
(2019) 08 NCLT CK 0052

In the National Company Law Appellate Tribunal

Case No : Company Petition No. CAA-119 (PB) Of 2019

Vikas Altech Private Limited

APPELLANT

Vs

Pranav Vikas (India) Private Limited

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Companies (Compromise, Arrangements And Amalgamations) Rules, 2016 — Rule 8, 16

Companies Act, 2013 — Section 230, 230(4), 230(5), 230(7), 231, 232, 232(3)

Citation : (2019) 08 NCLT CK 0052

Hon'ble Judges : M.M. Kumar, CJ; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Mohit Chaurasia, Raghvendra Kishore Singh, Vipul Agrawal

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This Company Petition jointly filed by the Petitioner companies has come up before us for admission and for fixing a date of hearing of the Company Petition as well as for a direction in relation to publication in press to be effected and notices to be issued to the authorities concerned in relation to the date of hearing of the Petition and calling for the objections, if any, to the Scheme of Amalgamation (hereinafter for brevity referred to as the "Scheme") as contemplated between the Petitioner Companies.

2. It is seen from the records that the First Motion application seeking convening/ dispensation from convening the meetings of Shareholders and Creditors of the petitioner companies was filed before this Bench vide Company Application CAA No. 44 (PB)/2019. Based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the transferor company and Secured Creditors and Unsecured Creditors of the transferee company were dispensed with, vide order dated 15.04.2019 read with order dated 23.05.2019

passed by this Bench. In respect of shareholders of transferee company, directions were issued to convene their meetings in order to obtain their approval in favour of the Scheme.

3. Subsequently, the aforesaid meetings were duly held on 13.07.2019 and the Scheme was unanimously approved by the members participated in the said meetings. The reports of chairperson and scrutinizer have been placed on record.

4. Thereafter the present second motion petition has come up before us for fixing a date of hearing as well as for other consequential directions in terms of the provisions of Sections 230 to 232 of Companies Act, 2013 read with Rule 16 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

5. Rule 16 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 envisages that:

"16. Date and notice of hearing. - (1) The Tribunal shall fix a date for the hearing of the petition, and notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised, or in such other newspaper as the Tribunal may direct, not less than ten days before the date fixed for the hearing.

(2) The notice of the hearing of the petition shall also be served by the Tribunal to the objectors or to their representatives under sub-section (4) of section 230 of the Act and to the Central Government and other authorities who have made representation under rule 8 and have desired to be heard in their representation."

6. Accordingly, in the present second motion petition filed under Sections 230 to 232 of Companies Act, 2013 read with Rule 16 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, the prayer for fixing a date of hearing as well as for other consequential directions is allowed with the following directions:-

(i) Notice of the hearing shall be advertised in the newspapers namely, "Business Standard" (English, Delhi edition) and "Business Standard" in Vernacular (Hindi, Delhi edition) not less than 10 days before the next date fixed for hearing.

(ii) In addition to the public notice, each of the Petitioners shall serve the notice of the Petition on the following Authorities namely,

(a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs;

(c) the Income Tax Department, at DCIT (High Court Cell), Lawyer's Chamber Block No.1, Room No. 428 & 429 Delhi High Court

(d) Official Liquidator attached to the High Court of Delhi;

and to such other Sectoral Regulatory Authorities who are likely to be affected by the Scheme at least 30 days before the date fixed for hearing of the above

Petition. The said authorities are directed to send their representations if any, within 30 days from the date of receipt of such notice as per the provisions of sub-section 5 of Section 230 of the Companies Act, 2013.

(iii) Further, notices shall also be served to the objector(s) or to their representative, if any, as contemplated under Sub-Section (4) of Section 230 of the Companies Act, 2013 who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the Annexures filed therewith at least 15 days before the date fixed for hearing.

(iv) Both the Petitioner companies shall at least 7 days before the date of hearing of the Petition file an affidavit of compliance in relation to paper publication effected as well as service of notices on the Authorities specified above including the Sectoral Regulators as well as to the objectors, if any.

(v) Objections, if any, to the Scheme contemplated by the authorities to whom notices have been given, may file their objections on or before the date fixed for hearing, failing which it will be considered that there is no objection on the part of the authorities to the approval of the Scheme by this Tribunal and subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.

(vi) The Petitioner Companies shall individually comply with proviso to sub section (3) of Section 232 or proviso to sub section (7) of Section 230, of the Companies Act, 2013, as may be applicable under the circumstances on or before the date fixed for hearing by filing the required certificate of Company's auditor.

(vii) The petitioner companies shall file their respective up to date audited financial statements before next date of hearing.

(viii) The next date of hearing of the Petition shall be on 26.09.2019 for the consideration of the approval of the Scheme of Amalgamation as contemplated between the Petitioner Companies.

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