(2021) 08 NCLT CK 0018

In the National Company Law Tribunal

Case No : CP (CAA)/1048/MB-IV/2020 IN CA (CAA)/1020/MB-IV/2020

Essential Power Transmission Pvt Ltd APPELLANT

Vs

Esenpro Power Transmission Private Limited RESPONDENT

Date of Decision : 04-08-2021

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

Citation : (2021) 08 NCLT CK 0018

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

Bench : Division Bench

Advocate : Ashish O. Lalpuria, Kamal Lahoty

Judgement

Particulars,Amount in (Rs.),

Authorised Capital,,

10,00,000 Equity Shares of Rs. 10/- each.","1,00,00,000",

Total,"1,00,00,000",

Issued, Subscribed and Paid-up",,

5,78,823 Equity Shares of Rs. 10/- each","57,88,230",

Total,"57,88,230",

Sr. No.

Para

(III)","RD Report / Observation Dated 12th

October, 2020","Response of the Petitioner

Companies

a),"In compliance of AS-14 (IND AS103),

the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc","A s far as the observation of the Regional Director, as stated in IV(a) of the report and reproduced hereinabove is concerned, we would like to state that as this is a scheme of demerger, AS-14 is not applicable to the scheme. However, petitioner Companies undertakes that it shall pass such accounting entries as may be necessary in connection with the Scheme to comply with all the applicable accounting Standards and generally accepted accounting principles.

b),"a . As per Definition of the Scheme, Appointed Date"" shall mean the opening of the business hours as on 1 st April, 2019 or such other date as may be fixed or approved by the NCLT at Mumbai or such other competent authorities; ""Effective Date"" shall mean the date or last of the dates on which the certified copies of the orders sanctioning the Scheme, passed by the National Company Law Tribunal or such other competent authority;

Further, the Petitioners may be asked to

comply with the requirements and

clarified vide circular no. F. No.

7/12/2019/CLI dated 21.08.2019 issued

by the Ministry of Corporate Affairs","A s far as the observation of the

Regional Director, as stated in IV(b)

of the report and reproduced

hereinabove is concerned, the

Petitioner Companies undertake to

comply all the requirements as

specified in the Ministry of Corporate

Affairs (â??MCAâ??) Circular

F.No.7ll2/2019/CL -I

(â??Circularâ??) dated August 21,

2019

c),"Petitioner Company have to undertake

to comply with section 232(3)(i) of

Companies Act, 2013, where the

transferor company is dissolved, the

fee, if any, paid by the transferor

company on its authorised capital shall

be set-off against any fees payable by

the transferee company on its

authorised capital subsequent to the

amalgamation and therefore, petitioners

to affirm that they comply the provisions

of the section","A s far as the observation of the

Regional Director, as stated in IV(c)

of the report, Petitioner companies

state that since it is a Scheme of Demerger and hence Section 232(3) (i) is not applicable in this case since post the effective date, the transferor company shall continue to remain in existence. The transferor company shall not be dissolved as this is a scheme of demerger and demerged undertaking as defined under the scheme of the transferor company is being demerged into transferee/resulting company d),"ROC, Mumbai Report dated 16th September, 2020 has inter alia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection, no complaint are pending. Further mentioned that interest of the Creditors shall be protected. In this regard, Petitioner Companies has to give detailed clarification regarding how interest of the creditor will be protected by the petitioner Companies","A s far as the observation of the Regional Director, as stated in IV(d) of the report and report of the ROC as mentioned herein above are concerned, the Petitioner companies hereby undertake that the interest of the creditor shall be protected

e),"Petitioner Companies directed to place
on record the list of assets and
liabilities which are to be demerge,
mentioning the total divisions (as the
case may be) in the demerged company
with the details of specific divisions (as
the case may be) to be demerged with
the resulting company","A s far as the observation of the
Regional Director, as stated in IV(e)
of the report, Petitioner companies
states that the list of assets and
liabilities which are to be demerge,
mentioning the total divisions in the
demerged company with the details
of specific divisions to be demerged
with the resulting company is
enclosed as â??Annexure-Bâ? to
Rejoinder to Regional Directorâ??s
Report.
f),"As per Clause 16 of the Scheme to the
Accounting Treatment in the books of
t h e Resulting Company â??The
difference being the excess/deficit of
the assets cover liabilities transferred to
and recorded by the Resulting Company
over the face value of the new equity
shares allotted as per 15.2 of the
Scheme to the Resulting Company shall
be credited to Capital reserve Account
in the books of the resulting company.

In this regards the company be directed to amend the scheme that the Capital Reserve so created to be named as â??Capital Reserve arising out of the Demergerâ? and that the reserves shall not be available for distribution of dividend","A s far as the observation of the Regional Director, as stated in IV(f) of the report, Petitioner companies states that since this is a scheme of demerger and as part of scheme, demerged undertaking of the transferor company surplus shall be credited to Capital Reserve account and the Capital Reserve so created shall be named as â??Capital Reserve arising out of the Demergerâ? and that the Reserve shall not be available for distribution of dividend