(2023) 06 NCLT CK 0015

In the National Company Law Tribunal

Case No : CA (CAA)/70/MB-IV/2023

Jagadeesh Iron and Steels Private Limited Vs

Date of Decision : 09-06-2023

Acts Referred:

Companies Act, 2013 — Section 230, 230(1), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2023) 06 NCLT CK 0015

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Avinash R. Khanolkar, Surekha Yadav

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Arrangements between (hereinafter as Scheme) M/s. Jagadeesh Iron and Steels Private Limited (hereinafter referred as the Demerged Company) and M/s. Jagadeesh Castings Private Limited (hereinafter referred as the Resulting Company) and with their respective Shareholders under section 232 read with Section 230(1) of the Companies Act, 2013.

2. That the Board of Directors of the Applicant Companies passed a Resolution on 20.02.2023, respectively, and approved the proposed Scheme. The appointed date of the Scheme is 01.04.2022.

3. The First Applicant Company is inter-alia engaged in the business of manufacturing ferrous and non-ferrous metals. And the Second Applicant is inter-alia engaged in the business of casting and machining.

4. This Scheme inter-alia provides for the transfer and vesting of Demerged Undertaking viz. casting and machining Business of the Demerged Company to the Resulting Company by way of demerger.

5. The respective Board of Directors of the Applicant Companies anticipate the

following benefits pursuant to the Scheme:

a. In order to focus on core business areas, the Business Undertaking would need to be segregated into a separate legal entity allowing concentrated focus by the respective managements of the Demerged Company and the Resulting Company on its core business areas.

b. Enable the Demerged Company and the Resulting Company to own and use separate technology platforms in an independent manner.

c. Segregate the businesses with different profiles between the legal entities thereby creating an enhanced value for the shareholders.

d. Enable the Resulting Company to explore new opportunities in its segregated business, productively utilize its resources and achieve operational and managerial efficiencies towards growth of the Business Undertaking.

e. Enable the Demerged Company to focus on the undertaking of the Demerged Company from a long-term perspective by streamlining operations and cutting costs thereby ensuring more efficient management control.

f. Similar shareholding in the Demerged Company and the Resulting Company.

6. The Shareholding pattern of the Demerged Company is as follows :-

Sr.

No.

Name & Address

L. F. No.

Capital Type

No. of Share

%

shareholding

EQUITY

1

Arvind Gangadhar Joshi

Othanil Colony, Plot No.16 Pandharpur Road, Miraj, Miraj, Maharashtra 416410

1

Equity - 10

3,25,000

28.26

2

Kedar Gangadhar Joshi

Othanil Colony, Plot No.16 Pandharpur Road, Miraj, Miraj, Maharashtra-416410

2

Equity - 10

3,25,000

28.26

3

Arvind Gangadhar Joshee Jt With K G Joshee

Othanil Colony, Plot No.16 Pandharpur Road, Miraj, Miraj, Maharashtra-416410

9

Equity - 10

2,50,000

21.73

4

Kedar Gangadhar Joshee Jt With A G Joshee

Othanil Colony, Plot No.16 Pandharpur Road, Miraj, Miraj, Maharashtra-416410

10

Equity - 10

2,50,000

21.73

PREFERENCE

5

Arvind Gangadhar Joshi

Othanil Colony, Plot No.16 Pandharpur Road, Miraj, Miraj, Maharashtra 416410

1

Preference - 10

1,50,000

50

6

Kedar Gangadhar Joshi

Othanil Colony, Plot No.16 Pandharpur Road, Miraj, Miraj, Maharashtra-416410

2

Preference - 10

1,50,000

50

EQUITY 10

11,50,000

PREFERENCE 10

3,00,000

7. The Shareholding pattern of the Resulting Company is as follows :-

Sr.

No.

Name & Address

L. F. No.

Capital Type

No. of Share

%

shareholding

EQUITY

1

Arvind Gangadhar Joshi

Othanil Colony, Plot No.16 Pandharpur Road, Miraj, Miraj, Maharashtra 416410

1

Equity-10

9500

95

2

Kedar Gangadhar Joshi

Othanil Colony, Plot No.16 Pandharpur Road, Miraj, Miraj, Maharashtra 416410

2

Equity-10

500

5

EQUITY 10

10,000

100

8. That all the Equity Shareholders of the Applicant Companies, respectively, have given their individual Consent Affidavits to the proposed Scheme. The individual Consent Affidavits of all of the Equity Shareholders of the Applicant Companies are annexed to the present Company Scheme Application. In view of this, the meetings of the Equity Shareholders of the Applicant Companies are hereby dispensed with.

9. The Demerged Company shall obtain consent of its Preference Shareholders on affidavit to the proposed scheme and file the same before the Bench.

10. That the Demerged Company is having 3 (three) Secured Creditors amounting to Rs. 24,12,08,802.82/- in total and having 495 (four hundred ninety five) Unsecured Creditors amounting to Rs. 9,80,73,146.16/- in total.

11. That the Resultant Company is having 2 (two) Secured Creditors amounting to Rs. 6,25,50,853/- in total and 271 (two hundred seventy one) Unsecured Creditors amounting to Rs. 7,67,40,934.92/- in total.

12. It is stated and submitted that the proposed Scheme does not seek any arrangement with the Creditors of the Applicant Companies and their interest will not be prejudiced and accordingly it is prayed that the requirement of the holding meetings with Creditors may be dispensed-with. However, the Learned Counsel further submitted that in interest of Justice the Applicant Companies will be issuing an individual notice to the respective Creditors of the Applicant Companies seeking their representations, if any, to the proposed Scheme.

13. This Bench hereby directs the First Applicant Company and Second Applicant Company to obtain NoC from the such numbers of Secured Creditors as constituted 75% in value of such Secured Creditors. Further, the First Applicant Company and Second Applicant Company shall issue notice enclosing copy of Scheme to its all the Unsecured Creditors named in the Scheme, by Registered Post-AD/Speed Post/ Hand Delivery and/or through E-mail and that they may submit their objections, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies. The Notice shall state that "If no representation/ response is received by the Tribunal from Unsecured Creditor(s), within a period of thirty days from the date of receipt of such notice, it will be presumed that Unsecured Creditor(s) has no

representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016".

14. That the Applicant Companies are directed to serve notices along with copy of Scheme upon the- .

(i) Central Government through the office of Regional Director, Western Region, Mumbai;

(ii) Jurisdictional Registrar of Companies;

(iii) Jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Companies are assessed to tax; and upon the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];

(iv) Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law;

(v) Ministry of Corporate Affairs;

(vi) Any other Sectoral/ Regulatory Authorities relevant to the Petitioner Companies or their business.

under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Notice shall be served through Registered Post-AD/ Speed Post/ Hand Delivery and email along with the copy of scheme and state that "If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme". It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

16. The Applicant Companies will submit –

a. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.

b. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.

c. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

17. In case of Shareholder(s) other than individuals, the Applicant Companies shall file Board Resolution recording the fact of consent and the person who is authorized to give consent for waiver of the meeting along with extract of

minutes of relevant meeting.

18. That the Applicant Companies shall file affidavit of service in and compliance of serving the notices to all the Regulatory Authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

19. On the directions herein-above the CA(CAA)70/MB/2023 is allowed and disposed-off accordingly.

