(2020) 02 NCLT CK 0061

In the National Company Law Appellate Tribunal

Case No : Company Application No. CA (CAA) 15 (ND) Of 2020

ECE Industries Ltd — APPELLANT

Vs

Kumar Metals Pvt. Ltd — RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

National Company Law Tribunal Rules, 2016 — Rule 16(d)
Companies Act, 2013 — Section 133, 230, 230(2), 231, 232

Citation : (2020) 02 NCLT CK 0061

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;Kapal Kumar Vohra, Member (Technical)

Bench : Division Bench

Advocate : Rajeev K. Goel

Final Decision : Allowed

Judgement

Kapal Kumar Vohra, Member (T)

1. The Application is filed by the Transferee Company named above under Section 230-232 of Companies Act, 2013 (The Act) and other applicable provisions of the Act, read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (Scheme) proposed between the Applicant and the Transferor Company. The said Scheme is also annexed as Annexure "A-4" to the Application.

2. Affidavit in support of the Application sworn for and on behalf of the Applicant Company has been filed by Mr. Rajat Sharma being the authorized signatory of the Applicant Company.

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise under Section 230 (2) of the Act. The registered office of the Applicant Company is situated within the territorial jurisdiction of this Tribunal.

4. The Transferor Company is a wholly owned subsidiary of the Transferee

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Company. The Transferee Company was incorporated on 13.06.1945 with the name 'Electric Construction and Equipment Ltd.' in Kolkata. Thereafter, the registered office of the Applicant Company was shifted to the NCT of Delhi. The name of the Applicant Company was then changed to its present name on 05.06.1987. The Applicant Company is presently engaged in the manufacturing of electric power transformers, elevators and other related activities. In relation to the Non-Applicant Transferor Company, it has been represented that it is outside the jurisdiction of this Tribunal. The Transferor Company is making necessary Application under Rule 16(d) of the National Company Rules, 2016, before the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi for allowing the Transferor Company to file 1st Motion Application before the Bench at New Delhi instead of filing the same before the Kolkata bench.

5. In relation to the Applicant Company, it has been represented that the present Authorized Share Capital of the Transferee Company is Rs. 15,00,00,000 divided into 1,45,00,000 Equity Shares of Rs. 10 each aggregating to Rs. 14,50,00,000 and 50,000 Preference Shares of Rs. 100 each aggregating to Rs. 50,00,000. The present issued and subscribed Capital of the Company is Rs. 7,33,38,750 divided into 73,33,875 Equity Shares of Rs. 10 each. The present paid-up Share capital of the Company is Rs. 7,29,03,100 divided into 72,88,645 Equity Shares of Rs. 10 each aggregating Rs. 7,28,86,450 and Rs. 16,650 being amount paid on fortified shares.

6. The Transferee Company is an Un-Listed Company and has 3,263 Shareholders (Pg. 132 of the Petition), 6 Secured Creditors, and 827 Unsecured Creditors, all of whose consents could not be obtained due to practical difficulties. It is proposed to convene a separate meeting of the Shareholders, Secured Creditors and Un-secured Creditors of the Applicant Company under the supervision of this Hon'ble Tribunal. The Transferee Company has mentioned Provision for liabilities under litigation totaling Rs. 18,19,48,672 (Pg. 161 of 1st Motion Application).

7. The above Application has been placed before us and this Tribunal proceeds to entertain the same.

8. It is seen that the board of directors of the Applicant Company have unanimously approved the proposed Scheme of Amalgamation on 10.01.2019.

9. The Appointed Date for the Scheme of Amalgamation is 01.01.2020.

10. The Applicant Company has filed the Audited Financial Statements for the year ended 31st March, 2019, and Un-Audited Financial (provisional) Accounts for the period ended on 15th December, 2019.

11. The Applicant Company has submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Act or under the provisions of the Companies Act, 1956 is pending against the Applicant Company.

12. Certificate of Statutory Auditor dated 20.01.2020 of the Applicant Company

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has been placed on record confirming that the Accounting Treatment in the Scheme is in conformity with the applicable provisions of the Act, Accounting Standards prescribed under Section 133 of the Act, and Generally Accepted Accounting Principles in India (Indian GAAP), as the case may be.

13. In the light of the facts and taking into consideration the Application filed by the Applicant Company the following directions in relation to the Applicant Company are issued: -

i. With respect to Shareholders:

The meeting of Shareholders is directed to be convened on Saturday, 18th April, 2020 at 03:30 PM at The Executive Club Resort, 439, Kharak Road, Shahoorpur Extension, Sat Bari, Chhatarpur, New Delhi-110074 or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

ii. With respect to Un-secured Creditors:

The meeting of Un-secured Creditors is directed to be convened on Saturday, 18th April, 2020 at 12:30 Noon at The Executive Club Resort, 439, Kharak Road, Shahoorpur Extension, Sat Bari, Chhatarpur, New Delhi-110074 or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

iii. With respect to Secured Creditors:

The meeting of Secured Creditors is directed to be convened on Saturday, 18th April, 2020 at 11:30 AM at The Executive Club Resort, 439, Kharak Road, Shahoorpur Extension, Sat Bari, Chhatarpur, New Delhi-110074 or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

iv. With respect to Accounts:

The Tribunal further directs the presence of the Auditor who has certified the compliance of Section 133 of the Act for elaborating the details in addition to all Valuations under the Scheme and Liabilities under litigation (Para 6).

14. The quorum for the meeting of the Shareholders, Secured and Unsecured Creditors of Applicant Transferee Company shall be:

Meetings of the Applicant Company

Quorum

No.

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% of total value

Shareholders

25

25%

Secured Creditors

2

25%

Un-secured Creditors

25

25%

i) Mr. Prakash Kumar Mohta, Managing Director of the Applicant Company shall act as the Chairperson for all the above meetings and Mr. Jitender Arora having IP Registration number: IBBI/IPA-002/IP-N00305/2017-18/10863 (Email ID: csjitender@yahoo.com) will act as the Common Scrutinizer.

ii) The Chairperson will file its reports within a week from the date of holding of the above said meetings.

iii) In case the quorum as noted above is not present at the meetings, the meetings may be adjourned for 30 Minutes, and the persons present in the meetings may be treated the proper quorum. Voting must be allowed on the proposed Scheme through Ballot Papers in the meeting, in terms of the provisions of the Act, read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions, if any. Further, the Applicant Company is also proposing to provide the facility of remote e-voting to its Shareholders, in addition to option of voting through Ballot Papers in the meeting.

iv) That individual notices of the above said meetings shall be sent by the Applicant Company through registered post or speed post or through courier or by hand or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Act and the prescribed form of proxy shall also be sent along and in addition to the above, any other documents, as may be prescribed under the Act or Rules may also be duly sent with the notice.

v) The Applicant Company shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Business Standard, English (Delhi Edition) in English, and Business Standard, Hindi (Delhi Edition) Newspapers

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which are circulated in the District in which the registered office of the Applicant Company is situated.

vi) Voting shall be allowed on the proposed Scheme by voting in person, The Chairperson shall as afore stated be responsible to report the result of the meeting within a period of 3 days of the conclusion of the meeting along with the details of voting on the proposed Scheme.

vii) The Company shall individually send notice to (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Delhi and Haryana, New Delhi; (c) the Official Liquidator, Ministry of Corporate Affairs, New Delhi; and (d) the Income Tax Department as well as other Sectoral Regulators who may have significant bearing on the operation of the Applicant company or the Scheme per se, along with copy of required documents and disclosures required under the provisions of the Act read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

viii) The Applicant Company shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of all the Companies entitled to attend the meetings as aforesaid.

ix) The authorized representative of the Applicant Company shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

x) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Act by the Applicants.

The Application stands allowed on the aforesaid terms.

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