(2023) 08 NCLT CK 0042

In the National Company Law Tribunal

Case No : CA.CAA-62(ND)/2023

M/s. GE India Industrial Pvt. Ltd Vs

Date of Decision : 17-08-2023

Acts Referred:
Companies Act, 2013 — Section 230, 230(6), 232, 232(2)(e)

Citation : (2023) 08 NCLT CK 0042

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J);Atul Chaturvedi, Member (T)

Bench : Division Bench

Advocate : Pawan Sharma, Anuj Shah

Final Decision : Disposed Of

Judgement

Atul Chaturvedi, Member (Technical)

1. This is a 1st Motion Petition jointly filed by the Applicant Companies seeking approval of this Tribunal about the Scheme of Arrangement under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 in respect of above Applicant Companies. It is represented that the registered office address of all the Applicant Companies is situated in New Delhi and therefore the subject matter of the said petition falls within the jurisdiction of this Tribunal. Ld. Counsel has given the brief description of the Applicant Companies, which are as follows:

i. Applicant Company No. 1 namely M/s. GE India Industrial Private Limited, bearing CIN: U31500DL1992PTC194724 was incorporated on 27/05/1992 under the provisions of the Companies Act, 1956 as a Company limited by Shares (Non-govt. company) with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Applicant Company No. 1 is situated at A-18, First Floor, Okhla Industrial Area Phase-II, South Delhi, Delhi-110020. The Authorized Share Capital of the Company is Rs. 3167,20,00,000/- and the issued, subscribed and paid-up share capital of the Company is Rs. 2547,27,70,575 /-.

ii. Applicant Company No. 2 namely M/s. GE Renewable R&D India Private

Limited, bearing CIN: U74999DL1993PTC053789 was incorporated on 27/05/1993 under the provisions of the Companies Act. 1956, as a Company limited by Shares (Non-govt. company) with the Registrar of Companies, NCT of Delhi and Haryana. The registered office of Applicant Company No. 2 is situated at A-18, First Floor, Okhla Industrial Area Phase-II, South Delhi, Delhi-110020. The Authorized Share Capital of the Company is Rs. 25,00,00,000/- and issued, subscribed and paid-up share capital of the Company is Rs. 20,50,00,000/-.

2. Affidavits in support of the above petition have been sworn by Mr. Randeep Singh Thakur, Company Secretary of Applicant Company No. 1 and by Mr. Himanshu Kundoo, Authorised Signatory of Applicant Company No.2, who have been authorized vide board resolutions for all the Applicant Companies and have been duly filed, along with the petition.

3. The Board of Directors of the Applicant No. 1/Demerged Company as well as the Board of Directors of the Applicant No. 2/Resulting Company in their separate meetings held on 31.07.2023 approved and adopted the Scheme of Arrangement wherein it is proposed to transfer and vest the Demerged Undertaking of the Applicant No. 1 Company/ Demerged Company with and into the Applicant No. 2/ Resulting Company on a going concern basis in accordance with the terms of the Scheme of Arrangement.

4. It is proposed to convene, conduct and hold the separate meetings of equity shareholders and unsecured creditors of the Applicant No. 1/ Demerged Company and the Applicant No. 2/ Resulting Company physically only within 2 months from receipt of the order subject to giving 30 days' notice to the equity shareholders and unsecured creditors as per the provisions of the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Since both the Companies are unlisted companies, there is no requirement of e-voting.

5. The Applicant No. 1/Demerged Company and Applicant No.2/Resulting Company propose the names of the following persons as Chairperson, and Scrutinizer for the above-mentioned meetings:

6. Having heard the submissions made by Ld. Counsel and having perused the records as well as the documents placed on record, we allow the prayer for the dispensation from convening and holding of the meetings of the Secured Creditor of both the Applicant Companies. Further, it is prayed for the convening of the meeting of Equity Shareholders and Unsecured Creditors of both the Applicant Companies. We have perused the Petition and the connected documents/ papers filed including the Scheme of Arrangement contemplated between the Applicant Companies.

7. The Applicant Companies have filed its Memorandum and Articles of Association inter alia delineating their object clauses as well as the latest audited annual financial report for the year ended 31.03.2022 and the copy of the unaudited provisional financial statements as on 31.03.2023 as required under

section 232(2)(e) of the Companies Act, 2013.

8. Taking into consideration the petition on behalf of the Applicant Companies and the documents filed there with, this Tribunal issues the following directions with respect to calling, convening and holding of the meetings of the Equity Shareholders and Unsecured creditors as well as issue of notices including by way of paper publication as follows.

9. The quorum for the meeting of the Equity Shareholders shall be not less than 75% in value as provided in section - 230(6) of the Act. The quorum for the meeting of unsecured creditors will also be 75% (in value) of unsecured creditors.

10. Mr. Sidharth Aggarwal, Advocate (+919810271460) shall act as the Chairperson and Mr. Atul Bhatia, Advocate (+919582684409) shall act as the Alternate Chairperson appointed for the said meetings. The fee of the chairperson for the aforesaid meetings shall be 1,25,000/- and the fee of the alternate chairperson shall be Rs 1,00,000/- in addition to meeting their incidental expenses.

11. Mr. Hemant Singh (+919917792134) is appointed as a Scrutinizer, who shall ensure that the registers are properly maintained and would be entitled to fee of Rs.75,000/- for services in addition to meeting incidental expenses. The Chairpersons will file their reports within 2 weeks from the date of holding of the above said meetings.

12. In case the quorum as noted above for the above meeting of the Applicant Companies is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the Applicant Companies to attain at least the quorum fixed, if not more, in relation to the approval of the scheme.

13. Individual notices of the above said meetings shall be sent by the Applicant Companies through e-mail and through speed post, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme of Amalgamation, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above, any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

14. The Applicant Companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the "Financial Express" English Edition Delhi and "Jansatta" Hindi Edition Delhi stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to

Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

15. Voting shall be allowed on the proposed Scheme by voting in person or through proxy as per the guidelines issued by Ministry of Corporate Affairs.

16. Notice of this petition shall be served on the following:

i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

iii. Official liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi110001;

iv. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.

v. Any other Sectoral Regulators/Authority required to be served who may have significant bearing on the operations of the applicant Companies or the Scheme per se along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

17. The Applicant Companies shall further furnish a copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of the company entitled to attend the meetings as aforesaid.

18. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

19. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicant Companies.

20. The prayer sought in the present petition bearing CA(CAA)-62/(ND)/2023 stands allowed on the aforesaid term and accordingly disposed of.

Let copy of the order be served to all the parties.