(2021) 08 NCLT CK 0020

In the National Company Law Tribunal

Case No : C. P. (CAA) No. 546, 547, 1062 of 2020

Cargo Service Center India Private Limited — APPELLANT

Vs

Mumbai Cargo Service Center Airport Private Limited — RESPONDENT

Date of Decision : 02-08-2021

Acts Referred:
Companies Act, 2013 — Section 230, 232, 230(1), 230(3), 230(5), 232(6), 232(3)(i)

Citation : (2021) 08 NCLT CK 0020

Hon'ble Judges : Suchitra Kanuparthi, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Rupa Sutar

Final Decision : Allowed

Judgement

Shyam Babu Gautam, Member (Technical)

1. Heard the Counsel for the Petitioner Companies and the representative of the Regional Director (Western Region), Ministry of Corporate Affairs,

Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the Scheme of

Arrangement between CARGO SERVICE CENTER INDIA PRIVATE LIMITED, the Demerged Company and MUMBAI CARGO SERVICE

CENTER AIRPORT PRIVATE LIMITED, the Resulting Company and their respective shareholders (â??Scheme of Arrangementâ?), annexed at

Exhibit G to the Company Scheme Petition.

3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the respective Board Resolutions dated January 14, 2020

which are annexed to the Company Scheme Petition as Exhibits â??Hâ?? and â?? Iâ??.

4. The Learned Counsel appearing on behalf of the Petitioner Companies states that the joint Company Petition has been filed in accordance with

Sections 230-232 of the Companies Act, 2013 and in compliance with the directions passed by this Honâ??ble Tribunal.

5. The Counsel for the Petitioner Companies submits that by Orders dated May 6, 2020 and January 28, 2021 passed by the Tribunal in Company

Scheme Applications bearing CA (CAA) No. 546/MB/2020 and CA (CAA) No. 547/ MB/2020, the meeting of the equity shareholders of the

Petitioner Companies were directed to be convened on 14th May 2020 via video conferencing and the said meetings have been duly convened.

Pursuant thereto, the meeting of Equity Shareholders of the Petitioner Companies were convened on May 14, 2020 and the requisite quorum was

present and the Scheme was approved unanimously by the Equity Shareholders without modifications. The Chairman appointed for the meeting has

filed his letters of compliance verifying his reports dated May 23, 2020 and May 22, 2020 for both the companies which are annexed as Exhibit

â??Mâ?? and â??Nâ?? to the captioned Petition.

6. There are no secured creditors in Petitioner Company No. 1. Notices to all secured creditors of Petitioner Company No. 2, as directed by the

Honâ??ble Tribunal, were sent and delivered. Notices to all unsecured creditors of the Petitioner Companies, as directed by the Honâ??ble

Tribunal, were sent and delivered.

7. The Demerged Company is engaged in the business of air cargo handling and warehousing services. In order to segregate the Palletization

Business (as defined in the Scheme of Arrangement) from the Remaining Business (as defined in the Scheme of Arrangement) of the Demerged

Company, it is intended to demerge the Palletization Business Undertaking on a going concern basis into the Resulting Company. The Demerged

Company and the Resulting Company are under the same management. The arrangement will result in better and efficient control by the management

of the segregated businesses and offer opportunities to the management of the Demerged Company and Resulting Company to vigorously pursue

growth and expansion strategies.

8. The Counsel for the Petitioner Companies further submits that the rationale for the Scheme is that it would lead to:

(a) Greater administrative efficiency and shall enable the Demerged Company to focus on and enhance its Remaining Business operations by streamlining operations

and cutting costs;

(b) Ability to leverage financial and operational resources of each business; and

(c) EachÂ businessÂ wouldÂ beÂ ableÂ toÂ addressÂ independent business opportunities, pursue efficient capital allocation and attract different sets of

investors, strategic partners, lenders and other stakeholders, and will enable investors to separately hold investments which best suit their investment strategies and

risk profiles.

(d) Streamlining of group structure;

(e) Consolidation of business operations-: pursuant to the demerger of the Palletization Business Undertaking by the Demerged Company to the Resulting Company,

the Resulting Company will have advanced shareholderâ??s value accruing from consolidation of business operation resulting in economies of scale, operational

rationalisation, organisation efficiency and optimum utilization of various resources.

9. Upon this Scheme coming into effect and in consideration of the Scheme of Arrangement, the Resulting Company shall issue and allot New Equity

Shares to the shareholders of Demerged Company on the basis of share entitlement ratio determined by an independent valuer-â??for every 1

equity shares held by the shareholders of Demerged Company (i.e. Mr. Tushar Jani and Mr. Khushroo Dubash), they will get 0.4237608

equity shares of the Resulting Company and balance if any, will be settled in cash.â? Accordingly, 8,05,191 equity shares of face value Rs. 10/-

each shall be allotted to each of Mr. Tushar Jani and Mr. Khushroo Dubash at par and balance of Rs. 328/- to be paid in cash to each of them

towards consideration for the Scheme of Arrangement.

10. The Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai filed a Report dated July 27, 2020 â(??Reportâ?) inter alia

stating in Paragraph IV (a) to (f) as under:

IV.Â TheÂ observationsÂ ofÂ theÂ RegionalÂ directorÂ onÂ theÂ proposed Scheme to be considered by the Hon'ble NCLT are as under:

(a) In addition to compliance of AS -14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connec tion with the

scheme to comply with other applicable Accounting Standards such as AS -5 (IND AS-8) etc.;

(b) As per Part-I-Definitions Clause-1 (1.2, 1.6 & 1.13) of the Scheme.

Appointed Date"" means the opening hours of April 1, 2019.

Effective Date"" means the date on which the scheme shall be deemed to be effective / operative retrospectively from the Appointed Date. It is clarified that the

coming into effect of Scheme presupposes the filing of the certified copy/ies of the order/s of the Regional Director or the NCLT, as the case may be, sanctioning

this Scheme under the provisions of the Act with the ROC. Any references in the Scheme to ""upon the Scheme becoming effective"" or ""on coming into effect of the

Scheme"" or ""Scheme coming into effect"" shall mean ""on the Effective Date"".

Record Date "" means the date to be f ixed by the Board of Directors of the Resulting Company for the purpose of determining the date on which the New Equity

Shares shall be issued by the Resulting Company to the equity shareholders of the Demerged Company, in accordance with Clause 5 hereto, upon coming into

effect of this scheme .

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date

from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this

aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the

Ministry of Corporate Affairs.

(c) The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before

the Tribunal.

(d) Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are

one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report if any

required;

Â (e) The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected

by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving

effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).

(f) As regards Part-II Clause 6 of the Scheme (Increase of authorized share capital of Resulting Company), and fee payable by the Resulting Company shall be in

accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013;

11. In response to the Report, the Petitioner Companies have submitted their respective clarifications and undertakings through separate Affidavits

each dated 30th July 2020, extracts of which are mentioned herein below:

Extract from Affidavit filed by Demerged Company/Petitioner Company No. 1-

I. Point IV(a) â?" This pertains to the Resulting Company.

II. Point IV(b) â?" The Demerged Company undertakes that as mentioned in Clause 1 of the Scheme, the Scheme shall be come into force from the Effective Date, i.e., the date of filing

of the final minutes of the Order of this NCLT with Registrar of Companies but shall be effective from the Appointed Date i.e., opening hours of April 1, 2019. The Demerged Company

confirms that it is in compliance with the circular no.F. No.

7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

III. Point IV(c) â?" The Demerged Company states and confirms that in pursuance of an Order dated March 5, 2020 read with the Order dated May 6, 2020 passed by the

Honâ??ble Tribunal in CA (CAA) No. 546/MB/2020, the meeting of the equity shareholders was convened by the Demerged Company on 14th May 2020 and the Scheme has been

unanimously approved by the equity shareholders of the Demerged Company. As per the said Order, the meeting of secured and unsecured creditors of the Demerged Company was

dispensed with and directions were issued to send notices to all its unsecured creditors since the Scheme does not involve any arrangement with the creditors. Letter of Compliance

Report dated 23rd May 2020 has been filed by the Demerged Company in accordance with the Order dated March 5, 2020 read with the Order dated May 6, 2020 passed by the

Honâ??ble

Tribunal. The copy of the minutes of the meeting of equity shareholders of the Demerged Company convened on 14th May 2020 is hereto annexed and marked as Annexure-A.

IV. Point IV(d) â?" The Demerged Company confirms and undertakes that there is no discrepancy or change in the Scheme enclosed to the Company Scheme Applications and the

Company Scheme Petition.

V. Point IV(e) â?" The Demerged Company submits that notices under Section 230(5) have been served upon the Concerned Income tax Authority, Regional Director, Registrar of

Companies, Mumbai, Maharashtra, by both the Petitioner Companies. The Letter of Compliance Report dated 23rd May

2020 has been filed by the Demerged Company in accordance with the Order dated March 5, 2020 read with the Order dated May 6, 2020 passed by the Honâ??ble Tribunal in CA

(CAA) No. 546/230-232/MB/2020. The Demerged Company further undertakes that the sanction of the Scheme by the Honâ??ble Tribunal will not deter any of the authorities to deal

with any of the issues arising after giving effect to the Scheme and that such issues arising out of the Scheme will be met and answered in accordance with law. The decision of the

authorities will be binding on the Demerged Company.

VI. Point IV(f) â?" This pertains to the Resulting Company.

Extract from Affidavit filed by Resulting Company/Petitioner Company No. 2-

I. Point IV(a) â?" The Petitioner Company No. 2/Resulting Company undertakes that in addition to compliance of AS-14 (IND AS -103), the Resulting Company shall pass such

accounting entries which are necessary in connection with the Scheme to comply with the other applicable Accounting Standards such as AS â?" 5 (IND AS -8), etc.

II. Point IV(b) â?" The Resulting Company undertakes that as mentioned in Clause 1 of the Scheme, the Scheme shall be come into force from the Effective Date, i.e., the date of filing of

the final minutes of the Order of this NCLT with Registrar of Companies but shall be effective from the Appointed Date i.e., opening hours of April 1, 2019. The Resulting Company

confirms that it is in compliance with the circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

III. Point IV(c) â?" The Resulting Company states and confirms that in pursuance of an Order dated March 5, 2020 read with the Order dated May 6, 2020 passed by the Honâ??ble

Tribunal in CA (CAA) No. 547/230-232/MB/2020, the meeting of the equity shareholders was convened by the Resulting Company on 14th May 2020 and the Scheme has been

unanimously approved by the equity shareholders of the Resulting Company. As per the said Order, the meeting of secured and unsecured creditors of the Resulting Company was

dispensed with and directions were issued to send notices to all its secured creditors and to unsecured creditors having an outstanding balance of Rs. 5 Lakh or more as on 21st

January 2020 since the Scheme does not involve any arrangement with the creditors. Letter of Compliance Report dated 23rd May 2020 has been filed by the Resulting Company in

accordance with the Order dated March 5, 2020 read with the Order dated May 6, 2020 passed by the Honâ??ble Tribunal. The copy of the minutes of the meeting of equity

shareholders of the Resulting Company convened on 14th May 2020 is hereto annexed and marked as Annexure-A.

IV. Point IV(d) â?" The Resulting Company confirms and undertakes that there is no discrepancy or change in the Scheme enclosed to the Company Scheme Application and the

Company Scheme Petition.

V. Point IV(e) â?" The Resulting Company submits that notices under Section 230(5) have been served upon the Concerned Income tax Authority, Regional Director, Registrar of

Companies, Mumbai, Maharashtra, by both the Petitioner Companies. The Letter of Compliance Report dated 23rd May 2020 has been filed by the Resulting Company in accordance

with the Order dated March 5, 2020 read with the Order dated May 6, 2020 passed by the Honâ??ble Tribunal in CA (CAA) No. 547/MB/2020. The Resulting Company further

undertakes that the sanction of the Scheme by the Honâ??ble Tribunal will not deter any of the authorities to deal with any of the issues arising after giving effect to the Scheme and that

such issues arising out of the Scheme will be met and answered in accordance with law. The decision of the authorities will be binding on the Resulting Company.

VI. Point IV(f) â?" The Resulting Company undertakes that it shall file necessary e-forms and pay the necessary filing fee and stamp duty, as may be applicable for the increase in the

authorized share capital of the Resulting Company, if required, so as to make its authorised share capital sufficient for allotment of shares to the shareholders of the Demerged

Company in consideration of the Scheme.

12. The Observations made by the Regional Director in the Report have been explained by the Petitioner Companies in Paragraph 11 above. The

clarifications and undertakings submitted by the Petitioner Companies are accepted.

13. The Learned Advocate appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the

requirements as per the directions of this Tribunal and they have filed necessary compliance reports with this Tribunal. Moreover, Petitioner

Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under

whichever is applicable. The said undertaking is accepted.

14. From the material on record, the Scheme of Arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not

contrary to public policy. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition bearing CP (CAA) No.

1062/MB/2020 filed by the Petitioner Companies is made absolute in terms of prayer clauses of the Company Scheme Petition. Hence ordered.

ORDER

i. The Scheme of Arrangement is hereby sanctioned and declared the same to be binding on the First Petitioner Company and the Second Petitioner Company and

their respective Shareholders.

ii. The appointed date of the Scheme of Arrangement is fixed as April 1, 2019.

iii. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of

Companies, electronically in E-Form INC-28 within 30 days from the date of receipt of the Order duly certified by the Joint/ Deputy/ Assistant Registrar of this

Tribunal.

iv. The Petitioner Companies to lodge a copy of this Order duly certified by the Deputy/Assistant/Joint Registrar of this Tribunal, along with a copy of the Scheme

with the concerned Superintendent of Stamps within 60 days from the date of the receipt of this Order for the purpose of adjudication of stamp duty payable, if any,

on the same.

v. All concerned authorities to act on a copy of this Order duly certified by the Joint/ Deputy/ Assistant Registrar of this Tribunal along with the Scheme.