(2021) 04 NCLT CK 0007

In the National Company Law Tribunal

Case No : CSP 191, 192, 193/MB Of 2017, CSD 891, 892, 893/MB Of 2016

ARCO Electro Technologies Pvt. Ltd. And Anr. — APPELLANT

Vs

AET Technologies Pvt. Ltd. — RESPONDENT

Date of Decision : 12-04-2021

Acts Referred:
Companies Act, 1956 — Section 100, 391, 392, 393, 394
Companies Act, 2013 — Section 133, 230, 230(2), 230(5), 231, 232, 232(3)(i)

Citation : (2021) 04 NCLT CK 0007

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Dipesh U. Siroya, Rupa Sutar

Final Decision : Allowed

Judgement

1. All these Petitions concerning interwoven facts and related prayers have been taken together. They shall abide by the common order passed hereunder.

2. The sanction of this Tribunal is sought under sections 391 to 394 read with section 100 of the Companies Act, 1956 along with sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Arrangement (the Scheme) amongst Arco Electro Technologies Private Limited and Armen Comtrade Private Limited and AET Technologies Private Limited and their respective shareholders and Creditors.

3. We have heard the learned counsel for the Petitioner Companies and the Deputy Director, WR, MCA, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions.

4. The Board of Directors of the Demerged Company and the Resulting Companies have approved the Scheme in their meetings held on 16th November, 2015 and 9th February, 2016 respectively. The Appointed Date fixed for the

Scheme is 1st April, 2015.

5. The learned counsel for the Petitioner Companies submits that the Demerged Company is engaged in the business of inter alia Residual, Manufacturing and Finance. The Resulting Company No. 1 is engaged in the business of Finance and the Resulting Company No. 2 is engaged in the business of Manufacturing.

6. The Scheme provides for the transfer by way of a demerger of the Demerged Undertakings of the Demerged Company to the Resulting Company No.1 and Resulting Company No. 2, on a going concern basis, the consequent issue of the securities by the Resulting Companies to the shareholders of the Demerged Company on a proportionate basis in consideration of the transfer and vesting of the Demerged Undertakings in the Resulting Companies. The separation of the Manufacturing and Finance Business, by way of the Scheme, including its business, undertaking and investments from the Demerged Company will lead to significant benefits for both businesses including:

a) Enhanced strategic flexibility to build a vibrant industrial platform;

b) Enable a dedicated management focus and to accelerate growth of the Retail Business; and

c) Access to varied sources of funds for the rapid growth of both businesses.

With a view to achieve the aforesaid growth potential, the Demerged Company proposes to re-organize and segregate, by way of the Scheme, its business, undertaking and investments in the Retail Business. The restructuring proposed by this Scheme will also provide an opportunity to the investors to select investments which best suit their investment strategies and risk profiles.

7. The learned counsel appearing on behalf of the Petitioner Companies states that the Company Petitions have been filed in consonance with sections 391- 394 read with section 100 of the Companies Act, 1956 and sections 230 to 232 and other applicable provisions of the Act along with the order dated 27.10.2016 passed in Company Summons for Directions Nos. 891/2016, 892/2016 and 893/2016 passed by the Hon'ble High Court, Bombay.

8. The learned counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per directions of the Hon'ble High Court, Bombay and this Bench and have filed necessary affidavits of compliance in the Hon'ble High Court, Bombay as well as this Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956 and Companies Act, 2013 and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 5th January, 2018 stating therein, its observations on the Scheme as stated in para IV (1) to (8) of the Report. In response to the

observations made by the Regional Director, the Petitioner Companies have given necessary clarifications and undertakings. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr.

No. Para (IV)

RD Report/ Observation dated 5th January 2018

Response of the Petitioner Companies

(1)

The tax implication if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income tax authority is binding on the Petitioner Company.

In so far as observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

(2)

It is submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities. In this regard petitioner has to submit the proof of serving the notice to Income Tax Authorities as per the provision of section 230(5) of the Act, 2013.

In so far as observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that Income tax Authority was served upon vide

letter dated 4th April 2017 as required under the provision of

Section 230(5) of the Act, 2013.

(3)

Petitioner companies not submitted admitted copy of the Petition, Minutes of order of the Hon'ble NCLT, Chairman's report of the meeting. In this regard petitioner to undertake submit the same for record of Regional Director.

In so far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the copies of the Petitions of the Petitioner Companies have already been submitted to the office of Regional Director. The Petitioner Company further submits that Chairman Report is not there as the meeting of the Equity Shareholders was dispensed in the High Court, Bombay.

(4)

Valuation Report, recommending share exchange ration not submitted by the petitioners. In this regard petitioner to undertake to submit the same.

In so far as the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have submitted the Valuation Report by way of further Affidavit to the Regional Director.

(5)

Certificate stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 read with Rules not submitted. In this regard petitioners to undertake to submit the same.

In so far as the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have submitted the Certificate as accounting standards prescribed under section 133 of the Companies Act, 2013 by way of further Affidavit to the Regional Director.

(6)

Petitioner Companies have to undertake to submit copy of the Affidavit duly notarized under section 230(2) of the Companies Act, 2013.

In so far as the observation in paragraph IV (6) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have submitted the Affidavit duly notarized under section 230(2) of the Companies Act, 2013 by way of further Affidavit to the Regional Director.

(7)

Petitioner Companies have to undertake to comply with provisions of Section 232(3)(i) of the Companies Act, 2013.

In so far as the observation in paragraph IV (7) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company undertakes to comply with the provisions of section 232(3)(i) of the Companies

Act, 2013.

(8)

ROC, Mumbai has mentioned observations in their report at point no. 32 for which Petitioner Companies have to undertake to comply with the same.

In so far as the observation in paragraph IV (8) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that have submitted the reply to them in

Affidavit.

10. The observations made by the Regional Director and the clarifications & undertakings given by the Petitioner Companies have been verified and accepted.

11. From the material on record, the Scheme appears to be fair and reasonable and is not contrary to public policy.

12. Since all the requisite statutory compliances have been fulfilled, CSP Nos. 191/2017, 192/2017 and 193/2017 are made absolute in terms of prayers made in the petitions. Hence Ordered.

ORDER

The Petition be and the same is allowed subject to the following.

(i) The Scheme with the Appointed dated fixed as 1st April 2015, respectively placed at Page nos. 27-53 of CSP No. 191 of 2017; Page Nos. 31-57 of CSP No. 192 of 2017 and Page Nos. 27-54 of CSP No. 193 of 2017, as Exhibit A of the Company Scheme Petitions is hereby sanctioned. It shall be binding on the Petitioner Companies and all concerned including their respective shareholders, secured creditors, unsecured creditors/ trade creditors and employees.

(ii) The Registrar of this Tribunal shall issue certified copy of this order along with the Scheme forthwith. Petitioners are directed to file a certified copy of this Order along with copies of the Scheme with the Registrar of Companies concerned, electronically in E-Form INC-28, within 30 days from the date of receipt of the order from the Registry.

(iii) The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal, within 60 days from the date of receipt of the order with the Superintendent of Stamps concerned for the purpose of adjudication of stamp duty payable, if any payable.

(iv) The Petitioner Companies shall comply with all the undertakings given by them.

(v) The Petitioner companies shall within 15 days of receipt of this order, issue newspaper publications with respect to approval of the Scheme, in the same newspaper in which pervious publications were issued.

(vi) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

(vii) All concerned shall act on a copy of this Order along with Scheme duly authenticated by the Registrar of this Tribunal.

(viii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any direction that may be necessary.

