(2020) 07 NCLT CK 0007

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

Case No : Caa-46/Nd/2020 In Company Appeal No. (Caa)117/Nd/2019

In Re: Ge India Industrial Private Limited And Ors. Vs

Date of Decision : 31-07-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232

Citation : (2020) 07 NCLT CK 0007

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Sumit Garg, Pawan Sharma, Rukmani, Easha Kadian

Final Decision : Allowed

Judgement

Sumita Purkayastha, Member (T)

1. This petition has been filed by the Applicant Company under Section 230-232 of the Companies Act, 2013 read with the Company (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving the Scheme of Arrangement of demerger, as contemplated between the Demerged Company with Resulting Company.

2. A perusal of the petition discloses that the Applicant company (Demerged Company) had filed the first motion application bearing CAA 117/ND/2019 which has been allowed by this Tribunal vide its order dated 13.12.2019. As per the said order, all the compliances have been made.

3. It has been certified by the Statutory Auditor of the Demerged Company that the Accounting Treatment is in compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013.

4. An affidavit filed on 18.06.2020 discloses that the applicant company had affected publication in daily newspapers in "Financial Express" (English) and in "Jansatta" (Hindi) both dated 05.06.2020 (Delhi Edition). The affidavit further

discloses that due notice of the proposed scheme had been served on the Regional Director, (Northern Region) and the Income tax Department, via E-mail as on 16.06.2020 and 22.05.2020 and via hand delivery to the Registrar of Companies, NCT of Delhi and Haryana on 16.03.2020 inviting objections, if any, to the proposed Scheme of Arrangement. The Applicant (Demerged Company) has through its counsel's email dated 06.06.2020, served a copy of the notice of hearing of petition published in "Financial Express" and "Jansatta" on the (a) Regional Director, (Northern Region) (b) Registrar of Companies, NCT of Delhi and Haryana and (c) Jurisdictional Income Tax Department (Assessing officer-Additional/Joint Commissioner of Income Tax and Principal Commissioner of Income Tax) and its counsel.

5. As per the order dated 15.07.2020 it was noted that the Regional Director, Northern Region has not filed any observation/objection report. The counsel for the Regional Director, North Region was granted a week's time to file such observation/objection. It is also observed that this Tribunal as per order dated 19.06.2020 had previously granted three weeks' time to the Regional Director, Northern Region to file the above-mentioned report. Since the report has not been filed by the Regional Director, Northern Region even after many opportunities being granted by the Hon'ble Tribunal, it is presumed that there is no objection to the Scheme under consideration.

6. The report dated 02.07.2020 of the Income Tax Department with respect to the Demerged Company has been placed of record which states that the assessment proceedings for AY 2017-18 is pending. As per order dated 15.07.2020 this Tribunal directed the Petitioner (Demerged Company) to file an undertaking to the effect that in case of any demand of the Income Tax Department, the Demerged Company will satisfy the same.

7. In view of the forgoing, upon considering the approval accorded by the members and creditors of the Demerged Company to the proposed Scheme, No objection of the Regional Director, Northern region, Ministry of Corporate Affairs, and submissions made by the Standing Counsel for the Income Tax Department, whereby a demand was raised which shall be met by filing an undertaking by the Petitioner (Demerged Company), there appears no impediment to grant sanction to the Scheme. However, the demerged shall remain bound by the undertaking filed. Consequently, the scheme under consideration is sanctioned.

8. While approving the Scheme as above, we further clarify that this order shall not be construed as an order in any way granting exemption from payment of stamp duty, taxes Statutory dues or other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may specifically be required under any law.

9. The Petitioner company shall within thirty days from the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration.

10. Persons concerned with the scheme shall be at liberty to apply to this Tribunal for seeking any directions that may be necessary for implementation of the same.

11. Accordingly, the Scheme stands sanctioned and CAA -46/230/232/ND/2020 is allowed.