(2020) 02 NCLT CK 0155

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition No. CA (CAA)-16 (PB) Of 2020

Verizon India Private Limited APPELLANT

Vs

Verizon Communications India Private Limited RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2020) 02 NCLT CK 0155

Hon'ble Judges : Dr. Deepti Mukesh, J;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Rajeev Kumar

Final Decision : Allowed

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This application has been jointly filed by both the Applicant Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of the Applicant Companies, for seeking appropriate orders/directions for convening the respective meetings of shareholders, secured creditors and unsecured creditors of the applicant companies, in connection with the proposed Scheme of Amalgamation contemplated between the applicant companies. The said Scheme of Amalgamation (hereinafter referred to as the "Scheme") has been placed on record along with the joint application.

2. It is represented that the registered offices of both the applicant companies are situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Bench.

3. M/s. Verizon India Private Limited (Transferor Company) was incorporated on

06.01.2000 under the provisions of the Companies Act, 1956. The present Authorized Share Capital of the Transferor Company is Rs. 3,00,00,000/- divided into 30,00,000 Equity Shares of Rs. 10/-. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs. 52,29,700/- divided into 5,22,970 Equity Shares of Rs. 10/-each. The registered office of the Transferor Company is presently situated at Unit -305, 3rd Floor, Aero City Asset No.-7, Worldmark-3 Indira Gandhi International Airport, New Delhi- 110037.

4. It is submitted that the transferor Company has two Equity Shareholders. Additionally, as on 31.12.2019 the transferor company has no secured creditor and one unsecured creditor. As the company has no secured creditor, the requirement of convening meeting of meeting of secured creditors does not arise. In respect of meetings of equity shareholders and unsecured creditors, the applicants have proposed on 18.02.2020 the place, date and time of the meetings and have prayed for issuance of directions for convening and holding of their respective meetings in order to obtain their approval in favour of the Scheme.

5. M/s. Verizon Communications India Private Limited (Transferee Company) was incorporated on 11.01.2002 as a private limited company under the provisions of the Companies Act, 1956. The registered office of the Company is presently situated at Unit -305, 3rd Floor, Aero City Asset No.-7, Worldmark-3 Indira Gandhi International Airport, New Delhi - 110037. The Authorized Share Capital of the company is Rs. 10,00,00,000/- divided in to 1,00,00,000 equity shares of Rs. 10/- each and Rs. 2,20,00,000/- divided into 2,20,000 Non-cumulative Redeemable Preference Shares of Rs. 100/-each. The Issued, subscribed and paid up share Capital of the Company is Rs. 8,94,16,020/- divided into 89,41,602 Equity Shares of Rs. 10/- each.

6. It is submitted that the transferee Company has 2 Equity Shareholders. As on 31.12.2019, the transferee company has no secured creditor and 27 unsecured creditors. As the company has no secured creditor, the requirement of convening meeting of the secured creditors does not arise. In respect of meetings of equity shareholders and unsecured creditors of the transferee Company, the applicants have proposed on 18.02.2020 the place, date and time of the meetings and have prayed for issuance of directions for convening and holding of their respective meetings in order to obtain their approval in favour of the Scheme.

7. We have perused the joint applications and the connected documents/papers filed by the applicants including the Scheme of Amalgamation as contemplated between the applicant companies.

8. It is seen that the board of directors of both the applicant companies vide meetings held on 16.12.2019 have unanimously approved the proposed Scheme of Amalgamation. Copies of such resolutions passed thereat have been placed on record by the applicant companies.

9. Both the applicants have also filed their respective Memorandum and Articles

of Associations. The applicants have further filed their latest audited financial statements for the year ending 31.03.2019.

10. It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the same if sanctioned by this Tribunal the appointed date as provided in the Scheme shall be 01.04.2019.

11. Both the applicant companies have submitted on affidavit that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under any other law is pending against any of the applicant companies.

12. Certificates of the respective statutory auditors of both the applicant companies have been placed on record confirming that the accounting treatment in the Scheme is in conformity with Section 133 of the Companies Act, 2013.

13. Further, it has been stated in the application that the Scheme will be beneficial to both the applicant companies and their respective shareholders, employees, creditors and other stake holders.

14. In the facts and taking into consideration the application jointly filed by the Applicant Companies the following directions are issued: -

A. In relation to the Transferor Company: -

i. The meeting of the equity shareholders of the transferor company is directed to be held at Unit -305, 3rd Floor, Aero City Asset No.-7, Worldmark-3 Indira Gandhi International Airport, New Delhi - 110037, on 20.04.2020 at 11:00 A.M. The quorum of the meeting shall he 2 in number or 90 % in value.

ii. The meeting of secured creditors is dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.

iii. The meeting of unsecured creditors is directed to be held at Unit -305, 3rd Floor, Aero City Asset No.-7, Worldmark-3 Indira Gandhi International Airport, New Delhi - 110037, on 20.04.2020 at 12:00 P.M. The quorum of the meeting shall be 1 in number or 90% in value.

B. In relation to the Transferee Company: -

i. The meeting of the equity shareholders of the transferee company is directed to be held at Unit -305, 3rd Floor, Aero City Asset No.-7, Worldmark-3 Indira Gandhi International Airport, New Delhi - 110037, on 20.04.2020 at 01:00 P.M. The quorum of the meeting shall be 2 in number or 90% in value.

ii. The meeting of secured creditors is dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.

iii. The meeting of unsecured creditors is directed to be held at Unit -305, 3rd Floor, Aero City Asset No.-7, Worldmark-3 Indira Gandhi International Airport, New Delhi- 110037, on 20.04.2020 at 03:00 P.M. The quorum of the meeting shall be 15 in number or 90% in value.

C. Mr. Eshna, Advocate (Mobile No. 9717313618) is appointed as the Chairperson and Ms. Gautam Mukopadhyay, Advocate (Mobile No. 9330486700) is appointed as the Alternate Chairperson and Mr. A.K. Labh, Company Secretary (Mobile No. 9830055689) is appointed as Scrutinizer for the aforesaid meetings in terms of directions issued herein.

D. In case the quorum as noted above for the aforesaid meetings are not present at the meetings, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the respective registered offices of the applicant companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

E. The fee of the Chairperson for the aforesaid meetings shall be Rs. 1,50,000/-, the fee of the Alternate Chairperson shall be Rs. 1,00,000/- and the fee of the Scrutinizer shall be Rs. 1,00,000/- in addition to meeting their incidental expenses.

F. The Chairperson will file its reports in respect of all the meetings within a week from the date of holding of the above meetings.

G. That the applicant companies shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi editions of 'Business Standard' English edition and "Business Standard" Hindi edition stating that the copies of the Scheme, the explanatory statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the respective registered offices of the applicant Companies.

H. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of equity shareholders and creditors of both the applicant Companies in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

I. The companies shall individually send notice to Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income Tax Authorities, Registrar of Companies National Capital Territory of Delhi and Haryana, Official Liquidator along with copy of relevant documents and disclosures as required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

J. The Applicant Companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every shareholders and creditors of the Applicant Companies entitled to attend the meetings as mentioned above.

K. The authorized representative of both the Applicant Companies shall furnish an affidavit of service of notice of the meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

L. All the aforesaid directions are to be complied with by the applicant companies strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as in terms of the provisions of the Companies Act, 2013.

The application stands allowed in the aforesaid terms.

Let the copy of the order be served to the parties.