(2022) 12 NCLT CK 0027

In the National Company Law Tribunal

Case No : CA (CAA) No. 59/Chd/HP/2022 (First Motion)

Kurmi Non Conventional Energy Private Limited Vs

Date of Decision : 16-12-2022

Acts Referred:
Companies Act, 2013 — Section 52, 66, 133, 230, 230(2)(a), 232

Citation : (2022) 12 NCLT CK 0027

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Yashpal Gupta

Final Decision : Allowed

Judgement

Harnam Singh Thakur, Member (Judicial)

1. This is a joint first motion application filed by Applicant Companies namely; Kurmi Non Conventional Energy Private Limited (Transferor Company/Applicant Company No. 1) and Kurmi Energy Private Limited (Transferee Company/ Applicant Company No. 2) under Sections 230-232 and Sections 52 & 66 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure- A1 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders, Debentureholders, Preference Shareholders and Secured & Unsecured Creditors of the Applicant Companies.

3. The Applicant Company No. 1 is presently engaged in the business of Generation, Transmission, Distribution and Conservation of energy by establishment, operation and maintenance of Hydro Power Plants or any other power plants from renewable, non-conventional sources of Energy and to plan, promote, develop and organize an integrated and efficient development of power

system/plants/projects in all its aspects including planning, investigation, research, design, engineering and preparation of preliminary feasibility and definite project reports, construction, generation, operation and maintenance of power stations and projects and sale of power generated and to acquire, procure, purchase, taken on lease or in way deal with anyone or more of the ongoing and under implementation power generating stations, grid sub-stations, transmission system and distribution system.

4. The Applicant Company No. 2 is presently engaged in the business of Generation, Transmission, Distribution and Conservation of energy by establishment, operation and maintenance of Hydro Power Plants or any other power plants from renewable, non-conventional sources of Energy.

5. It is submitted that the registered offices of Applicant Companies are situated in Himachal Pradesh, therefore, the territorial jurisdiction of Applicant Companies fall with this Bench.

6. The rationale of the Scheme is given below:-

a. Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholders value and will improve the competitive position of the combined entity. \

b. The existence of independent companies at times result in duplicatioin of efforts and the integration and combination of such businesses will lead to greater and optimal utilization of resources. The amalgamation would , therefore, enable the Transferee Company to increase operations and confer a competitive advantage on the entire business. With integrated provess, the Transferee Comany can achieve higher scales of operation.

c. The amalgamation of the operations of the Transferor Company in to the Transferee Company will assist the Transferee Company and its management in meeting the funding through a common funding mechanism. This will result in effective management and utilization of funds for capital expenditure and working capital. The efficiencies generated through cash management of the merged entity and access to cash flow generated by the combined business can be deployed more efficiency to fund organic and inorganic growth opportunities and to maximize shareholders value.

d. The amalgamated company will have the optimum use of human relations, expertise, and stability of operations and would help to achieve economies of scale through efficient utilization of resources and facilities.

e. Strengthened leadership in the industry, in terms of asset base, revenues, product range, production volumes and market share of the combined entity. The amalgamated entity will have the ability to leverage on its large asset base and vast pool of intellectual capital, to enhance shareholder value.

f. Simplified group and business structure

7. It is stated that the Board of Directors of the Applicant Companies in their meetings held on 14.10.2022 and 15.10.2022 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the board resolutions of the Applicant Companies are part of Annexure-A11 and Annexure-A12 respectively of the application.

8. The appointed date of the Scheme is 01.04.2022 as mentioned in the Part I Clause 1.1.3 of Amalgamation which is attached as Annexure A-1 of the application.

9. It is stated that the Applicant Companies have filed the audited financial statements as on 31.03.2022 and provisional Financial Statements as on 30.09.2022 attached as Annexure- A4, A-5, A6 and A-8 respectively of the application.

10. It is submitted that the Applicant Companies have filed a certificate dated 08.07.2022, issued by Statutory Auditors of the Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure A-7 and A-9 of application.

11. It is further submitted that the valuation report has been submitted by CA Subodh Kumar, Registered Valuer having IBBI Registration No.-IBBI/RV/05/2019/11705 which is attached as Annexure-A10 of the application. As per valuation report dated 12.10.2022, the following Share Swap Ratio has been proposed:-

"Exchange ratio of each share of Kurmi Energy Private Limited for shares of Kurmi Non-conventional Energy Private Limited:0.67 i.e. 0.77 equity shares of Kurmi Energy Private Limited for one equity share of Kurmi Non-conventional Energy Private Limited"

12. It is submitted that the Scheme [Annexure -A1 of the application] also takes care of the interests of the workmen and staff (employees) of the Companies, by virtue of Part III, Para 3.2.5 of the Scheme.

13. It is deposed by way of affidavit furnished by authorised representatives of the applicant companies that there are no regulators or sectoral approval is required. The aforesaid affidavits are attached as Annexure A-36 and A-37 respectively of the application.

14. It is also deposed by way of affidavit by authorised representatives of the applicant companies that as per the provisions of Section 230 (2) (a) of the Companies Act, 2013, all the material facts relating to the companies are place on record and no legal proceedings are pending against the applicant companies. The aforesaid affidavits are attached as Annexure A-38 and A-39 respectively of the application.

15. The applicant companies have furnished the following documents:-

i. Proposed Scheme of Amalgamation (Annexure-A1 of the Application);

ii. Copy of Memorandum and Articles of Association of the applicant companies (Annexures-A2 and A3 respectively of the Application);

iii. Audited financial statements as on 31.03.2022 of the applicant companies (Annexure A-4 and Annexure A-5 respectively of the Application);

iv. Provisional Financial Statements as on 30.09.2022 of applicant companies (Annexure-A6 and Annexure-A8 respectively of the Application);

v. List of Equity Shareholders of the Applicant Company No.1 as on 30.09.2022 certified by S. Tandon & Associates, Chartered Accountants alongwith the consent furnished by way of affidavits (Annexures-A-13, A-14 to A-16, respectively of the Application);

vi. List of Equity Shareholders of the Applicant Company No. 2 as on 30.09.2022 certified by S. Tandon & Associates, Chartered Accountants alongwith the consent furnished by way of affidavits (Annexures-A17, A18 and A19, respectively of the Application);

vii. List of Secured and Unsecured Creditors of the Applicant Company No. 1 duly certified by S. Tandon & Associates, Chartered Accountants as on 30.09.2022 (Annexures-A-21 and A-22 respectively of the Application);

viii. List of Secured and Unsecured Creditors of the Applicant Company No. 2 duly certified by S. Tandon & Associates, Chartered Accountants as on 30.09.2022 (Annexures-A-22 and A-23 respectively of the Application);

ix. List of Preference Shareholder of the Applicant company No. 2 duly certified by S. Tandon & Associates, Chartered Accountants as on 30.09.2022 alongwith the consent furnished by way of affidavits (Annexure A-24 and Annexure A-25 to Annexue A-27 respectively of the Application);

x. List of Debenture Holders of the Applicant company No.1 duly certified by S. Tandon & Associates, Chartered Accountants as on 30.09.2022 alongwith the consent furnished by way of affidavits (Annexure A-28 and Annexure A-29 to Annexue A-31 respectively of the Application);

xi. List of Debenture Holders of the Applicant company No.2 duly certified by S. Tandon & Associates, Chartered Accountants as on 30.09.2022 alongwith the consent furnished by way of affidavits (Annexure A-32 and Annexure A-33 to Annexue A-35 respectively of the Application);

xii. Certificates of Statutory Auditors dated 19.10.2022 to the effect that Accounting treatment proposed in the Scheme is inconformity with Section 133 of Companies Act, 2013 (Annexure- A-7 and A-9 of the Application);

xiii. Valuation report and Share Entitlement Report by the registered valuer CA Subodh Kumar (Annexure A-10 of the Application);

xiv. Audited financial statements as on 31.03.2022 of the applicant companies (Annexure-A4 and Annexure-A5 respectively of the Application);

xv. Provisional Financial Statements as on 30.09.2022 of the applicant companies (Annexure-A6 and Annexure-A8 respectively of the Application);

xvi. Affidavit furnished by Applicant Companies with regard to the Sectoral Regulator (Annexure A-36 and A-37 of the Application);

xvii. Affidavit furnished by Applicant Companies under Section 230 (2) (a) of the Companies Act, 2013 (Annexure A-36 and A-37 of the Application).

16. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors is as follow:

Name of the Applicant

Companies

Shareholders along with their consent

Creditors along with their consent.

Equity Shareholder

Consent with

calculations

Preference Shareholder

Consent with calculations

Debentur e Holders

Consent with calculationns

Secured Creditors

Consent with

calculations

Unsecur ed

Creditors

Consent with calculations

Applicant Company No.1

3

100% in Value

NIL

NA

3

100%

in value

NIL

NA

NIL

NA

Applicant Company No.2

4

100% in Value

3

100% in Value

3

100%

in value

NIL

NA

NIL

NA

17. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Transferor Company/Applicant Company No.1:

a) The meetings of the Equity Shareholders of Transferor Company/Applicant Company No.1 are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent have been received by way of affidavits.

b) The meetings of Debenture Holders of the Transferor Company/Applicant Company No.1 are dispensed with as consent of all Debenture Holders have been received by way of affidavits.

c) Since, there is no Secured and Unsecured Creditor in the Transferor Company/ Applicant Company No.1, therefore, there is no scope for any meeting.

II. In relation to the Transferee Company/Applicant Company No.2:

a) The meetings of both Equity Shareholders of Transferee Company/Applicant Company No.2 are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent by way of affidavits has been received.

b) The meetings of Debenture Holders of the Transferee Company/Applicant Company No.2 are dispensed with as consent of all Debenture Holders have been received by way of affidavits.

c) The meetings of Preference Shareholders of the Transferee Company/Applicant Company No.2 are dispensed with as consent of all Preference Shareholders have been received by way of affidavits.

d) Since, there is no Secured and Unsecured Creditor in the Transferee Company/ Applicant Company No.2, therefore, there is no scope for any meeting.

18. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies, (c) Official Liquidator (d) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.