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**(2020) 05 NCLT CK 0037**

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

**Case No :** Company Application Nos. (CAA)-30(PB) Of 2019, Company Application (CAA) No. 125(PB) Of 2018

Cosmotec Systems Private Limited — APPELLANT

Vs

Powertec Supplies (India) Private Limited — RESPONDENT

**Date of Decision :** 15-05-2020

**Acts Referred:**

Companies (Registration Of Charges) Rules, 2014 — Rule 8(1)
Companies Act, 2013 — Section 82(1), 133, 230, 231, 232, 232(2)(i), 232(3)(i)

**Citation :** (2020) 05 NCLT CK 0037

**Hon'ble Judges :** B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

**Bench :** Division Bench

**Advocate :** Neha Bhasin, Tania Sharma, Vibhooti Malhotra

**Final Decision :** Disposed Of

# Judgement

B.S.V. Prakash Kumar, J

1. This Joint petition has been filed by the Petitioner 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, for the purpose of the approval of the Scheme of Amalgamation of the transferor company with the transferee company. Copy of the said Scheme of Amalgamation (hereinafter referred as "Scheme") has been placed on record.

2. M/s. Cosmotec Systems Private Limited (Transferor Company) is a private company incorporated on 12/07/1990 under Companies Act, 1956 having its registered office at LGF-69, Vijay Building, 17, Barakhamba Road, New Delhi-110001.

3. M/s. Powertec Supplies (India) Private Limited (Transferee Company) is a

private company incorporated on 22/05/1996 under Companies Act, 1956 having its registered office at 902, 9th Floor, Vijay Building, Barakhamba Road, New Delhi-110001.

4. A perusal of the petition discloses that initially the First Motion joint application seeking directions for dispensing with the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of both the petitioner companies was filed before this Bench vide Company Application No. CA(CAA)-125(PB)/2018 and based on such joint application moved under Sections 230 to 232 of the Companies Act, 2013, the meetings of the equity Shareholders, secured creditors and unsecured creditors of all the petitioner companies were dispensed with vide order dated 04.02.2019.

5. Thereafter, on 05.03.2019 the Petitioners were directed to carry out publication in the newspapers "Business Standard" (English, Delhi edition) and "Jansatta" (Hindi, Delhi edition). In addition to the public notice, notices were directed to be served on the Regional Director (Northern Region), Official Liquidator, Registrar of Companies, NCT of Delhi and Haryana, the Income Tax Department and to the other relevant sectoral regulators.

6. It is seen from the records that the Petitioners have filed an affidavit dated 23.03.2019 affirming compliance of the order passed by the Tribunal dated 05.03.2019. A perusal of the affidavit discloses that the petitioners have effected the Newspaper publication as directed in one issue of the 'Business Standard' English edition on 14.03.2019 as well as in 'Jansatta" Hindi edition on 14.03.2019 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition have been duly served on the Registrar of Companies, Regional Director, Northern Region, Official Liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been enclosed.

7. The Official Liquidator has filed its report wherein no material objection has been raised by them in relation to the scheme and they have not received any complaint against the scheme from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

8. The Regional Director has filed its representation in which it has submitted that as per Para 4(i) of the report the reply of the petitioner company was taken up with the Registrar of Companies, and the Registrar of Companies vide its Report dated 03.10.2019 submitted that the petitioner companies have stated that the said charge of Rs. 60.00 lac has been satisfied on 21st November, 2014, however, the company has uploaded e-form CHG-4 on MCA-21 portal showing date of satisfaction as 20th August, 2019. Therefore, petitioner companies may be directed to clarify and comply with section 82(1) of the Companies Act, 2013 and rule 8(1) of the Companies (Registration of charges) rules, 2014. Further, as

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per Para 4(ii) Transferee company may kindly be directed to comply with the provisions of Section 232(2)(i) of Companies Act, 2013 with regard to the fee payable on its revised Authorised share capital.

9. In response of the aforementioned observation of the Regional Director, an additional affidavit has been filed by the authorized representative of Transferor company clarifying that:

"3.1.a- The Petitioner Company was required to file the satisfaction of charge in full of INR 60.00 lacs within a period of 30 days from the date of satisfaction of charge i.e. 21st November, 2014. Since, the charge holder i.e., Corporation Bank issued charge satisfaction certificate on 20.08.2019 stating the said account has been closed on 21st November, 2014 and there is no outstanding amount on 21st November, 2014, The Company has filed e-Form CHG-4 with Registrar of Companies, NCT of Delhi & Haryana on 24.08.2019 by stating the date of satisfaction of charge as 20.08.2019 instead of 21.11.2014.

3.1.b- Further, after receipt of additional affidavit from Regional Director, the Transferor Company filed eForm CHG 8 for rectification of omission or misstatement in providing date of satisfaction of charge in full and filed an application before the Regional Director, Northern Region, New Delhi on 30th January, 2020. (Acknowledgment copy of the same has been annexed as Annexure 1).

4. Also, with reference to Para 4(H) of the Report of Regional Director, the Transferee Company will comply with the provision of Section 232 (3) (i) of the Companies Act, 2013 in regard to fee payable on its revised authorised share capital.

10. Since, the petitioner company has complied with the provision section 82(1) of the Companies Act, 2013 and rule 8(1) of the Companies (Registration of Charges) Rules, 2014, the objection of Regional Director in this regard stands satisfied subject to passing of Order by the Regional Director in this regard, if any.

11. Income Tax Department in respect of M/s. Cosmotec Systems Private Limited has filed its report wherein no material objection has been raised by them in relation to the scheme. However, despite several opportunities afforded the Department of Income Tax has not filed its report for M/s. Powertec Supplies (India) Private Limited, Transferee Company. The same fact has been duly reflected in the order dated 09.08.2019. It is also mentioned in a same order that Official Liquidator has not raised any objection against the scheme.

12. Be that as it may, in order to safeguard the interest of the Revenue it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. from all the petitioner companies as provided in law.

13. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act,

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2013 or under provisions of Companies Act, 1956 is pending against any of the Petitioner Companies.

14. Certificates of respective Statutory auditors of both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

15. The petitioner companies have filed an affidavit confirming that no objection has been received against the Scheme from any party or from any person interested in the Scheme in any manner.

16. It has also been affirmed in the petition that Scheme is in the interest of the Transferor Company and the transferee company including their shareholders, creditors, employees and all concerned.

17. In view of the foregoing and upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, and the report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, Official Liquidator and in the absence of any objection against the Scheme there appears to be no impediment in sanctioning the present Scheme.

18. Consequently, the Scheme is hereby sanctioned under Section 230 to 232 of the Companies Act, 2013.

19. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

20. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

21. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

22. THIS TRIBUNAL DO FURTHER ORDER:

i. That the Transferor Company shall stands dissolved without following the process of winding-up; and

ii. That all the property, rights and powers of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 the Companies Act, 2013, be transferred to and vest in the transferee company; and

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iii. That all the liabilities and dues of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and dues of the transferee company; and

iv. That all proceedings now pending by or against the Transferor Company, be continued by or against the transferee company; and

v. That all the employees of the Transferor Company, in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favourable than those subsisting in the Transferor Company on the said date.

vi. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered all the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the Transferee Company and the files relating to all the petitioner companies shall be consolidated accordingly; and

vii. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

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