(2020) 12 NCLT CK 0126

In the National Company Law Tribunal

Case No : Company Application No. (CAA)/1145/MB.V Of 2020

Aker Powergas Subsea Private Limited And Anr. Vs

Date of Decision : 10-12-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8
Companies Act, 2013 — Section 230, 230(1)(b), 230(1)(a), 230(5), 231, 232

Citation : (2020) 12 NCLT CK 0126

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

Bench : Division Bench

Advocate : Ajit Singh Tawar

Judgement

1. This Court convened via videoconferencing today.

2. The Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Merger by Absorption of Aker Powergas Subsea

Private Limited (Transferor Company) with Aker Powergas Private Limited (Transferee Company) and their respective Shareholders (â??the

Schemeâ??) under the provisions of Sections 230 to 232 of the Companies Act, 2013.

3. The Counsel for the Applicant Companies further submits that the First Applicant Company is engaged in the business of assisting its parent

company for Product Design, Engineering, Supply Chain Management and Document Management relating to subsea, oil and gas projects, and the

Second Applicant Company is engaged in the business of Process Engineering, Detail Engineering, Project Management, Procurement, Construction

and Computer Integrated engineering.

4. The Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 6th

day of November 2020 have approved the proposed Scheme with the Appointed Date as 1st day of April 2020. The Board Resolution approving the

Scheme for the Applicant Companies is annexed as Annexure E (Colly.) to the Company Scheme Application.

5. The appointed date for the Scheme of Merger by Absorption is 1st day of April 2020.

6. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31st day of March, 2020 is as under:

a. The Authorised Share Capital of the First Applicant Company is Rs. 25,00,000/- divided into 2,50,000 Equity Shares of Rs. 10/- each. Issued,

Subscribed and Paid-up Share Capital of the First Applicant Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each.

b. The Authorised Share Capital of the Second Applicant Company is Rs. 50,00,000 divided into 5,00,000 Equity Shares of Rs.10/- each. Issued,

Subscribed and Paid-up Share Capital of the Second Applicant Company is Rs. 16,00,660 divided into 1,60,066 Equity Shares of Rs.10/- each.

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

The Transferor Company and Transferee Company are engaged in the similar line of business. Combining of businesses would help in achieving

operational efficiency, streamlining the business operations and reduction in compliance cost; hence it is proposed inter-alia to amalgamate the

Transferor Company into the Transferee Company. The proposed amalgamation will also result in following benefits:

a. Consolidation of the Transferor Company and the Transferee Company will achieve simplified corporate structure, rationalise the number of entities

and result in a single entity with combined businesses.

b. Provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, it will enable optimal utilization of existing

resources and provide an opportunity to fully leverage assets, capacities, experience and infrastructure of the Transferor Company and Transferee

Company.

c. Reducing managerial overlaps involved in operating multiple entities, enable cost savings and effective utilization of valuable resources which will

enhance the management focus thereby leading to increase in operational and management efficiency; integrate business functions; eliminate

duplication and rationalization of administrative expenses.

d. Synchronization of efforts to achieve uniform corporate policy, greater integration and greater financial strength and flexibility for the Transferee

Company.

e. Upon completion of the Merger, the Transferor Company will be dissolved. Consequently, there would be lesser regulatory and legal compliance

obligations including accounting, reporting requirements, statutory and internal audit compliance requirements, tax filings, company law compliances,

etc. and therefore reduction in administrative costs.

8. The Counsel for the Applicant Companies submits that the Transferor Company is a wholly-owned subsidiary of the Transferee Company since the

entire paid up equity share capital of the Transferor Company is held by the Transferee Company along with its nominees there will no consideration

shall be payable pursuant to the Merger by Absorption of the Transferor Company with the Transferee Company.

9. The Counsel for the Applicant Companies states that all the Equity shareholders of the Applicant Companies have given their consent in writing to

the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of all the Applicant Companies, the meetings of the Equity

Shareholders of the respective Applicant Companies, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without

modification(s) are hereby dispensed with. The Consent affidavits are annexed as Annexure H (Colly.) and Annexure K (Colly.) to the Company

Scheme Application.

10. The Counsel for the Applicant Companies submits that the Applicant Companies do not have any Secured Creditors, therefore, the question of

convening and holding of the meeting of Secured Creditors of the Applicant Companies does not arise.

11. The Counsel for the Applicant Companies submits that the First Applicant Company has 47 (Fourty Seven) Unsecured Creditors as on 27th

September, 2020 amounting to Rs. 75,068,957/- (Rupees Seven Crores Fifty Lakhs Sixty-Eight Thousand Nine Hundred and Fifty-Seven only). List of

Unsecured Creditors of the First Applicant Company is annexed as Annexure I to the Company Scheme Application.

12. The Counsel for the First Applicant Company submits that since 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 unsecured creditors is

dispensed with. The First Applicant Company will issue notice to all its unsecured Creditors by Courier/Registered Post/Speed Post/Hand Delivery or

through Email (to those creditors whose email addresses are duly registered with the First Applicant Company for the purpose of receiving such

notices by email), at their last known address as per the records of the First Applicant Company, with a direction that they may submit their

representations, if any, to the Tribunal within 30 days and copy of such representations shall simultaneously be served upon the First Applicant

Company.

13. The Counsel for the Applicant Companies submits that the Second Applicant Company has 83 (Eighty Three) Unsecured Creditors as on 27th

September, 2020 amounting to Rs. 75,859,505/- (Rupees Seven Crores Fifty Eight Lakhs Fifty Nine Thousand Five Hundred and Five only). List of

Unsecured Creditors of the Second Applicant Company is annexed as Annexure L to the Company Scheme Application.

14. The Counsel for the Second Applicant Company submits that since 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 unsecured creditors is

dispensed with. The Second Applicant Company will issue notice to all its unsecured Creditors by Courier/Registered Post/Speed Post/Hand Delivery

or through Email (to those creditors whose email addresses are duly registered with the Second Applicant Company for the purpose of receiving such

notices by email), at their last known address as per the records of the Second Applicant Company, with a direction that they may submit their

representations, if any, to the Tribunal within 30 days and copy of such representations shall simultaneously be served upon the Second Applicant

Company.

15. The First Applicant Company / Transferor Company to serve notice of the present Application complete with enclosures on â?" (1) the Regional

Director (Western region), Ministry of Corporate Affairs, Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Official Liquidator, High

Court Bombay and (4) Income Tax Authority within whose jurisdiction the Transferor Company are assessed to tax, bearing PAN number

AAJCA0766B having IT ward jurisdiction circle 15(1)(1) Aaaykar bhava, Churchgate, Mumbai; and (5) SEZ Unit i.e. Neopro Technologies Private

Limited at 1st Floor and 2nd Floor IT-2 Building, Neopro Technologies Pvt. Ltd., SEZ, Rajiv Gandhi Infotech Park, Phase â?" I, Hinjewadi, Pune

pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016.

If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have

no objection to the proposed Scheme.

16. The Tribunal is appointing M/s. M K P S & Associates, Chartered Accountants, having their office at 106-109, 1st Floor, Apollo Complex, near

Sona Udyog, Andheri (east), Mumbai- 400069, Contact No. 22 28399709/ 10 to assist the Official Liquidator to scrutinize the books of accounts of the

Transferor Company for the last five (5) years and submit its representation/ report to the Tribunal. The aforesaid Companies to pay fees of Rs.

2,00,000/- for this purpose. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the

receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Transferor Company.

17. The Second Applicant Company / Transferee Company to serve notice of the present Application complete with enclosures on â?" (1) the

Regional Director (Western region), Ministry of Corporate Affairs, Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; and (3) Income Tax

Authority within whose jurisdiction the Transferor Company are assessed to tax, bearing PAN number AAACD1981E having IT ward jurisdiction

circle 15(1)(1) Aaykar bhavan, Churchgate, Mumbai; pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies

(Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the

date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

18. The Applicant Companies shall host the notices directed herein, on their respective websites, if any.

19. That the Applicant Companies to file a Compliance Report with the Registry proving dispatch of notices to creditors and regulatory authorities as

stated above, and report to this Tribunal that the directions have been duly complied with. The Compliance Report is in lieu of customary affidavit of

service, due to the lockdown situation prevailing now.