(2020) 01 NCLT CK 0012

In the National Company Law Tribunal

Case No : CA (CAA) No. 146, 148/230/HDB/2019

Keerthi Estates Private Limited APPELLANT

Vs

Meenakshi Malkapur Power Private Limited RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Companies Act, 2013 — Section 102, 103, 230, 230(3), 230(5), 231, 232
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 7, 8, 10, 12, 14

Citation : (2020) 01 NCLT CK 0012

Hon'ble Judges : K. Anantha Padmanabha Swamy,J;Binod Kumar Sinha, Member (Technical)

Bench : Division Bench

Advocate : L. Dhanamjay Reddy

Final Decision : Disposed Of

Judgement

K. Anantha Padmanabha Swamy, J

1. The present Company Applications bearing CA(CAA) No. 146/230/HDB/2019 and CA(CAA) No. 146/230/HDB/2019 are jointly filed by Keerthi

Estates Private Limited (Demerged Company) and Meenakshi Malkapur Power Private Limited (Resulting Company), under Section 230 to 232 of

the Companies Act, 2013 (the Act) and the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 (hereinafter referred to as

â??the Rulesâ?). The Applicant Companies inter-alia seeking an order to dispense with convening of the meetings of the Shareholders, Secured and

Unsecured Creditors of both the Applicant Companies for consideration of the Scheme of Demerger (â??the Schemeâ??) between Applicant

Companies and their respective shareholders and creditors as envisaged under the said Scheme.

2. The Registered Office of the Applicant Companies are situated in the State of Telangana and therefore within the jurisdiction of this Tribunal.

3. Brief facts leading to the filing of present case are as follows:

I. In respect of Demerged Company;

The Authorised Share Capital of the Demerged Company as on 31.03.2019 was Rs. 12,00,00,000/- (Rupees Twelve Crores) divided into 1,20,00,000

equity shares of Rs. 10/- each. The issued, subscribed and paid-up Share Capital is Rs. 9,00,00,000/- (Rupees Nine Crores) divided into 90,00,000

equity shares of Rs. 10/- each.

The main objects of the Company are to purchase, lease or otherwise acquire land, plots, buildings and develop them into residential plots, construct

houses, resorts on such lands or plots, and sell the plots, houses, resorts under the properties of the company on hire purchase installment or otherwise

etc.

II. In respect of Resulting Company:

The Authorised Share Capital of the Resulting Company as on 31.03.2019 was Rs. 10,00,000/- (Rupees Ten Lakhs) divided into 1,00,000 equity

shares of Rs. 10/- each. The issued, subscribed and paid-up Share Capital is Rs. 1,00,000/- (Rupees One Lakh) divided into 10,000 equity shares of

Rs. 10/- each.

The main objects of the Company are to carry on business of establishing power generating plants through Solar Power, Hydel Power, Diesel general

sets, naptha based, coal bases or any other sources or through such other sources hereinafter invented in connection with the generation of electricity

or any power that can be used as substitute thereof and to promote, own acquire, execute, takeover, construct, establish, maintain, improve, manage,

operate, alter, carry on, take on hire/lease power, plants, cogeneration power plants, energy conservation projects, power house, power station, cable

and wire lines and to use or manufacture dynamos, accumulators and apparatus in connection with generation transformation, transmission

propagation, radiation, distribution, supply, accumulation and employment or application of electricity or different source of power/energy, etc.

4. According to the Applicant Companies they are closely held companies under the same management. The Scheme contemplated transfer of Solar

Division of the Demerged Company into the Resulting Company for business synergy and to achieve high growth in Power Sector. Further it would

ensure the consolidation of the Solar Division in single entity so as to meet the competition in the market. The proposed demerger of the solar Division

will focus and aim to achieve accelerated growth of these companies in different segments of business which they are carrying on and to effectively

face the current competitive scenario in global practices, standards and competition.

5. It is further stated that the Board of Directors of the Applicant Companies in their respective Board Meetings held on 01.04.2019 approved the

Scheme with appointed date as 01.02.2019 subject to the approval of their members and Hon'ble NCLT, Hyderabad Bench.

6. It is stated that there are no proceedings pending under the provisions of the Companies Act, 2013 against the Applicant Companies.

7. The Demerged Company has filed certificate of Statutory Auditors (refer Page No. 198 of the Petition) stating that as on 27.03.2019 there are

four (4) Equity Shareholders holding 90,00,000 shares in the Demerged Company and they have given their consent to the proposed Scheme (refer

page Nos. 180 to 187 of the Petition).

8. The Demerged Company has filed certificate of Statutory Auditor (refer page No. 188 of the Petition) stating that as on 31.01.2019 there are six

(6) Secured Creditors together having debt of Rs. 110,78,07,841/-.

9. The Demerged Company has filed certificate of Statutory Auditor (refer page No. 189 of the Petition) stating that as on 31.01.2019 there are

three (3) Unsecured Creditors together having debt of Rs. 13,29,87,906/-. It is further stated (refer Page No. 190 to 196 of the Petition) that as on

31.01.2019 there are two hundred and ninety seven (297) Sundry Creditors together having debt of Rs. 8,34,58,617.83 paise.

10. The Resulting Company has filed certificate of Statutory Auditor (refer Page No. 185 of the petition) stating that as on 27.03.2019 there are two

(2) Shareholders together holding 10,000 shares in the Demerged Company and they have given their consent to the proposed Scheme (refer page

Nos. 177 to 180 of the Petition).

11. The Resulting Company has filed certificate of Statutory Auditor (refer page No. 181 & 182 of the petition) stating that as on 31.01.2019 there

are no Secured Creditors and Unsecured Creditors in the Resulting Company.

12. The Demerged Company filed an I.A. No. 1158/2019 praying this Bench to direct the Demerged Company to convene the meetings of its

creditors as the consent for the scheme was not received from some of the creditors. For the reasons mentioned in the IA, this Bench allowed the

same.

13. Heard the submissions made in this regard by the Counsel for the Applicant Companies and perused the documents filed therewith.

14. It is noted that all the Equity Shareholders of both the Applicant Companies have given consent affidavits agreeing to the proposed Scheme and

hence no need to direct the Applicant Companies to hold meeting of Equity Shareholders and the same are dispensed with.

15. It is noted that there are no Secured and Unsecured Creditors in the Resulting Company and hence no need to direct the Resulting Company

to hold meetings of the Secured and Unsecured Creditors and the same are dispensed with.

16. With regard to the Secured Creditors and Unsecured Creditors of the Demerged Company, this Tribunal passes the following order:â?

a) A meeting of the Secured Creditors of the Demerged Company shall be held on 20.02.2020 at 2.00 PM at the registered office of the Demerged

Company i.e. 8-2-120/86/1, Road No. 2, Banjara Hills, Hyderabad, Telangana - 500033 for the purpose of considering and if, thought fit, approving

with or without modification(s) the arrangement embodied in the Scheme.

b) A meeting of the Unsecured Creditors of the Demerged Company shall be held on 20.02.2020 at 3.00 PM at the registered office of the

Demerged Company i.e. 8-2-120/86/1, Road No. 2, Banjara Hills, Hyderabad, Telangana - 500033 for the purpose of considering and if, thought fit,

approving with or without modification(s) the arrangement embodied in the Scheme.

c) Shri Ch. Srinivasulu, Advocate (Mobile No. 9908672717) shall be the Chairman for the above meetings and in respect of any adjournment thereof.

d) Mr. S.V. Sai Phanidhar, Advocate (Mobile No. 9700942504) is appointed as the Scrutinizer for the aforesaid meetings and in respect of any

adjournment thereof.

e) The remuneration of Chairman is fixed at Rs. 1,00,000/- (Rupees One Lakhs only) and remuneration of the scrutinizer is fixed at Rs. 75,000/-

(Rupees Seventy Five Thousand only) on consolidated basis.

f) At least one month before 20.02.2020 i.e. the date of the aforesaid meetings, an advertisement about convening of the said meetings, indicating the

day, date, place and time, as aforesaid, shall be published in Business Standard (in English) and in Nava Telangana (in Telugu). The publication shall

indicate the time within which copies of scheme shall be made available to the concerned persons free of charge from the registered office of the

Demerged Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with

Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Demerged Company or

at the office of its Counsel i.e. Mr. L. Dhanamjay Reddy, Practicing Company Secretary, 504, Afzal Commercial complex, Lakdikapool, Hyderabad -

500 004 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

g) The Chairman appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meeting referred to above. The

Chairman is free to avail the services of the Resulting Company or any agency for carrying out the aforesaid directions. The Chairman shall have all

the powers under the Articles of Association of the Resulting Company and also under the Rules in relation to the conduct of the meeting, including

for deciding any procedural questions that may arise at the meeting or adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the

aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meeting by ballot/polling paper at the venue of the meeting.

h) The quorum for the meeting shall be as per Provisions of Section 103 of the Companies Act, 2013.

i) Voting by proxy/authorised representatives is permitted provided that the proxy in the prescribed form/authorisation duly signed by the person

entitled to attend and vote at the aforesaid meeting is filed with the Demerged Company at the Registered Office i.e. i.e. 8-2-120/86/1, Road No. 2,

Banjara Hills, Hyderabad, Telangana - 500033, not later than 48 hours before the meetings vide Rule 10 of the Companies (CAA) Rules, 2016 read

with Section 105 of the Act.

j) The Chairman to file an Affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that

the directions regarding issuance of notices and advertisement of the meeting have been duly complied with as per Rule 12 of the Companies (CAA)

Rules, 2016.

k) It is further ordered that the Chairman shall report to this Tribunal on the result of the meeting in Form No. CAA-4, duly verified by his affidavit, as

per Rule 14 of the Companies (CAA) Rules, 2016 within seven working days.

1) In compliance of sub section(5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, all the applicant companies shall send

notice under sub section (3) of Section 230 read with Rule 6 of the Rules with a copy of the Scheme, the explanatory statement and the disclosures

mentioned in Rule 6 to (a) the Central Government through the Regional Director, South Eastern Region; (b) the Registrar of Companies, Telangana;

and (c) the Income Tax Authorities. The said notices be sent either by Registered Post or by Speed Post or by Hand Delivery at the Offices of the

authorities as required by sub rule (2) of Rule 8 of the Rules. The aforesaid authorities, who desire to make any representation under sub section (5)

of section 230 shall send the same to this Tribunal within a period of 30 (thirty) days from the date of receipt of such notice, failing which it shall be

deemed that they have no representation to make on the proposed Scheme.

18. The Company Applications i.e. CA (CAA) No. 146/230/HDB/2019 and CA (CAA) No. 148/230/HDB/2019 are disposed of accordingly.