
(2024) 03 NCLT CK 0032

In the National Company Law Tribunal

Case No : CA (CAA) No. 46/Chd/Hry/2023 (First Motion)

M/s MKU Holdings Private Limited Vs

Date of Decision : 14-03-2024

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6(3)

Citation : (2024) 03 NCLT CK 0032

Hon'ble Judges : Dr. P.S.N Prasad, Member (J); Umesh Kumar Shukla, Member (T)

Bench : Division Bench

Advocate : Karanveer Jindal

Final Decision : Disposed Of

Judgement

Dr. PSN Prasad, Member (Judicial),

Umesh Kumar Shukla, Member (Technical)

1. This is a joint first motion application filed by Applicant Companies namely; M/s MKU Holdings Private Limited (Transferee Company/Applicant Company-I), M/s Acme Cleantech Solutions Private Limited (Resulting Company/Applicant Company-II) and M/s Acme Solar Holdings Private Limited (Demerged Company/Transferor Company/Applicant Company-III) under Section 230 to 232 of Companies Act, 2013 (hereinafter referred to as 'Act') read with Rule 3 and 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and applicable National Company Law Tribunal Rules, 2016 in relation to the Composite Scheme of Arrangement between the Applicant Companies. The said Scheme is attached as Annexure-A of the Application. Subsequently, the Applicant Companies, vide diary no. 02111/01 dated 19/09/2023 filed joint additional affidavit furnishing additional information.

2. The registered offices of all the Applicant Companies are situated in the State of Haryana, therefore, the territorial jurisdiction of the Applicant Companies for the present petition falls within NCLT, Chandigarh.

FACTS OF THE CASE

3. The facts of the case, as stated in the joint application/ additional affidavit, have been summarised below:

(i) The Applicant Company-I is an unlisted private limited company incorporated under the provisions of the Companies Act, 2013 on 04.01.2005 under the name and style of 'Green Shelters (India) Private Limited' with its registered office in the State of Delhi. In the year 2007, the name of the company was changed to its present name viz., 'MKU Holdings Private Limited' and a fresh certificate of incorporation was issued by the Registrar of Companies, NCT of Delhi & Haryana (?RoC?) on 13.06.2007. In the year 2019, the registered office of the company was shifted from the State of Delhi to the State of Haryana and accordingly, certificate of registration of order of Regional Director for change of State was issued by the RoC on 19.01.2019. Presently, the registered office of company is situated in the State of Haryana at Plot No.152, Sector 44, Gurugram, Haryana-122002. The authorised share capital of the company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10 each and issued, subscribed and paid-up share capital is Rs.61,01,500/- divided into 6,10,150 equity shares of Rs.10 each. The company is engaged in the business of investing into renewable energy projects and upcoming new age technologies through its subsidiaries, associates and joint ventures. The main objects of the company, as set out in clause III(A) of the Memorandum of Association, are as under:

?(a) To carry out in India or else where the business of establishing, commissioning, setting up, operation and maintaining power generation using solar power, fossil and alternate source of energy and act as owners, manufacturers, engineers, procurers, buyers and sellers, distributors, dealers and contractors for setting up of power plants using glass based mirrors, photo voltaic, boilers, turbine and/or other equipments for generating, distributing, purchasing, selling, trading, importing and exporting and otherwise dealing in and supplying of electricity and other products using solar, fossil and alternate source of energy under conditions direct ownership or through its affiliate, associate or subsidiaries.

(b) To plan, develop, establish, erect, construct, acquire, operate, run, manage, higher, lease, buy, sell, maintain, enlarge, alter, renovate, modernize, work and use power system networks of all types including ultra-high voltage (UHV), extra-high voltage (EHV), high voltage (HV), high voltage direct current (HVDC), medium voltage (MV) and low voltage (LV) lines and associated stations, substations, transmission and distribution centers, systems and networks and to lay cables, wires, accumulators, plants, motors, meters, apparatus, computers, telecommunication and telemetering equipments and other materials connected with generation, transmission, distribution, supply and other ancillary activities relating to the electrical power and to undertake for and on behalf of others all these activities in any manner.

(c) To carry on the business consultants, engineering, designing, manufacturing, procurement, integration in setting up of all types of plants, projects for production of electricity using solar, fossil and alternate source of energy and related activities and to undertake research & development programs to construct install, erect, build, improve, develop, enlarge, demolish, re-erect, alter, repair, remodel, power plant, power substations, power transmission lines, transmission towers and accessories and the work of power/electric generation based on thermal, gas, wind, water, solar and power supply, distribution or any work of structural, architectural, civil or any type for and behalf of the company or through contract, sub contract, bidding joint venture, partnership and or in any manner whatsoever of any work in connection therewith.?

A certified copy of the Memorandum and Articles of Association of the company are attached as Annexure-B1 of the joint application.

(ii) The Applicant Company-II, a subsidiary of the Applicant Company-I, is an unlisted private limited company incorporated under the provisions of the Companies Act, 2013 on 14.01.2003 under the name and style of 'Acme Tele Power Private Limited'. In the year 2005, the status of the company was changed from private limited company to public limited company and accordingly, the name of the company was changed to 'Acme Tele Power Limited' and a fresh certificate of incorporation was issued by RoC on 29.08.2005. In the year 2013, the name of the company was changed to 'Acme Cleantech Solutions Limited' and a fresh certificate of incorporation was issued by RoC on 22.02.2013. In the year 2015, the status of the company was again changed from public limited company to private limited company, consequent to which name of the company was changed to its present name viz., 'Acme Cleantech Solutions Private Limited' and a fresh certificate of incorporation was issued by RoC on 24.03.2015. Presently, registered office of the company is situated in the State of Haryana at Plot No.152, Sector 44, Gurugram, Haryana-122002. The authorised share capital of the company is Rs.59,01,00,000/- divided into 11,402 equity shares of Rs.50,000/- each and 20,00,000 preference shares of Rs.10 each. The issued, subscribed and paid-up share capital is Rs.36,96,00,000/- divided into 6,992 equity shares of Rs.50,000/- each and 20,00,000 preference shares of Rs.10 each. The company is presently engaged in the business of undertaking project management consultancy, land development services and operation and maintenance for solar power plants; energy management and diversified into green ammonia and hydrogen business in and outside India. The company also undertakes supply contracts and is also responsible for the investment, sponsorship for its solar and wind renewable business in India. The main objects of the company, as set out in clause-III(A) of the Memorandum of Association, are as under:

?(i) To carry on the business of designing, manufacturing, integration of telecom control power products and buying, selling, processing, distribution, trading or other dealing thereof; manufacturers, assemblers, fabricators and traders of

electronic products and instruments of all kinds, radar equipment, electronic instrument and components, consumer and entertainment electronics equipment, office and telecommunication equipment, computer peripherals and software, micro-wave equipment, and equipment for the processing of information technology and for alternate sources of energy and equipment for the any industries and the manufacture of all their components and sub-assemblies thereof including electronic engineers, to buy, sell, trade, process, refine, fabricate, distribute, convert, license, or otherwise deal in all kinds of communication, electrical power and energy, automotive, navigational and information technology.

(ii) To carry on the business of establishing, commissioning, setting up, collaborate, operation and maintaining power generation plants using solar, fossil and alternate source of energy and act as owners, manufactures, engineers, consultants, engineering, designing, integration, procurers, buyers, sellers, distributors, dealers and contractors for setting-up of power plants using glass bases mirrors, photo voltaic, boilers, turbines and/or other equipment for generating, distributing and supplying of electricity and other products and related activities and to undertake research & development programs under conditions of direct ownership or through its affiliates, associates or subsidiaries.?

A certified copy of the Memorandum and Articles of Association of the company are attached as Annexure-C1 of the joint application.

(iii) The Applicant Company-III, a direct wholly-owned subsidiary of Applicant Company-II and an indirect subsidiary of Applicant Company-I, is an unlisted private limited company incorporated under the provisions of Companies Act, 2013 on 03.06.2015 under the name and style of ?Acme Solar Holdings Private Limited? with its registered office in the State of Haryana. In the year 2017, the status of the company was changed from private limited company to public limited company and accordingly, its name was changed to ?Acme Solar Holdings Limited? and a fresh certificate of incorporation was issued by the RoC on 12.05.2017. In the year 2018, registered office of the company was shifted from the State of Haryana to the State of Delhi and a certificate of registration of order of Regional Director for change of State was issued by the RoC on 25.08.2018. In the year 2020, the status of the company was again changed from public limited company to private limited company and accordingly, name of the company was changed to ?Acme Solar Holdings Private Limited? and a fresh certificate of incorporation consequent upon conversion from public company to private company was issued by the RoC on 01.07.2020. Finally, in the year 2022, the registered office of the company was again shifted from the State of Delhi to the State of Haryana and a certificate of registration of order of Regional Director for change of State was issued by RoC on 22.03.2022. Presently, the registered office of the company is situated in the State of Haryana at Plot No.152, Sector-44, Gurugram, Haryana-122002. The authorised share capital of the company is Rs.1000,00,00,000/- divided into 100,00,00,000 equity shares of

Rs.10 each and issued, subscribed and paid-up share capital is Rs.104,44,15,820/- divided into 10,44,41,582 equity shares of Rs.10 each. The company is engaged in the business of engineering, procurement and construction of solar and wind projects. The company is also engaged in execution of service contracts of solar and wind projects and is also responsible for the investment, sponsorship for its solar and wind business in India. The main objects of the company, as set out in Clause-III(A) of the Memorandum of Association, are as under:

?(i) To carry on in India or elsewhere the business of power generation using solar, fossil and alternate source of energy and owners, manufactures, engineers, procurers, buyers, sellers, distributors, dealers and contractors for setting up of power plants using glass bases mirrors, photo voltaic, boilers, turbines and/or other equipments for generating, distributing and supplying of electricity and other products using solar, fossil and alternate source of energy under conditions of direct ownership or through its affiliates, associates or subsidiaries.

?ii)?To carry the business of consultants, engineering, designing, manufacturing, procurement, integration in setting up of all types of plants, projects for production of electricity using solar, fossil and alternate source of energy and related activities and to undertake research & development programs.?

A certified copy of the Memorandum and Articles of Association of the company are attached as Annexure-D1 of the joint application.

(iv) The Board of Directors of the Applicant Companies are of the view that the proposed scheme will have benefits, as enumerated in the rationale of the scheme, given below: -

"The Companies involved in the present Scheme are closely held group companies belonging to Acme group, which is engaged in sustainable and renewable energy business in India and abroad. Acme Group has constructed over 5 GW of renewable capacity in India over the last decade and has immensely contributed towards achieving renewable energy targets of the Government of India. It has also set-up more than 60 solar power plants in 12 states across India through its group companies and has also forayed into Green Hydrogen/Ammonia business in India and abroad.

In order to enable Acme group to expand its global presence in Green Hydrogen/ Ammonia business, the Resulting Company has been made responsible for the sourcing of funds from third parties and arranging sponsorship for Green Hydrogen/ Ammonia business abroad, which has been and would be, in future, substantially invested in these offshore projects in Green Hydrogen/Ammonia business.

At present, one of the major line of business of Acme group comprises of Solar Renewable projects, which are developed and constructed by executing supply and service contracts with different group companies. Under the present

business model, the Resulting Company, which is flagship company of the Acme group, inter-alia, undertakes supply contracts and the Demerged Company, inter-alia, undertakes the services contracts which includes civil construction, erection and commissioning of the projects.

Having regard to the above, in order to enable the Resulting Company to - i) become financially independent to effectively arrange, manage and channelize the fund requirements for the upcoming Green Hydrogen/Ammonia projects; and ii) achieve business centric approach for the investors interested in solar renewable projects, it is prudent to streamline and consolidate the solar and wind business of the Demerged Company with and into the Resulting Company.

The Transferee Company is primarily an investment holding company of Acme group, which holds investments in its various group entities catering to specific line of businesses relating to the sustainable and renewable business of the Acme group. It is proposed to merge the Transferor Company comprising of its Remaining Business with and into the Transferee Company.

Accordingly, it is proposed to demerge Solar and Wind Business of the Demerged Company with and into the Resulting Company under Part-II of the Scheme and thereafter, Amalgamation of the Transferor Company with its Remaining Business (as defined hereinafter) with and into the Transferee Company under Part-III of the Scheme.

The demerger and Amalgamation (as defined hereinafter), as envisaged in this Scheme, is expected to enable better realization of independent potential of the respective businesses, yielding beneficial results, unlocking shareholders value of their investments and enhanced value creation for the Companies and their respective shareholders, lenders and employees.?

(v) The certified true copy of the audited financial statements for the financial year ended 31.03.2022 along with provisional financial statements for the period from 01.04.2022 to 31.03.2023 of the Applicant Companies I, II and III have been attached at Annexure-B2, Annexure-C2 and Annexure-D2 respectively of the joint application.

(vi) The Board of Directors of the Applicant Companies in their respective board meetings held on 15.06.2023 have approved the proposed scheme. The certified copy of the board resolutions along with list of directors of each of the applicant companies along with list of directors of Applicant company I, II and III are annexed as Annexure-B3, Annexure-C3 and Annexure-D3 respectively of the joint application.

(vii) The Applicant Companies, in the joint application, have prayed to dispense with the requirement of convening the meeting of equity shareholders of all the Applicant Companies, as the all the equity shareholders of Applicant Company-I, II and III have given their consent, by way of affidavits, to the scheme and have also waived the requirement of convening their meeting for considering and

approving the scheme under sections 230-232 of the Act. The list of equity shareholders of the Applicant Company-I, II and III as on 31.03.2023 duly certified by M/s. Tekriwal & Associates, Chartered Accountants along with their consent affidavits are attached as Annexure-B4, Annexure-C4 and Annexure-D4 respectively of the joint application.

(viii) The Applicant Companies, in the joint application, have also prayed to dispense with the requirement of convening the meeting of preference shareholders of Applicant Company-II, as the said preference shareholders has given its consent, by way of affidavits, to the scheme and have also waived the requirement of convening their meeting for considering and approving the scheme under sections 230-232 of the Act. The list of preference shareholders of the Applicant Company-II as on 31.03.2023 duly certified by M/s.Tekriwal & Associates, Chartered Accountants along with its consent affidavits are attached as Annexure-C5 of the joint application.

(ix) The Applicant Companies, in the joint application, have submitted that there are no secured creditors as on 31.03.2023 of Applicant Company-I & III, therefore, the requirement of convening their meeting does not arise. The certificate of M/s.Tekriwal & Associates, Chartered Accountants certifying that there are no secured creditors as on 31.03.2023 of Applicant Company-I & III are attached as Annexure-B5 and Annexure-D5 of the joint application.

(x) The Applicant Companies, in the joint application, had submitted that Applicant Company-II has one secured creditor having an outstanding debt of Rs.Two Hundred Thirty Crores as on 31.03.2023. The list of secured creditor of the Applicant Company-II as on 31.03.2023 duly certified by M/s.Tekriwal & Associates, Chartered Accountants are attached as Annexure- C6 of the joint application. The consent of the said secured creditor was not obtained. Subsequently, the applicant companies vide diary no. 02111/01 dated 19/09/2023 filed joint additional affidavit, in which they submitted that during the pendency of the present application, the secured creditor of Applicant Company-II have agreed to provide their respective consents, by way of affidavits, and sought for dispensation of requirement of convening and holding of meetings of the secured creditor of Applicant Company-II. The consent of affidavits of Applicant Company-II have been attached to the Annexure D of the additional affidavit.

(xi) The Applicant Companies, in the joint application, have prayed to dispense with the requirement of convening the meeting of unsecured creditors of Applicant Company-I, II and III, as unsecured creditors constituting 99.89%, 91.87% and 97.99% debt of the total due to the unsecured creditors have given their consent, by way of affidavits, to the scheme and have also waived the requirement of convening their meeting for considering and approving the scheme under sections 230-232 of the Act. The list of unsecured creditors of the Applicant Company-I, II and III as on 31.03.2023 duly certified by M/s.Tekriwal & Associates, Chartered Accountants along with their consent affidavits are

attached as Annexure-B6, Annexure-C7 and Annexure-D6 respectively of the joint application.

(xii) The Applicant Companies, in the joint application, have also prayed to dispense with the requirement of convening the meeting of 8% compulsorily convertible debenture holder of Applicant Company-III, as the said sole debenture holder has given its consent, by way of affidavits, to the scheme and have also waived the requirement of convening their meeting for considering and approving the Scheme under sections 230-232 of the Act. The list of 8% compulsorily convertible debenture holders of Applicant Company-III as on 31.03.2023 duly certified by M/s.Tekriwal & Associates, Chartered Accountants along with its consent affidavits are attached as Annexure-D7 of the joint application

(xiii) The Applicant Companies, in the joint application, had submitted that Applicant Company-III has six 12.84% non-convertible debenture holders as on 31.03.2023 and the list of said debenture holders as on 31.03.2023 duly certified by M/s.Tekriwal & Associates, Chartered Accountants have been attached as Annexure-D8 of the joint application. The consent of the said secured creditor was not obtained. Subsequently, the applicant companies vide diary no. 02111/01 dated 19/09/2023 filed joint additional affidavit, in which they submitted that during the pendency of the present application, the said debenture holders of Applicant Company-III have agreed to provide their respective consents by way of affidavits and sought for dispensation of requirement of convening and holding of their meetings. The consent of affidavits of said debenture holders of Applicant Company-II have been attached to the Annexure E of the additional joint affidavit.

(xiv) The Applicant Companies have submitted certificates of Chartered Accountants stating that the accounting treatment specified in the Scheme is in compliance with the applicable Indian Accounting Standards as prescribed by the Central Government in accordance with the provisions of Section 133 of the Companies Act, 2013 read with rules made thereunder. The said certificates are annexed as Annexure-B7 and Annexure-C8 for the Applicant Company I and II respectively of the joint application. The certificate of statutory auditors of Applicant Company-III certifying that upon scheme becoming effective, all assets, liabilities and reserves of Applicant Company-III, after transfer of demerged undertaking into Applicant Company-II, shall stands transferred to Applicant Company-I and Applicant Company-III shall stand dissolved without being wound up, therefore requirement of compliance with accounting standards prescribed by central government under section 133 of the Act does not arise, is annexed as Annexure-D9 of the joint application.

(xv) The scheme does not provide for any corporate debt restructuring and there is no reduction of share capital involved in the present scheme of arrangement. Further, the scheme does not involve any consideration and accordingly, no valuation report is required. The joint affidavit in this regard have been attached

as Annexure-E of the joint application.

(xvi) The Applicant Companies are unlisted companies and are not governed by any other sectoral regulator(s) including Competition Commission of India. The joint affidavit in this regard have been attached as Annexure-F of the joint application.

(xvii) Joint Affidavit by the Applicant Companies confirming the status of pending litigation(s), if any, including but not limited to appeal(s) or case(s) or petition(s) by or against the Petitioner Companies under any forum, court, tribunal or any other judicial or quasi-judicial bodies under any statute have been attached as Annexure-G of the joint application.

(xviii) Upon coming into effect of the Scheme, all staff, workmen and employees, who are in employment of Demerged Undertaking of the Demerged Company, shall become staff, workmen and employees of Resulting Company with effect from Appointed Date and all staff, workmen and employees, who are in employment of Transferor Company pertaining to its Remaining Business (as defined in the Scheme) on Effective Date shall become staff, workmen and employees of Transferee Company with effect from Appointed Date. Their employment shall be deemed to have been continuous and not been interrupted by reasons of the said transfer; and terms and conditions of their employment after such transfer shall not in any way be less favourable to them than those applicable to them immediately preceding the said transfer, in accordance of Part-II of the Scheme;

(xix) The appointed date of the Scheme is 01.04.2023 and effective date shall be the last of the dates, on which all the conditions and matters referred to in clause 37 of Part IV of the scheme have been fulfilled or waived in accordance with the scheme and applicable laws.

(xx) Upon the Scheme coming into effect and with effect from the Appointing Date, authorized share capital of the Demerged Company to the tune of Rs.999,90,00,000/- (Rupees Nine Hundred ninety nine crore and ninety lakhs only) comprising of 99,99,00,000/- (Ninety Nine Crores and Ninety Nine Lakhs) equity shares of Rs.10/- (Rupees Ten only) each will get transferred to the Resulting Company and accordingly the authorized share capital of the Resulting Company shall stand increased by Rs.999,90,00,000/- (Rupees Nine Hundred ninety nine crore and ninety lakhs only) on the effective date and hence Clause V of the Memorandum of Association of the Resulting Company shall stand suitably modified. The Resulting company shall not be required to pay any other additional fees (including fee payable to RoC except as may be required as per the applicable provisions of the Act) or stamp duty or any other charges under any Applicable Law(s) for time being in force.

(xxi) Upon the scheme coming into effect and with effect from the appointed date, authorized share capital of the Transferor Company to the tune of Rs.10,00,000/- (Rupees Ten Lakhs only) comprising of 1,00,000 (One Lakh)

equity shares of Rs.10 (Rupees Ten only) each will get transferred to the Transferee Company and accordingly authorized equity share capital of the Transferee Company shall stand increased by Rs.10,00,000/-(Rupees Ten Lakhs only) on the effective date and hence Clause V of the Memorandum of Association of the Transferee Company shall stand suitably modified. Transferee company shall not be required to pay any other additional fees (including fee payable to RoC except as may be required as per the application provisions of the Act) or stamp duty or any other charges under any Applicable Law(s) for time being in force.

(xxii) No investigation or proceedings under the Companies Act, 2013 are pending in relation to any of the Applicant Companies.

4. The Applicant Companies in their application and Joint additional affidavit have furnished the details of the equity shareholders, preference shareholders, debenture holders, secured creditors and unsecured creditors along with consent on affidavits, which is summarised follow:

Particulars

Transferor Company/ Applicant Company-I (M/s MKU Holdings Private Limited)

Resulting Company Applicant Company-II/ (M/s Acme Cleantech Solutions Private

Limited)

Demerged Company/ Transferor Company/ Applicant Company-III (M/s Acme Solar Holdings Private

Limited)

Total

Consent

Total

Consent

Total

Consent

Equity Shareholders

2 Shareholders

holding 6,10,150 equity shares of Rs.10 each.

100% (in

value)

5 Shareholders

holding 6,992 shares of Rs.50,000/- each

100% (in

value)

2 shareholders holding 10,44,41,582 shares

of Rs.10/- each.

100% (in

value)

Preference Shareholders

Nil

N.A.

1 shareholder

holding 20,00,000 shares of Rs.10/-

each.

100%

Nil

N.A.

8%

Compulsorily Convertible

Debentures

Nil

N.A.

Nil

N.A.

1 debenture holder

All (representing 100% debt of

total debt due)

12.84% Non-

Convertible

Debenture Holders

Nil

N.A.

Nil

N.A.

6 debenture holders

100% debt of total debt due

Secured Creditors

NIL

N.A.

1 creditor having outstanding debt of Rs.230,00,00,000/-

100%

(consent submitted vide additional joint
affidavit)

NIL

N.A.

Unsecured Creditors

4 Creditors having outstanding debt of Rs.68,79,49,306/-

1

representing 99.89% debt of total debt
due

2346 creditors having outstanding debt of Rs.807,62,09,644/-

39

representing 91.87% debt of total debt
due.

485 creditors having outstanding debt of Rs.17,64,82,58,149/-

30

representing 97.99% debt of total debt
due.

5. The Applicant Companies, vide order dated 20.09.2023, were directed to file additional documents to support with the application. The joint affidavit was filed,

vide diary no. 2111/2 dated 12.10.2023, in which it has been submitted in that they are not directly involved in any power generation business, therefore, in terms of applicable provisions of Electricity Act, none of the Applicant Companies were/ are required to take license from CERC/SERC and accordingly, the requirement of obtaining approval from sectoral regulator does not arise in the instant case. Since none of the applicant companies had entered into any PPA with power sellers, therefore, the requirement of obtaining the consent of the parties with whom PPA has been executed does not arise in the instant case.

ANALYSIS AND FINDING

6. It is noted from the certificate of Chartered Accountants certifying the list of unsecured creditors of Applicant Companies that the unsecured creditors include all the unsecured loan and advances, trade creditors, sundry creditors and other current liabilities of the company, as the case may be, except the amount of statutory dues and provision for expenses. On reconciliation of the unsecured creditors with the figures in the financial statements for the year ended 31.03.2023, some discrepancies have been noticed. For Applicant Company-I, the unsecured creditors based on the financial statements for the year ended 31.03.2023 works out to Rs.22,66,480/- as against Rs.68,79,49,306/- as per list of unsecured creditors as on 31.03.2023. For Applicant Company-II and III, the unsecured creditors as per the list of unsecured creditors as on 31.03.2023 shows lesser unsecured creditors than that worked out based on their financial statements for the year ended 31.03.2023.

7. It is noted from the financial statements for the year ended 31.03.2023 of Applicant Company-II that the provision for warranty amounting to Rs.72.28 crore have been made in the accounts.

8. It is noted from the Auditors, Report on the financial statements for the year ended 31.03.2023 of Applicant Companies that they have outstanding guarantees as shown below:

Applicant Company

Rs.Crores

Transferee Company/ Applicant Company-I

410.64

Resulting Company/ Applicant Company-II

2038.35

Demerged Company/Transferor Company/Applicant Company-III

14648.90

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

I. The meetings of the equity shareholders of all the Applicant Companies are dispensed with keeping in view the shareholding and ownership pattern and the fact that the consent to the proposed scheme, by way of affidavits, has been furnished by all the equity shareholder of the respective companies. The requirement of issue and publication of notices with for the same are also being dispensed;

II. The meeting of the preference shareholder of Applicant Company-II is dispensed with keeping in view the shareholding and ownership pattern and the fact that the there is only one preference shareholder, who has furnished consent to the proposed scheme, by way of affidavits. The requirement of issue and publication of notice with for the same is also being dispensed. Since there are no preference shares in Applicant Company I & III as per the details available in the joint application, there is no scope for any meeting;

III. The meeting of the secured creditors of Applicant Company-II is dispensed with keeping in view the fact that the there is only one secured creditor, who has furnished consent to the proposed scheme, by way of affidavits. The requirement of issue and publication of notice with for the same is also being dispensed. Since there are no secured creditors in Applicant Company I &

III as per the details available in the joint application, there is no scope for any meeting;

IV. The meeting of the 8% compulsorily convertible debenture holder of Applicant Company-III is dispensed with keeping in view the fact that the that the consent to the proposed scheme, by way of affidavits, has been furnished by the sole debenture holder of Applicant Company-III. The requirement of issue and publication of notices with for the same are also being dispensed. Since there are no compulsorily convertible debentures in Applicant Company I & II as per the details available in the joint application, there is no scope for any meeting;

V. The meeting of the 12.84% non-convertible debenture holder of Applicant Company-III is dispensed with keeping in view the fact that the that the consent to the proposed scheme, by way of affidavits, has been furnished by all the debenture holders of Applicant Company-III. The requirement of issue and publication of notices with for the same are also being dispensed. Since there are no 12.84% non-convertible debentures in Applicant Company I & II as per the details available in the joint application, there is no scope for any meeting;

VI. It has been submitted in the joint application that Applicant Company-I has 4 (Four) Unsecured Creditors and the consent of 1 (one) Unsecured Creditor representing 99.89% debt of total debt due to the unsecured creditors has been received by way of affidavit; Applicant Company-II has 2346 Unsecured creditors and consent of 39 representing 91.87% debt of total debt due to the Unsecured creditors has been received by way of affidavit and there are 485 Unsecured creditors of Applicant Company-III and consent of 30 representing 97.99% debt of total debt due to the Unsecured creditors has been received by way of

affidavit. keeping in view of the above and the observations in para 6 of this order, the convening of meeting of the unsecured creditors of Applicant Companies are dispensed with subject to strict compliance of the conditions laid down herein:

a. All the Applicant Companies shall file their respective complete list of creditors duly certified by the Statutory Auditor of the respective Applicant Companies on the date of passing of this Order, with the Registry within a fortnight from the date of Order.

b. All the Applicant Companies are required to serve the notices through speed post/courier/email upon their current creditors having outstanding debt amounting to not less than one percent of total outstanding debt of the company as per the complete list of creditors as on the date of passing of this Order in the same manner, as the notices shall be served to various authorities as per Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to waiver of the meetings and with a direction that they may submit their representations, if any, to the Tribunal and a copy of the same shall be simultaneously served on the concerned applicant company. If no response is received from such creditors within 30 days of the date of receipt of the notice it shall be presumed that such creditors have no objection to the proposed Scheme.

c. The notices to be served under Section 230 (5) of the Companies Act, 2013 as aforesaid shall contain all disclosures as mentioned in Rule 6(3) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 irrespective of the fact that meetings have been dispensed with.

d. All the Applicant Companies shall furnish a copy of the Scheme free of charge within 1 day of any requisition for the same made by every creditor as mentioned above or member of the concerned Applicant Companies.

e. All the Applicant Companies to serve the notice upon the (a) Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) concerned Registrar of Companies; (c) concerned Income Tax Department; (d) concerned Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to waiver of the meetings. If no response is received by the Tribunal from the above authorities within 30 days of the date of receipt of the notice it will be presumed that such authorities have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

f. All the Applicant Companies shall file an affidavit in compliance of all the conditions laid down herein along with original proof of service to all the authorities and creditors.

VII. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of period of 30 days as mentioned in Section 230(5) of the Companies Act, 2013 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) concerned Official Liquidator; and (d) Income Tax Authorities, within whose jurisdiction the respective Applicant Companies are assessed by disclosing the PAN of both the Applicant Companies in the title of the Second Motion Petition.

10. A copy of this order be supplied to the learned counsel for the Applicant Companies.