(2023) 09 NCLT CK 0027

In the National Company Law Tribunal

Case No : CA (CAA) No. 109/KB/2023

DPM Infrastructure & Housing Privatelimited Vs

Date of Decision : 22-09-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 232

Companies (Compromises, Arrangements and Amalgamations) Rules 2016 — Rule 8(2)

Citation : (2023) 09 NCLT CK 0027

Hon'ble Judges : Bidisha Banerjee, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Anil Kumar Dubey

Final Decision : Disposed Of

Judgement

Bidisha Banerjee, Member (Judicial)

1. This Application has been filed under Sections 230-232 of the Companies Act by the Applicant Companies namely; M/s. DPM Infrastructure & Housing Private Limited, (hereinafter referred to as the DEMERGED COMPANY) with M/s. Ritual Buildcon Private Limited, (hereinafter referred to as the RESULTANT COMPANY) for obtaining sanction of this Tribunal to the Scheme of Demerger proposed to be made between the Demerged Company and the Resultant Company. A copy of the Scheme of Demerger has been annexed with the application as Annexure-5.

2. Ld. Authorized Representative for the Applicant(s) submits that the shares of the Applicant Companies are not listed at any stock exchange.

3. Further, the Applicant(s) have the following classes of shareholders and creditors:-

a) Demerged Company has 2 (Two) equity shareholders, Nil secured creditors and Nil unsecured creditors.

b) Resultant Company has 2 (Two) equity shareholders, Nil secured creditors and Nil unsecured creditors.

4. It is submitted that the Board of Directors of the Applicant Companies in their

respective meetings held on 13th March, 2023 approved the Scheme. Copy of the board resolution dated 13th March, 2023 of all the Applicant Companies are annexed with the application and marked as 'Annexure-"6".

5. The accounting treatment as proposed in the scheme is in conformity with the Indian Accounting Standard prescribed under Section 133 of the Companies Act, 2013 for which the Certificates from the Auditors of the Applicant Companies are annexed with the application and marked as Annexure-"9".

6. The Valuation Report dated 8thApril, 2023issued by Anil Kumar Dubey, Registered Valuer, IBBI Registration Number: IBBI/RV/03/2019/12411 recommending the fair equity share exchange ratio in respect of the Demerger of the Demerged undertaking as defined in the Scheme as proposed between the Applicant Companies. Copy of the Valuation Report dated 8th April, 2023 is annexed with the application and marked as 'Annexure 10'.

7. It is submitted that the Scheme does not contemplate any compromise or arrangement with the Creditors of the Demerged Company and the Resultant Company. The Scheme does not provide or contemplate any variation in the rights of the Creditors of the Demerged Company and the Resultant Company. It is further submitted that the Resultant Company shall have a positive net worth post effectiveness of the Scheme.

There are nil secured and unsecured creditors in the Demerged Company and Nil secured and unsecured creditors in the Resultant Company. Copy of Auditor Certificate is annexed with the application and marked as 'Annexure 8.

8. It is submitted that:

a) The Demerged Company and Resultant Company have two equity shareholders respectively. List of the equity shareholders along with Consent of Affidavits of all the equity shareholders approving the Scheme are annexed with the application and marked as 'Annexure 7.

9. Directions are sought accordingly for dispensation with meetings of the equity shareholders and preference shareholders and secured creditors and unsecured creditors of all the Applicant Companies.

10. Heard the Ld. Authorized Representative for the Applicant(s), perused the records, documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following Orders are passed: -

a) Meetings of equity shareholders of all the Applicant Companies i.e. the Demerged Company and Resultant Company are dispensed with in view of all the equity shareholders having already considered and given their written consents to the Scheme by way of affidavits.

b) Meetings of secured and unsecured creditors of the Demerged Companies are dispensed as there nil secured and nil unsecured creditors.

c) Meeting of secured and unsecured creditors of the Resultant Company is dispensed as there is nil secured creditors and nil unsecured creditors.

d) In view of all the aforesaid meetings being dispensed with, the notice of the meeting in Form No. CAA.2, in one English newspaper and in one Hindi newspaper as per Rule 7 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is also dispensed with.

11. Notice under Section 230 (5) of the Companies Act, 2013 along with all accompanying documents including copy of scheme and statement under provisions of the Companies Act, 2013 shall also be served to on the Regional Director (Eastern Region) - Ministry of Corporate Affairs, Kolkata and the Registrar of Companies-cum-Official Liquidator, Bihar and the concerned Income Tax Authority having jurisdiction over the Applicant Companies indicating the PAN numbers of the respective Applicant Companies by sending the same by hand delivery against proper receipt or by registered post/speed post and also by email. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Ld. Authorized Representative of the said Applicant(s). If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Demerger. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 (2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA.3 of the said Rules with necessary variations, incorporating the Directions herein.

12. All the Applicant Companies before the date of hearing of the Confirmation petition shall file an affidavit of service of notices on the Authorities specified above by way of an affidavit of compliance.

13. The Company Application being CA (CAA) No.109/KB/2023 is disposed of accordingly.

14. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliances of all requisite formalities.

