(2015) 12 SHI CK 0084

In the High Court Of Himachal Pradesh

Case No : Company Petition No. 14 of 2015

Himachal Energy Pvt. Ltd. APPELLANT

Vs

HPL Projects Portfolio Pvt. Ltd. RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Citation : (2015) 12 SHI CK 0084

Hon'ble Judges : Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Ashwani Sharma, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Dharam Chand Chaudhary, J.—Himachal Energy Private Limited (hereinafter to be referred as the Demerged Company) and HPL Projects Portfolio Private Limited (hereinafter to be referred as the Resultant Company) have filed this application jointly under Sections 391 and 394 read with Section 102 and 104 of the Companies Act seeking permission of this Court to dispense with the requirement of convening meetings of its Equity Shareholders, Secured and Un-secured Creditors and Debenture holders with a further prayer to approve with or without modification the proposed Scheme of arrangement qua merger of Demerged Company into Resultant Company, as aforesaid.

2. The registered office of the Demerged and Resultant Companies are situated at Village Shavella, Post Office Jabli, Tehsil Kasauli, District Solan, Himachal Pradesh. Demerged Company was incorporated under the Companies Act on 3rd July, 2003 vide certificate of Incorporation No. (CIN) U 31909 DL 2003 PTC 121178 by the Registrar of Companies with its registered office at New Delhi. The registered office, however, was later on shifted to Himachal Pradesh with the approval of Company Law Board, Northern Region Bench, New Delhi vide order dated 10th June, 2004. Consequently, the Registrar of Companies Punjab, Himachal Pradesh and Chandigarh allotted a new company registration number

(CIN) U 31909 HP 2003 PTC 027983 dated 17th February, 2005 to the damaged company. A copy of memorandum and articles of association of the Demerged Company is Annexure A-1/1. The Demerged Company as per Memorandum of Association is engaged in manufacturing energy meters and implementation of rural electrification projects and related activities.

3. The Authorized Share Capital of the Demerged Company is Rs. 22,00,00,000/- divided into Rs. 2,20,00,000/- equity shares of Rs. 10 each. The accounts of Demerged Company has been prepared and audited for the year ended with 31st March 2015. The audited balance sheet is Annexure A-1/2 to the petition. The Board of Directors of Demerged Company in its meetings held on 6th August, 2015 and 15th October, 2015 has unanimously approved the scheme of arrangement qua the de-merger of its investment division into Resultant Company and rearrangement/reduction of post de-merger Capital of Demerged Company and also Resultant Company. The extract of the minutes recorded in the meetings of the Board is Annexure A-1/4.

4. The Demerged Company is a private limited company having five Shareholders. The Scheme of arrangement as proposed has been considered and unanimously approved by the Shareholders of the Demerged Company in its Extra ordinary general meeting held on 19th November, 2015. The Shareholders have also given their respective consents/NOC, which is Annexure A-1/5. The Demerged Company has one Debenture holder, who has also given NOC Annexure A-1/6. Besides, it has three Secured Creditors i.e. State Bank of India, Overseas branch, 9th Floor, Jawahar Vyapar Bhawan, 1, Tolstoy Marg, New Delhi, HDFC Bank Limited, 2nd Floor, Express Building, 9-10, Bahadur Shah Safar Marg, ITO, New Delhi and IDBI Bank Limited Indian Red Cross Society Building, 1, Red Cross Road, New Delhi. The NOCs of said Secured Creditors are Annexure A-1/7 (colly). The Demerged Company has 73 Un-secured Creditors inclusive of current liabilities to the tune of Rs. 55,98,92,11/-. Amount of Rs. 55,96,46,565/- is constituting 95.89% of total numbers and 99.96% of total value of Un-secured Creditors of the Company. Out of the said Un-secured Creditors, 70 have given their written consents/NOC for the proposed scheme of arrangement. Their consents/NOCs are Annexure A-1/8 (colly).

5. Now coming to the Resultant Company, the affidavit of Shri Gautam Seth, one of its Directors, reveal that the said Company was incorporated under the provisions of the Companies Act, 2013 vide certificate of Incorporation No. (CIN) U 31401 HP 2015 PTC 001033 Dated 7th September, 2015 issued by the Registrar of Companies, Himachal Pradesh, Chandigarh. The Memorandum of Articles of Association of the Resultant Company is Annexure A-2/1 to the petition. The registered office of the applicant-Resultant Company is also situated at Village Shavella, Post Office Jabli, Tehsil Kasauli, District Solan, Himachal Pradesh. The Resultant Company having been incorporated recently on 7th September, 2015 for the purpose of de-merger had yet to prepare its first audited accounts. The present authorized Share Capital of the Company is Rs.

1,00,000/- divided into Rs. 10,000/- Equity shares of Rs. 10 each. The Board of Directors of Resultant Company in its meeting held on 15th October, 2015 considered and unanimously approved the proposed scheme of arrangement for the de-merger of investment division of the Demerged Company into the Resultant Company and Rearrangement/reduction of post De-merger Capital of both companies as is apparent from the extract of minutes Annexure A-2/2. The Resultant Company is also a private limited having two Shareholders. The Shareholders have approved the proposed scheme of arrangement in Extra ordinary General Meeting held on 19th November, 2015. The minutes are annexure A-2/3. The Resultant Company had no Secured Creditors as on 30.9.2015 as is apparent from the perusal of certificate Annexure A-2/4. Similarly, the Resultant Company had also no UnSecured Creditors as on 30th September, 2015 as is evident from Annexure A-2/5. Both Demerged Company and Resultant Company have stated that no proceedings under Sections 235 to 251 of the Companies Act are pending against them. Therefore, in view of the consents given by Shareholders, Debenture holders, Secured Creditors, Un-secured Creditors, Demerged Company and Resultant Company have approached this Court to dispense with the requirement of convening the joint meeting of its Shareholders, Debenture holders, Secured Creditors, Un-secured Creditors.

6. Having gone through the record and also taking into consideration the submissions made by learned counsel and also that the Shareholders of the Demerged Company and Resultant Company have approved the proposed scheme of arrangement in its Extra ordinary General Meeting and as regard the Debenture holders, Secured Creditors and Unsecured Creditors of Demerged Company, they have also given their consents for the proposed scheme of arrangement, whereas the Resultant Company recently incorporated does not have any Secured or Un-secured Creditors as yet nor prepared or audited its accounts and having been incorporated with the sole idea of merger of the Demerged Company into it, there is no legal hindrance in allowing the exemption as sought by the Demerged Company and Resultant Company.

7. In view of the above, the petition is allowed. Consequently both the Companies are exempted from convening the joint meeting of its Shareholders, Secured Creditors, Unsecured Creditors and Debenture Holders, of course, subject to the condition that the Demerged Company and Resultant Company shall comply with all statutory requirements in accordance with law. The Companies shall not seek any exemption qua payment of stamp duty or tax or any other charges, if payable in accordance with law on the basis of this judgment. The Scheme of proposed arrangement shall be binding on the Demerged Company and Resultant Company, the Shareholders, Secured, Unsecured Creditors, Debenture holders. Opportunity to the parties to the proposed scheme of arrangement or any other person interested in Demerged Company and Resultant Company to move this Court for appropriate directions if necessitated in the matter of implementation of the Scheme of arrangement.

8. The petition is accordingly disposed of. Pending application(s), if any, also stand disposed of.