(2019) 10 NCLT CK 0020

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

Case No : Company Application No. (CAA)-152(ND) Of 2019

Global Power Transformers Limited APPELLANT

Vs

DS Spiceco Private Limited RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232

Citation : (2019) 10 NCLT CK 0020

Hon'ble Judges : Dr. Deepti Mukesh, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Anirudh Das

Final Decision : Disposed Of

Judgement

Dr. Deepti Mukesh, J

1. This is an application filed by the applicant companies herein, Global Power Transformers Limited (for brevity â??Amalgamating Companyâ?), and

DS Spiceco Private Limited (for brevity â??Amalgamated Companyâ?) jointly under section 230-232 of Companies Act, 2013, and other applicable

provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme

of Arrangement by way of Amalgamation (hereinafter referred to as the â??SCHEMEâ??) proposed between the applicants.

2. An affidavit in support of the above application sworn by Mr. Neeraj Kumar Joshi on behalf of the Amalgamating Company and by Mr. Mahesh

Tiwari on behalf of the Amalgamated Company respectively being the authorized representatives who has been authorized vide board resolution dated

06.09.2019 has been duly filed, along with the application. It is also represented that the registered office of both the applicant companies are under

the domain of Registrar of Companies, NCLT, New Delhi and within the territorial jurisdiction of this Tribunal.

3. The Amalgamating Company is incorporated under the provisions of Companies Act, 1956 on 5th April, 2010, with Registrar of Companies, New

Delhi under the name and style of â??Global Power Transformers Limitedâ?, having CIN U31100DL2010PLC201125 registered with the Registrar

of Companies, NCT of Delhi & Haryana. The registered office of the company is situated at 4828/24, Prahlad Lane, Ansari Road, Daryaganj, Delhi-

110002.

4. The Authorized Share Capital of the Amalgamating Company is Rs. 20,00,00,000/- divided into 2,00,00,000 Equity Shares of Rs.10/- each. The

Paid-up Share Capital of the Transferor Company is Rs. 17,70,00,000/-divided into 1,77,00,000 Equity Shares of Rs.10/- each fully paid up.

5. The Amalgamated Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 26th June, 2013, with

Registrar of Companies, New Delhi under the name and style of â??DS Spiceco Private Limitedâ?, having CIN U15122DL2013PTC254373

registered with the Registrar of Companies, NCT of Delhi & Haryana. The registered office of the company is situated at 4828/24, Prahlad Lane,

Ansari Road, Daryaganj, Delhi-110002.

6. The Authorized Share Capital of the Amalgamated Company is Rs. 5,00,00,000/- divided into 50,00,000 equity Shares of Rs.10/- each. The Paid-Up

Share Capital of the Transferor Company as on date is Rs. 3,89,25,760/-divided into 38,92,576/- Equity Shares of Rs.10/- each.

7. Both the applicants have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their

last available Audited Annual Accounts for the year ended 31.03.2019.

8. The Board of Directors of both the Applicant companies i.e. vide meeting held on 06th September, 2019 have unanimously approved the proposed

Scheme of Amalgamation as contemplated above and copies of resolutions passed thereon have been placed on record.

9. It is stated that the Amalgamating Company is having 7 Shareholders and all of them have given their respective consents by way of affidavits

which are annexed to the application. It is further represented that the Company has Nil Secured Creditors and has three Unsecured Creditor, and all

the Unsecured Creditors have placed their consents on record in the form of an affidavits. In relation to the shareholders and unsecured creditors of

the Amalgamating Company, it seeks for dispensing of holding/convening of the meetings as all consents by way of affidavits are placed on record.

Since there are no secured creditors, requirement of holding meeting does not arise.

10. It is stated that the Amalgamated Company is having 8 Shareholders and all of them have given their respective consents by way of affidavits

which are annexed to the application. It is further represented that the Company has one Secured Creditor and its consent has been placed on record

in the form of an affidavit. The Company has seventy-eight Unsecured Creditors and in relation to the unsecured creditors, the Amalgamated

Company seeks for convening/holding of the meetings for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in

absence of their respective consents. In relation to the shareholders and the secured creditors of the Amalgamated Company, it seeks for dispensing

with holding/convening of the meetings as consents are placed on record.

11. The appointed date as specified in the Scheme is 1st April, 2019 subject to the directions of this Tribunal.

12. Taking into consideration the submissions and the documents filed therewith, we propose to issue the following directions with respect to calling,

convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same as well as issue of notices

including by way of paper publication as follows: -

A) In relation to the Amalgamating Company:

(i) With respect to Equity shareholders:

In view of consent affidavits, from all seven equity shareholders of the company, convening the meeting of shareholders/members is dispensed with.

(ii) With respect to Secured Creditors:

Since there are no Secured Creditors in the Company, the necessity of convening a meeting does not arise.

iii) With respect to Unsecured Creditors:

There are three Unsecured Creditors in the Company who have given their consent affidavits, thus the convening of meeting is dispensed with.

B) In relation to Amalgamated Company:

(i) With respect to Equity shareholders:

In view of consent affidavits, from all the eight equity shareholders of the company, convening the meeting of shareholders/members is dispensed

with.

(ii) With respect to Secured Creditors:

There is only one Secured Creditor in the Company who has given its consent affidavit, thus the convening of meeting is dispensed with.

(iii) With respect to Unsecured Creditors:

In absence of the consents from all the unsecured creditors, meeting of the unsecured creditors of the Amalgamated Company is directed to be held

on 06th December, 2019 at 03:30 Noon on Holiday Inn, 13A Mayur Vihar, Delhi-110091 or if not convenient at a suitable place as may be chosen by

the Applicants 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.

13. The quorum for the meeting of the unsecured creditors of amalgamated Company as mentioned above which are to be convened as directed shall

be 20 in number.

i. The Chairperson for the said meetings shall be Ms. Deepa Krishan, Former NCLT Member (9818369200), shall act as the Chairperson in his stead

and Mr. Ishwar Chandra Mohapatra, FCS, LLB, Advocate (9818325183) as alternate chairperson appointed herein along with Scrutinizer shall ensure

that the registers are properly maintained.

ii. The fee for the Chairperson for the aforesaid meetings shall be Rs. 1,00,000/- and the fee for the Alternative Chairperson shall be Rs. 75,000/- in

addition to meeting their incidental expenses. Mr. Avdhesh Bairwa, (9988723233) is appointed as a Scrutinizer and would be entitled to fee of

Rs.50,000/- for services in addition to meeting incidental expenses. The Chairperson(s) will file their reports within a week from the date of holding of

the above said meetings.

iii. That individual notices of the above said meetings shall be sent by the

Applicant Companies through registered post or speed post or through

courier or through or 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 of Amalgamation, copy of explanatory statement, required to be sent under the Companies Act, 2013 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.

iv. That the Applicant Companies shall publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date

and the place and time as aforesaid, to be published in the English Daily â??The Business Standardâ? in English, and â??Jan Sattaâ? in Vernacular

stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act,

2013 and the form of proxy shall be provided free of charge at the registered office of the respective Applicant Companies.

v. Voting shall be allowed on the proposed Scheme by voting in person, the Chairperson shall as aforestated be responsible to report the result of the

meeting within a period of 3 days of the conclusion of the meeting with details of voting on the proposed scheme.

vi. The companies shall individually send notice to Central Government, the Income Tax Authorities, Registrar of Companies NCT Delhi & Haryana,

Official Liquidator and Regional Director, as well as other sectoral regulators who may have significant bearing on the operation of the applicant

companies or the Scheme per se along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read

with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

vii. The applicant companies 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 both the companies entitled to attend the meetings as aforesaid.

viii. The authorized representative of the Applicant Companies 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.

ix. 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 Companies Act, 2013 by the Applicants.

The application stands allowed on the aforesaid terms and is disposed of.