as the Scrutinizer of the meeting to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 65,000/- for acting as Scrutinizer.

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

(f) Mode of Voting:Voting on the resolution shall be through Ballot Paper only at the venue of the meeting and Applicant shall make necessary arrangements for voting accordingly.

(g) Cut-off date: The cut-off date for determining the eligibility to vote and the value of votes of Equity Shareholders, Preference Shareholders and Un Secured Creditors of Applicant shall be as on 10th May 2023. The cut-off date for dispatch of notice to Un Secured Creditors of Applicant shall be 10th May 2023. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

(h) Voting procedure: Subject to the directions and matters dealt with herein, the procedure for voting by polling paper/ ballot paper and conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 ("the said Rules"), and the forms there under 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: Voting shall be allowed on the proposed Scheme by proxy at the meeting of the Un Secured Creditors of Applicant provided that the proxies are in the prescribed form duly signed by the persons(s) entitled to attend d Office not later than forty-eight hours before the meetings. In case of a Body Corporate, being anUn Secured Creditor of Applicant opting to attend and vote at the meeting, as aforesaid, through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at the meeting on its behalf is deposited at the registered office of the Applicant not later than forty-eight hours before the time for holding the meeting.

(j) That the Chairperson appointed for the said meeting or any person authorised by the Chairperson do issue and send the notices of the aforesaid meetings. Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 read with the other applicable rules and provisions in relation to the conduct of the meetings, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meetings, including an amendment to the Scheme, if any proposed by any persons.

(k) Scrutinizer's Report/ Declaration of Results: The votes cast shall be Scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meeting along with all papers relating to the voting of the Chairperson of the meeting within 3 days from the conclusion of the meeting. The Chairperson shall declare the result of the meeting after submission of the report of the Scrutinizer.

(l) The value of each Equity Shareholder, Preference Shareholder and Unsecured Creditor shall be in accordance with the books and records of the Applicants and, where entries in the books are disputed, the Chairperson shall determine the value for purpose of the said meeting.

(m) The resolution for approval of the Scheme of Amalgamation put to a meeting, if passed by a majority in number representing three-fourth in value of the Equity Shareholders, Preference Shareholders and Un Secured Creditors of

Applicant, 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.

(n) The Chairperson must report to this Tribunal the result of the said meeting within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA 4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

11. 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:

a) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;

b) Registrar of Companies , West Bengal ,Kolkata

c) Reserve Bank of India , Kolkata Regional Office

d) Official Liquidator; High Court at Calcutta

e) Income Tax Department having jurisdiction over the Applicant(s) by sending the same by hand delivery through special messenger or

by post or by email within two weeks from the date of receiving this order. The notice shall specify 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 Ld Counsel of the said Applicant(s). 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.

12. The Applicants to file an affidavit proving service of notices of meeting(s) and publication of advertisement and compliance of all directions contained herein at least a week before the meeting(s) to be held.

13. The application being CA (CAA) No. 38/ KB / 2023 is disposed of accordingly. The connected company petition shall be filed before this tribunal within a period of 4 weeks.

14. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

