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(2023) 03 NCLT CK 0070

In the National Company Law Tribunal

Case No : CA (CAA)/4/MB-IV/2023

Vakratunda Tradecom Private Limited Vs

Date of Decision : 29-03-2023

Acts Referred:
Companies Act, 2013 — Section 230, 230(1)(a), 230(3), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 03 NCLT CK 0070

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ashish O. Lalpuria, Kamal Lahoty

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. This Bench is convened through Video Conferencing.

2. The present Application is filed for necessary directions and Orders for Scheme of Amalgamation of Antimony Barter Private Limited, the First Transferor Company; Ayaan Tracon Private Limited, the Second Transferor Company; Magnet Foundry Suppliers Private Limited, the Third Transferor Company; Namrata Dealers Private Limited, the Forth Transferor Company; Preview Infrastructure Private Limited, the Fifth Transferor Company; Rocket Infrastructure Private Limited, the Sixth Transferor Company; Shilpam Suppliers Private Limited, the Seventh Transferor Company; Subhvani Marcom Private Limited, the Eight Transferor Company; Nabanita Dealcom Private Limited, the Ninth Transferor Company; Sandhya Tieup Private Limited, the Tenth Transferor Company; Shilpa Tie Up Private Limited, the Eleventh Transferor Company with Vakratunda Tradecom Private Limited (formerly known as “L7 Resorts Private Limited”), the Transferee Company under sections 232 read with Section 230 of the Companies Act, 2013.

3. The respective Board of Directors of Applicant Company Nos. 1 to 6 at their respective meetings held on 12th December, 2022 and Applicant Company Nos. 7

to 12 at their respective meeting held on 13th December, 2022 approved the Scheme. The appointed date of Scheme of Amalgamation is 1st April, 2022.

4. It is submitted by the Petitioners that the Applicant Companies are engaged in the business of trading of goods and none of company is engaged in Real-Estate Business.

5. The rationale for the Scheme is stated as under:

a. In order to consolidate and effectively manage the Transferor Companies and the Transferee Company in a single entity, which will provide several benefits including synergy, economies of scale, attain efficiencies and cost competitiveness, it is intended that the Transferor Companies be amalgamated with Transferee Company. Furthermore, the multiple requirements of compliances under the various applicable laws for the Transferor Companies will not arise.

b. The amalgamation of all the Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings enabling effective management and unified control of operations. This would enable streamlining the activities and consequently reducing managerial overlaps by reducing the number of companies under the same Management and thus lead to reduction in administration efforts.

c. It would be advantageous to combine the activities and operations of all the Twelve Companies into a single Company for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance issues as the Companies are engaged in similar businesses thereby reduction in Statutory Compliance and other related cost of the combined entity.

d. The management of all the Transferor Companies and the Transferee Company are closely held and owned by same group. There are cross holdings of shares between Transferor Companies.

e. The Transferor Companies and Transferee Company are willing to merge into a single entity to eliminate the cross holding of shares and cancellation of shares within the entities and to rationalize the Corporate Structure of the Group. Shareholders will stand to benefit by the consolidation of the strengths of all the Companies.

6. The Transferor Companies and Transferee Company have the following capital structure:

Name of Company

Authorised Share Capital

(Rs.)

Paid up Share Capital

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(Rs.)

Antimony Barter Private Limited, First Transferor Company

71,00,000/-

71,00,000/-

Ayaan Tracon Private Limited, Second Transferor Company

26,00,000/-

26,00,000/-

Magnet Foundry Suppliers Private Limited, Third Transferor Company

16,00,000/-

15,02,500/-

Namrata Dealers Private Limited, Fourth Transferor Company

6,00,000/-

5,51,000/-

Preview Infrastructure Private Limited, Fifth Transferor Company

30,00,000/-

29,47,500/-

Rocket Infrastructure Private Limited, Sixth Transferor Company

1,60,00,000/-

65,01,250/-

Shilpam Suppliers Private Limited,

4,00,000/-

3,59,000/-

Seventh Transferor Company

Subhvani Marcom Private Limited, Eighth Transferor Company

1,00,000/-

1,00,000/-

Nabanita Dealcom Private Limited, Ninth Transferor Company

1,00,00,000/-

89,00,000/-

Sandhya Tieup Private Limited, Tenth Transferor Company

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1,02,00,000/-

1,01,00,000/

-

Shilpa Tie Up Private Limited, Eleventh Transferor Company

1,00,00,000/-

86,00,000/-

Vakratunda Tradecom Private Limited, Transferee Company

24,00,000/-

23,10,000/-

7. That all the Equity Shareholders of all the Transferor Companies and all the Equity Shareholders of the Transferee Company have given their consent by way of Affidavits and the details thereof are as under:

Name of Company

No. of Equity Shareholders

Antimony Barter Private Limited, First Transferor Company

3

Ayaan Tracon Private Limited, Second Transferor Company

3

Magnet Foundry Suppliers Private Limited, Third Transferor Company

2

Namrata Dealers Private Limited, Fourth Transferor Company

2

Preview Infrastructure Private Limited, Fifth Transferor Company

2

Rocket Infrastructure Private Limited, Sixth Transferor Company

2

Shilpam Suppliers Private Limited,

Seventh Transferor Company

2

Subhvani Marcom Private Limited, Eighth Transferor Company

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3

Nabanita Dealcom Private Limited, Ninth Transferor Company

3

Sandhya Tieup Private Limited, Tenth Transferor Company

5

Shilpa Tie Up Private Limited,

Eleventh Transferor Company

5

Vakratunda Tradecom Private Limited, Transferee Company

2

In view of the Consent Affidavits, the meeting of the Equity Shareholders of the Transferor Companies and Transferee Company are dispensed with.

8. That there are no Secured Creditors in the Applicant Companies.

9. That the Transferor Companies and Transferee Company have Unsecured Creditors are as under:-

Name of Company

No. of

Unsecured Creditors

Amount in Rs.

Antimony Barter Private Limited,

First Transferor Company

5

(Five)

21,80,351/-

Ayaan Tracon Private Limited, Second Transferor Company

6

(Six)

50,95,060/-

Magnet Foundry Suppliers Private Limited, Third Transferor

Company

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2

(Two)

20,580/-

Namrata Dealers Private Limited, Fourth Transferor Company

2

(Two)

52,080/-

Preview Infrastructure Private

Limited, Fifth Transferor Company

2

(Two)

19,080/-

Rocket Infrastructure Private

Limited, Sixth Transferor Company

2

(Two)

19,080/-

Shilpam Suppliers Private Limited,

Seventh Transferor Company

2

(Two)

32,080/-

Subhvani Limited,

Company

Marcom Eighth

Private Transferor

4

(Four)

77,12,080/-

Nabanita

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Limited,

Dealcom

Ninth

Private

Transferor

2

(Two)

12,080/-

So far as Unsecured Creditors of the aforesaid Applicant Companies are concerned, they will in no way be affected by the proposed Scheme of Amalgamation as the assets of the Applicant Companies after the proposed amalgamation will be far more than its liabilities. Applicants state that the Unsecured Creditors are not in any manner affected by the Scheme nor is there any compromise or arrangement envisaged in the Scheme with the Unsecured Creditors as contemplated under section 230(1)(a). The Applicant further submitted that the Scheme does not contemplate any variation in the rights of the Unsecured Creditors of the Applicant Companies in any manner whatsoever. Applicant submits that upon the Scheme becoming effective, the Transferee Company shall continue with its existence and shall accordingly continue to meet the liabilities of its Creditors and the Creditors of Transferor Companies as they arise in the normal course of business. In view of this, it is submitted that this Hon'ble Tribunal be pleased to dispense with holding of such meeting as prayed for in prayer to the notice of admission. In view of this, this Bench hereby directs the Applicant Companies to issue notice to its all Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies. The Notice shall state that "If no representation / response is received by the Tribunal from Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016".

10. That this Scheme becoming effective and in consideration of amalgamation of the Transferor Companies with Transferee Company in terms of this Scheme, the Transferee Company shall issue and allot Equity Shares, credited as fully paid up, to the extent indicated below, to the members of the Transferor Companies holding fully paid-up Equity Shares of the Transferor Companies as on the Record Date in the following ratio:-

To the Shareholders of Transferor Company No. 1:

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1 (One) fully paid-up Equity Shares of Vakratunda Tradecom Private Limited, the Transferee Company of Rs. 10/- each for every 1,000 (One Thousand) Equity Share of Rs. 10/- each to be issued to Shareholders of Antimony Barter Private Limited, the First Transferor Company.

To the Shareholders of Transferor Company No. 2:

1 (One) fully paid-up Equity Shares of Vakratunda Tradecom Private Limited, the Transferee Company of Rs. 10/- each for every 1,000 (One Thousand) Equity Share of Rs. 10/- each to be issued to shareholders of Ayaan Tracon Private Limited, the Second Transferor Company.

To the shareholders of Transferor Company No. 3:

No shares will be issued to Shareholders of Magnet Foundry Suppliers Private Limited, the Third Transferor Company as all the shares held in Magnet Foundry Suppliers Private Limited, upon amalgamation will be cancelled on account of cross holding of shares.

To the Shareholders of Transferor Company No. 4:

41 (Forty One) fully paid-up Equity Shares of Vakratunda Tradecom Private Limited, the Transferee Company of Rs. 10/- each for every 1,000 (One Thousand) Equity Share of Rs. 10/- each to be issued to Shareholders of Namrata Dealers Private Limited, the Fourth Transferor Company.

To the Shareholders of Transferor Company No. 5:

691 (Six Ninety One) fully paid-up Equity Shares of Vakratunda Tradecom Private Limited, the Transferee Company of Rs. 10/-each for every 1,000 (One Thousand) Equity Share of Rs. 10/-each to be issued to Shareholders of Preview Infrastructure Private Limited, the Fifth Transferor Company.

To the Shareholders of Transferor Company No. 6:

No shares will be issued to Shareholders of Rocket Infrastructure Private Limited, the Sixth Transferor Company as the shares held in Rocket Infrastructure Private Limited, upon amalgamation will be cancelled on account of cross holding of shares.

To the Shareholders of Transferor Company No. 7:

35 (Thirty Five) fully paid-up Equity Shares of Vakratunda Tradecom Private Limited, the Transferee Company of Rs.10/- each for every 1,000 (One Thousand) Equity Share of Rs.10/- each to be issued to Shareholders of Shilpam Suppliers Private Limited, the Seventh Transferor Company.

To the Shareholders of Transferor Company No. 8:

3 (Three) fully paid-up Equity Shares of Vakratunda Tradecom Private Limited, the Transferee Company of Rs.10/- each for every 1000 (One Thousand) Equity

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Share of Rs.10/- each to be issued to Shareholders of Subhvani Marcom Private Limited, the Eighth Transferor Company.

To the Shareholders of Transferor Company No. 9:

No shares will be issued to shareholders of Nabanita Dealcom Private Limited, the Ninth Transferor Company as the shares held in Nabanita Dealcom Private Limited, upon amalgamation will be cancelled on account of cross holding of shares.

To the Shareholders of Transferor Company 10:

262 (Two Sixty Two) fully paid-up Equity Shares of Vakratunda Tradecom Private Limited, the Transferee Company of Rs. 10/-each for every 1,000 (One Thousand) Equity Share of Rs. 10/-each to be issued to Shareholders of Sandhya Tieup Private Limited, the Tenth Transferor Company.

To the Shareholders of Transferor Company No. 11:

307 (Three Hundred Seven) fully paid-up Equity Shares of Vakratunda Tradecom Private Limited, the Transferee Company of Rs. 10/- each for every 1,000 (One Thousand) Equity Share of Rs. 10/- each to be issued to shareholders of Shilpa Tie Up Private Limited, the Eleventh Transferor Company.

11. The Applicant Companies are directed to serve Notice along with copy of Scheme upon the –

(i) the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai;

(ii) Jurisdictional Registrar of Companies, Maharashtra, (Mumbai in case of Applicant Company No. 1 and 3 to 12 and Pune in case of the Applicant Company No. 2);

(iii) the concerned GST Authority (Proper Officer), with whose jurisdiction Petitioner Companies are assessed to tax under GST law;

(iv) the jurisdictional Income Tax Authorities within whose jurisdiction the Applicant Companies' assessments are made and as well as upon the Nodal authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in;

(v) Ministry of Corporate Affairs;

(vi) Reserve Bank of India; and

(vii) Any Sectoral/ Regulatory Authorities, under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

12. The Transferor Companies are directed to serve Notice upon the Official

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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. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

13. The Notice shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery and email along with copy of scheme and state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme". It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

14. In case of shareholder(s) other than individuals, the Petitioner Companies shall file Board Resolution recording the fact of consent and the person who is authorized to give consent for waiver of the meeting along with extract of minutes of relevant meeting.

15. The Applicant Companies will submit –

a. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;

b. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme;

c. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any; and

d. A declaration that no proceedings under Income Tax, PMLA Act or Benami Act is pending against the Petitioner Companies and its Corporate Shareholder in relation to their shareholding.

16. The Applicant Companies to file affidavit of service within 15 (fifteen) days from the last of the compliances as stated in above paragraphs are made and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

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