(2021) 01 NCLT CK 0038

In the National Company Law Tribunal

Case No : Company Application No. (CAA) 1122, 1124/MB-I Of 2020

L&T Gulf Private Limited Vs

Date of Decision : 21-01-2021

Acts Referred:

Companies Act, 2013 — Section 230, 230(1)(b), 230(3), 230(5), 231, 232
Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8

Citation : (2021) 01 NCLT CK 0038

Hon'ble Judges : Harihar Prakash Chaturvedi, J;Shyam Babu Gautam, Member (Technical)

Bench : Division Bench

Advocate : Rashid Boatwalla, Lipsa Unadkat, Manilal Kher Ambalal

Final Decision : Allowed

Judgement

1. The Bench is convened by videoconference on 18.01.2021.

2. Applicant Company represented by Learned Counsel Mr. Rashid Boatwalla a/w Ms. Lipsa Unadkat i/b M/s. Manilal Kher Ambalal & Co. submits

that the present Scheme is Scheme of Amalgamation is between L&T â?" Gulf Private Limited (â??the Transferor Companyâ?) and L&T

Hydrocarbon Engineering Limited (â??the Transferee Companyâ?) and their respective shareholders (â??Schemeâ?) under the provisions of the

Sections 230 to 232 of the Companies Act, 2013.

3. The present Application is filed as the first stage motion petition seeking for dispensation with the meeting of equity shareholders and unsecured

creditor. It is also reported that there are no secured creditor in the Applicant Company.

4. The Counsel for the Applicant Companies further submits that the Transferor Company is a wholly owned subsidiary of the Transferee Company.

5. The Counsel for the Applicant Companies further submits that the Board of

Directors of the Transferor Company and the Transferee Company

have approved the Scheme by unanimously passing resolutions at each of their meetings held on 17th January 2020 and 13th January 2020

respectively. The Appointed Date fixed for the scheme is 1st April 2020.

6. The Counsel for the Applicant Companies submits that there are two Equity Shareholders of the Transferor Company i.e. the Transferee Company

and its nominee. Both the Equity Shareholders have consented to the to the Scheme of Amalgamation. Consent Affidavits of the Equity Shareholders

are annexed at Exhibit â??E-1â? and Exhibit â??E-2â? of the Company Application. Accordingly, the meeting of the Equity Shareholders of the

Transferor Company be dispensed with.

7. That Counsel for the Applicant Companies submits that there are no Secured Creditors in Transferor Company and Transferee Company as

mentioned in paragraph 25 and 28 of the respective Company Applications.

8. The Counsel for the Applicant Companies further submits that the Registered Offices of the Transferor Company and Transferee Company are in

Mumbai. And it has filed separate Company Applications (i.e one for Transferor Company and second for Transferee Company) before the

Honâ??ble National Company Law Tribunal, Mumbai Bench for the sanction of the proposed Scheme of Amalgamation.

9. The Counsel for the Applicant Companies would submit that in view of the above, no reconstruction or arrangement would happen with its

shareholders or creditors and moreover all the Equity Shareholders and the Preference Shareholder of the Transferee Company have alredy given

their consent to the Scheme of Amalgamation. Consent Affidavits of the Equity Shareholders are annexed at Exhibit â??E-1â? and Exhibit â??E-7â?

and Consent Affidavit of the Preference Shareholder is annexed at Exhibit â??F-1â? of the present Company Application. Thus, the Transferee

Company does not require to meetings of its either the Equity Shareholders or of the Preference Shareholder for approval of the proposed Scheme.

10. That the convening and holding of meeting of the Unsecured Creditors of the Transferor Company be dispensed with as the Transferor Company

undertakes to issue individual notice by email or registered post or air mail or courier or speed post or hand delivery to all its Unsecured Creditors as

on 30th June 2020 as mentioned in paragraph 26 of the Company Application under Section 230(3) of the Companies Act, 2013 with a direction that

they may submit their representations, if any, to the Tribunal and a copy of such representation being simultaneously served upon the Transferor

Company.

11. The Counsel for the Applicant Companies has contended that the present Scheme is an arrangement between the Transferor Company and the

Transferee Company and their respective shareholders as contemplated under Section 230(1) (b) of the Companies Act 2013 as there is no

compromise or arrangement with any of the Unsecured Creditors and the rights of the Secured Creditors would not be affected as there are no

Secured Creditors and the rights of the Unsecured Creditors are not affected as all the Unsecured Creditors would be paid off in the ordinary course

of business.

12. The Counsel for the Applicant Companies also contended that the proposed Scheme will be beneficial to the Transferor Company and the

Transferee Company and their respective shareholders, creditors, employees and other stakeholders. The proposed Scheme will have the following

benefits:

â?¢ The Transferor Company generates maximum revenue from the Transferee Company as they are operating in complementary/similar lines of

business and can be conveniently combined for mutual benefit as this would result in cost optimization;

â?¢ One of the chief reasons necessitating the amalgamation is that the Transferor Company is a wholly owned subsidiary of the Transferee

Company as the complete shareholding of the Transferor Company is held by the Transferee Company and its nominee;

â?¢ The amalgamation will improve organizational capability arising from the pooling of human capital that has diverse skills, talent and vast

experience;

â?¢ The management has decided to consolidate the various business lines of the Transferor Company and the Transferee Company to enable cost

competitiveness;

â?¢ The Scheme is commercially and economically viable and feasible and is in fact fair and reasonable;

â?¢ The proposed amalgamation will result in administrative and operations rationalization, organizational efficiencies, reduction in overheads,

compliance cost and other administrative expenses, elimination of unnecessary inter-company transactions, full alignment with EPC outcome,

facilitation of the Transferee Companyâ??s pre qualifications for large value international projects. It will prevent cost duplication and will result in

synergies in operations. The synergies created by the amalgamation would increase operational efficiency and integrate business functions.

13. The Scheme is in the interest of and in no manner whatsoever prejudicial to the shareholders, creditors, lenders and various other stakeholders of

respective companies.

14. The Counsel for Applicant Companies submits that:

a. Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to

the merger. Accordingly, the rights of the members of the Applicant Company is not affected since there will be no issue of shares pursuant to the

Scheme and there would be absolutely no change in the Equity Share Capital of the Applicant Company.

b. The rights of the creditors of the Applicant Company are not affected since there will be no reduction in their claims and assets of the Transferee

Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company is and will

continue to remain highly positive, post-merger.

c. The existence of the Transferee Company will remain as before without any change to its shareholding pattern pursuant to the Scheme.

15. Having heard the learned Counsel for the Companies and having perused the records representing the Companies and have perused the records of

the present company Application along with material available in record the present company Application deserved to be allowed. Hence it is allowed

with following order

ORDER

a. The Application be and the same is allowed.

b. The meeting of the Equity Shareholders and Unsecured Creditors of the Transferor Company be dispensed with.

c. The Applicant Companies shall serve the notice of Application along with a copy of the Scheme upon â?" (i) Regional Director (Western Region),

Ministry of Corporate Affairs, Mumbai; (ii) Registrar of Companies, Maharashtra, Mumbai; (iii) Income Tax Authority within whose jurisdiction the

Applicant Companies' assessments are made in terms to section 230(5) of the Act and as per Rule 8 Rules. If no response is received by the Tribunal

from the regulatory authorities within 30 days of the date of receipt of the notice it will be presumed that the Authorities have no objection to the

Scheme.

d. The First Applicant Company is also directed to serve notice of Application along with a copy of the Scheme upon the Official Liquidator pursuant

to Section 230(5) of the Act.

e. The Official Liquidator shall submit its report/representation to this Tribunal. If no representation is received by the Tribunal from the Official

Liquidator within a period of thirty (30) days of the receipt of such notice, it would be presumed that the Official Liquidator has no objection to

proposed Scheme.

f. The Applicant Companies shall file compliance report, of the above directions, in not less than seven (7) days before the date fixed for holding of

meetings, in the Registry, in lieu of customary affidavit of service, due to the prevailing lockdown warranted by Covid-19 pandemic.

