(2020) 02 NCLT CK 0019

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

Case No : Company Application (CAA) No. 168/ND Of 2019

Jakson Limited — APPELLANT

Vs

Jakson Enterprises Private Limited — RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2020) 02 NCLT CK 0019

Hon'ble Judges : Ina Malhotra, J

Bench : Single Bench

Judgement

Ina Malhotra, J

1. This Joint application has been filed by the Applicant Companies under sections 230 and 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, as contemplated between the Demerged Company with Resulting Company.

2. Both the Demerged Company and the Resulting Company have their registered offices which lie within the jurisdiction of this Tribunal.

3. A perusal of the petition discloses that initially the Demerged Company and Resulting Company had jointly filed the first motion application bearing CAA 146/ND/2019 which had been disposed off by this Tribunal vide its order dated 15.10.2019 directing:-

A.) In respect to the Demerged Company:

i. The requirement of convening a meeting of the shareholders was dispensed with, in view of the consent affidavits of its 8 equity shareholders.

ii. A meeting to be convened on 03.12.2019 in respect of its 12 Secured

Creditors.

iii. A meeting to be convened on 03.12.2019 in respect of its 1884 Unsecured Creditors.

B.)In respect to the Resulting Company:

i. The requirement of convening a meeting of the shareholders was dispensed with, in view of the consent affidavits of its 2 equity shareholders.

ii. A meeting to be convened on 27.11.2019 in respect of its 1 Secured Creditor.

iii. A meeting to be convened on 27.11.2019 in respect of its 199 Unsecured Creditors.

4. The aforesaid meeting of Secured and Unsecured Creditors of the Demerged Company and Resulting Company was duly held on 03.12.2019 and 27.11.2019 respectively as directed by the Tribunal, wherein the proposed Scheme was approved by its members and creditors. The Chairman's reports, recording the approval of the proposed scheme without modification subsequent to the voting process, is on record.

5. The Demerged Company is a public company and is currently engaged in primarily three distinct and diverse activities through the following undertakings, namely:

a.) Manufacturing business of silent Diesel and Gas Generating sets and electricals EPC business ("Manufacturing Business"

b.) Trading and maintenance services of engine parts of businesses undertaking-incidental business activities such as trading of engine parts, rendering maintenance services, hospitality, real estate projects and related investments ("Trading and Maintenance Services of Engine Parts of Business")

c.) Investment business undertaking- investment business that includes investments in properties and shares/other securities of group companies and granting of loans and advances to group companies ("Investment Undertaking")

6. The Scheme is sought to be justified on the grounds:

(i) That the employees of both these activities can be incentivized based on the performance of such business activities provided they do have separate entity taking care of expansion and growth requirement.

(ii) Certain investments into incidental business activities can be utilized to their maximum scale and potential provided a focused environment and resource allocation is created through separate entity. Considering this object in mind, it is essential that the Demerged Undertaking comprising of various incidental business activities be transferred through process of the demerger to the Resulting Company.

(iii) The demerger of the Demerged Undertaking of Jakson Limited is proposed whereby the Demerged Undertaking will be transferred to Jakson Enterprise Private Limited. Demerged Undertaking means all the movable and immovable properties including investments and cash and cash bank balance and liabilities, of whatsoever nature and kind and wherever situated of the Demerged Company, which pertain to its incidental businesses of Trading and Maintenance Services of Engine Parts of Businesses and Investment Undertaking, all the movable and immovable properties, vehicles, investments, employees and other assets related to activities of the Demerged Undertaking.

7. Copies of the Memorandum and Articles of Association along with the audited Balance Sheets as on 31.03.2019 and reports of the Statutory Auditor of both the Applicant Companies have been filed. The Articles of Association provide for the applicants to consider and act upon the Scheme as proposed herein.

It has also been certified by the Statutory Auditor of each of the applicant company that the Accounting Treatment, as in the Scheme, is in compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013.

8. The applicant company has now initiated the Second Motion. An affidavit dated 05.02.2020 discloses that the applicant had effected publication in daily newspapers in "Business Standard" (English) and in "Jansatta" (Hindi) both dated 28.01.2020 (Delhi Edition). The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of Companies, Regional Director, (Northern Region) and the Income tax Department, inviting objections, if any, to the proposed Scheme of Arrangement.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector has appeared before us opposing the prayer of demerger.

9. We have heard the counsels for the petitioners and also considered the representation dated 10.02.2020 made by the Regional Director, Northern Region. In the reply filed by the Regional Director (NR), they have confirmed that the demerged company is regular in filing its statutory returns. No prosecution has been filed, no complaints are pending and no inspection or investigation has been conducted in respect of its affairs. Reply to their initial queries have been addressed by the applicant company by giving satisfactory replies. Upon which the office of the RD has affirmed that they have no further observation to make on the proposed scheme.

Despite notice to the Income Tax Dept, no observation was received.

10. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and no objections being raised by the office of the Regional Director or the Income Tax Dept, there appears to be no impediment in granting sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232

of the Companies Act, 2013. The sanctioned Scheme of arrangement shall be binding on the Transferor and the Transferee Companies and on all their respective shareholders and creditors. The Petitioners shall also be bound to comply with the statutory requirements in accordance with law.

11. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of both the petitioner companies.

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

13. This tribunal doth further order that upon scheme of Arrangement by way of Demerger coming into effect;

a. That the entire business, properties and assets of the Demerged Scheme of the company, be transferred without further act or deed to the Resulting company and accordingly the same shall, pursuant to section 232 of the Act, be transferred to and vest in the Resulting company, but subject nevertheless to all charges now affecting the same;

b. That all the assets and liabilities including Income Tax and all other Statutory dues, if any, in respect of the Demerged business, be transferred without further act or deed to the Resulting company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Resulting company;

c. All employees of the Demerged Company in service on the effective date shall become the employees of the Resulting Company on and from such date without any break or interruption in service and upon terms and conditions not less favorable than those subsidiary with the Demerged Company on that date. That all proceedings now pending by or against the transferor companies, be continued by or against the Resulting company;

14. That petitioners shall within thirty days of 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.

15. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

16. The Applicant Company is directed to pay Rs. 1 Lakh to the Prime Minister's Relief Fund receipt of which shall be produced before the RoC at the time of Submission of the Sanctioned Scheme.