(2020) 03 NCLT CK 0016

In the National Company Law Tribunal

Case No : Company Petition No. (CAA) No. 176, 230 AMR Of 2019 Connected With CA (CAA) No. 88, 230 HDB Of 2019

In The Matter Of Umsl Limited

Date of Decision : 20-03-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 232, 239
Companies (Compromise, Arrangement And Amalgamation) Rules, 2013 — Rule 17(2)

Citation : (2020) 03 NCLT CK 0016

Hon'ble Judges : Mohammed Ajmal, J

Bench : Single Bench

Advocate : Dr. S. V. Ramakrishna, S. V. Vanshi Krishna, K. Harish Reddy

Final Decision : Allowed

Judgement

1. The Company Petition under Section 230 and 232 of the Companies Act, 2013 (the Act) read with the Companies (Compromises, Arrangements

and Amalgamation) Rules, 2016 (the Rules) is filed seeking sanction of the proposed Scheme of Demerger (â??the Schemeâ??) between the

Petitioner Company (Resulting Company-1); Raila Enterprises Private Limited (Demerged Company) and BP Developers Private Limited (Resulting

Company-2) and their respective shareholders and creditors.

2. The Registered Office of the Petitioner/Resulting Company-1 situated in the State of Andhra Pradesh is within the jurisdiction of this Tribunal. The

Registered Office of the Demerged Company is situated in New Delhi. The Registered Office of the Resulting Company-2 is situated in the State of

Odisha.

3. The Petitioner Company had filed CA (CAA) No. 88/230/HDB/2019 before NCLT, Hyderabad Bench by seeking dispensation of convening

meeting of Equity Shareholders and further prayed to convene the meetings of the Secured and Unsecured Creditors. The NCLT, Hyderabad Bench

vide its order dated 18.06.2019 dispensed with convening of Meeting of the Equity Shareholders. It also ordered to convene meetings of the Secured

and Unsecured Creditors of the Petitioner Company and appointed Mrs. B. Adilakshmi, Advocate as Chairperson and Mr. P. Narasinga Rao, PCS as

Scrutinizer for the said meetings. It is also dispensed with the service of notice of meeting on the Unsecured Creditors of the Resulting Company-1,

whose value was less than Rs. 50,000/-.

4. In pursuance of the Order dated 18.06.2019, the following meetings were conducted:â?

a) Meeting of the Unsecured Creditors of the Petitioner Company on 03.08.2019 at 11 AM at Hotel Daspalla, 28-2-48, Suryabagh, Jagadamba

Junction, Visakhapatnam, Andhra Pradesh - 530020. Ms. B. Adilakshmi, Advocate and Chairperson of the meeting, has filed her report. It is seen

from the Report that the meeting was attended by twenty two (22) Unsecured Creditors present in person/proxy and they voted in favour of the

Scheme. None of the Unsecured Creditors who attended the meeting voted against the Scheme. Thus 100% of Unsecured Creditors, voted in favour

of Scheme.

b) Meetings of the Secured Creditors of the Resulting Company-1 conducted 03.08.2019 at 12 Noon at the same venue. Ms. B. Adilakshmi, the

Chairperson of the meeting has filed her report. It is seen from the Report that the meeting was attended by six (6) Secured Creditors and they voted

in favour of the Scheme. None of the Secured Creditors who attended the meeting voted against the Scheme. Thus 100% of Secured Creditors, voted

in favour of Scheme.

5. The Petitioner Company then filed the present Company Petition seeking sanction of the Scheme with appointed date as 01.01.2019.

6. According to the Petitioner Company, the Companies involved in the Scheme are group Companies, as the Demerged Company is a wholly owned

subsidiary of the Petitioner Company. Further, the Petitioner Company is a wholly owned subsidiary of the Resulting Company-2. The respective

Board of Directors of the Companies are desirous of streamlining the ownership and business operations of Raila Investment Undertaking and UMSL

Investment Undertaking with that of Resulting Company-2 through the present

Scheme. This demerger is hence, in the interest of the Companies'

Shareholders and Creditors. The proposed Scheme would result in achieving more focused business and management control; provide greater

efficiency and more optimal utilization of resources, create enhanced value for all stakeholders of the companies and reorganize business to optimize

for operational efficiency, rationalization of cost and streamline the growth, capital raising and strategic partnership at a later stage.

7. Counsel for the Petitioner Company filed a memo dated 30.10.2019 stating that notice of hearing of the Company Petition has been published in

English Newspaper i.e. Business Standard and Telugu Newspaper i.e. Andhra Bhoomi on 16.10.2019. It is further submitted that Notices of hearing

had been sent to the Regional Director (SER), Ministry of Corporate Affairs; Registrar of Companies, Andhra Pradesh; and Income Tax Officer by

hand on 04.10.2019.

8. The Regional Director (South East Region), Ministry of Corporate Affairs vide his report dated 24.12.2019 observed the following and the

Petitioner Company replied for the same as detailed below:â?

SI. RD's Observations Reply of the Petitioner Companies by

No. way of Memo dated 03.01.2020

1 The Directorate has received letter dated 25.11.2019 from the ROC, Andhra Pradesh pointed out certainThe Petitioner Company has already

observations as under:â?" filed its annual report in e-form AOC- 4

on 30.11.2019 and 31.122019

a) As per the Company Master Data, Resulting Company-1i .e. UMSL Limited has not filed its duerespectively vide SRNs R20683967 and

Statutory Returns i.e. Annual Return and Annual Report for the year ending 31.03.2019. The Hon'bleR28599371 respectively.

Tribunal may be pleased to direct the Petitioner Company to file the same before the Scheme is allowed.

b) Requested that the Hon'ble Tribunal may be pleased to direct the Petitioner Company to preserve itsSince, the Companies involved in the

books of accounts and papers and records and shall not be disposed off without the prior permission ofScheme will continue to exist after the

the Central Government in terms of Provisions of Section 239 of the Act, 2013.

Scheme of Demerger has become

effective. In view of the above, no

question arises with respect to the

disposal of books f accounts, papers and

records of the Petitioner Company.

Further, the disposal of the books of

accounts, papers and records, if any, of

the Petitioner Company will be done in

accordance with the provisions of

Section 239 of the Act.

c) Requested that the Hon'ble Tribunal may be pleased to direct the Petitioner Companies to ensurePetitioner Company undertakes to

statutory compliance of all applicable laws and also on sanctioning of the present scheme the applicantcomply with all the relevant statutory

company shall not be absolved for any of its statutory liability in any manner. compliances, as and when they become

applicable to the Petitioner Company

and will not absolve itself of the

applicable statutory liability in any

manner.

d) Requested that the Hon'ble Tribunal may be pleased to direct the Petitioner Companies, to TheScheme with the MCA in e-form INC-

Petitioner Company undertakes to file the order of this Tribunal as and when it is passed, sanctioning the28 in accordance with the directions as

comply with Rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013may be issued by the Hon'ble Tribunal.

with respect to filing of order for confirmation of scheme to be filed in Form No. INC-28 with the

concerned office of Registrar of Companies.

2 The Petitioner Company is a listed Company and has not stated whether the company had intimated toThe Petitioner Company is a public

the respective SEBI/StockE xchanges regarding the proposed Scheme. The Hon'ble Tribunal may belimited unlisted company and its equity pleased to direct the Petitioner Company to furnish the compliance of SEBI/ StockE xchange withshares are not listed on any stock

supporting documents before the Scheme is allowed. exchange. Hence, the observation of

RD that the Petitioner Company to

furnish the compliance of SEBI/Stock

Exchange with supporting documents

before the Scheme is allowed is not

applicable and is superfluous.

3 The Petitioner Company while reply to the queries raised by the Directorate replied that the significanceAt para 1.2 of the Scheme of Demerger

of the appointed date in the Scheme is that it is the date on which the transfer of assets and liabilities ofunder the heading â??Rationale of the

the demerged undertaking is recorded in the books of accounts of the companies involved in the scheme.Schemeâ? at Part-I, pages 48 and 49 of

However, as per clause 1.2.3 of Part-I of the Scheme it has been stated that the demerger of thethe CP(CAA)No.1 76/230/AMR /2019

investment undertaking under this scheme into BP Developers Private Limited has been proposedreasons have been given which is the

through the ownership structure, by two steps demerged i.e. (i) the demerger of Raila Investmentjustification for the demerger scheme

Undertaking into UMSL and (ii) the demerger of the UMSLI nvestment Undertaking into BPand the same may be read as reply to

Developers Private Limited. Whereas, Petitioner Company has not clearly stated the reasons forthe observations of the RD.

demerging of Raila Investment undertaking into UMSL and the demerger of UMSL investment

undertaking into BP Developers Private Limited. The Hon'ble Tribunal may bep leased to direct the

Petitioner company to furnish the reasons with proper justification and supporting documents, before the

Scheme is allowed.

In view of the above reply the Petitioner Company prayed this Tribunal to sanction the Scheme. The learned Counsel of the Company was heard in the matter.

9. The Petitioner Company vide its memo dated 03.01.2020 enclosed a letter dated 11.12.2019 received from the Assistant Commissioner of Income

Tax, Circle-4(1) Visakhapatnam, stating that the Income Tax Office does not have any objection to the Scheme as far as the Petitioner Company is

concerned as long as the Scheme operated in accordance with the provisions of the Income Tax Act, 1961.

10. The Petitioner Company enclosed a Certificate from Statutory Auditors namely M/s V. Ravikiran & Associates, Chartered Accountants, stating

that the Accounting Treatment proposed in the Scheme is in conformity with Accounting Standards specified under Section 133 of the Companies

Act, 2013.

11. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, the Scheme

appears to be fair and reasonable and is not contrary to public policy and nor is violative of any provisions of law. All the statutory compliances have

been made under Sections 230 to 232 of the Act. Hence ordered.

ORDER

The Petition be and the same is allowed subject to the following.

a) The Scheme placed at Page Nos. 46 to 80 of the CP (CAA) No. 176/230/AMR/2019 with appointed date as 01.01.2019 is hereby sanctioned. It

shall be binding on the Petitioner and the Companies involved in the Scheme and their respective Shareholders, Secured Creditors, Unsecured

Creditors/Trade Creditors, Employees and all concerned.

b) This order shall not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges and fee payable or

from any applicable permissions that may have to be obtained or compliances that may have to be made under law.

c) The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme forthwith. All concerned shall act on a copy of this

order along with the Scheme duly authenticated by the Registrar of this Tribunal.

d) The Petitioner Company is directed to take appropriate steps to submit the Scheme to Registrar of Companies within 30 days from the date of

receipt of copy of this order.

e) The Petitioner Company is directed to issue newspaper publication with respect to approval of the Scheme, in the same newspapers in which

previous publications were issued.

f) The Petitioner Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme under the

provisions of the Act.