(2021) 02 NCLT CK 0105

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 1102 Of 2020

M/s. Pegasys Systems Private Limited APPELLANT

Vs

M/s. Pegasys Machines Private Limited RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 6
Companies Act, 2013 — Section 230, 231, 232

Citation : (2021) 02 NCLT CK 0105

Hon'ble Judges : H.V. Subba Rao, J;Shyam Babu Gautam, Member (Technical)

Bench : Division Bench

Advocate : Rajvirendra Singh Rajpurohit, Kush Gupta

Final Decision : Disposed Of

Judgement

1. The sanction of this Tribunal is sought under Section 230-232 of the Companies Act for the Composite Scheme of Arrangement by way of Demerger (hereinafter as "Scheme) between M/s. M/s. Pegasys Systems Private Limited (hereinafter as the "Demerged Company") and M/s. Pegasys Machines Private Limited and their respective shareholders.

2. The respective Board of Directors of the Applicant Companies passed a Resolution on 28.09.2020, respectively, and approved the proposed Scheme.

3. The Demerged Company is incorporated under provisions of the Companies Act, 1956 on 03.02.2000 and having the Registered office at J - 114, Ansa Industrial Estate, Saki Vihar Road, Andheri (E) Mumbai - 400072. The Demerged Company is inter alia engaged in the business of manufacturing of Plants and Machineries.

4. The Resulting Company is incorporated under the provisions of the Companies Act, 2013 on 04.06.2020 and having Registered office at 1001, Versova Dhanlaxmi Chs Ltd, Svp Nagar Nr Versova Tel Exchange, Andheri West Mumbai MH 400053. The Resulting Company inter alia engaged in the business of offering

and manufacturing several types of machinery & Services like Shaft Straightening Machines, Gear Roll Testers, PLC/PC Based automation systems, special purpose machines, Machine design and Technical Consultancy.

5. This Scheme inter-alia provides for the transfer and vesting of whole business undertaking of the Demerged Company to the Resulting Company.

6. The respective Board of Directors of the Applicant Companies anticipate the following Rationale pursuant to the Scheme:

a) Segregation of business of the Demerged Undertaking of the Demerged Company into Resulting Company in a manner provided in this scheme resulting into enhanced strategic flexibility to build a viable platform solely focusing on each of the businesses;

b) Empower each company to pursue independent growth strategies and unlock significant value for its shareholders;

c) Allow in creating the ability to achieve valuation based on respective risk-return profile and cash flow, attracting right investors and thus enhancing flexibility while accessing capital;

d) Provide scope of separate companies for independent collaboration and expansion including expanding potential clients/customer market for each business;

e) Resulting Company will acquire the Demerged Undertaking ongoing concern basis from Demerged Company. Demerged Company will focus on other commercial activities / businesses including general and engineering consulting business, property and other asset management. The demerger will ensure focused management attention and resources and skill set allocation;

f) The nature of technology, risk, competition and capital intensity involved in each of the undertakings of the Demerged Company is distinct from each other. Consequently, each undertaking of the Demerged Company is capable of addressing independent business opportunities, deploying different technologies and attracting different set of investors, strategic partners, lenders and other stakeholders, Hence as a part of overall business reorganization plan, it is considered desirable and expedient to reorganize and reconstruct the Demerged Company by demerging the Demerged Undertaking to the Resulting Company in the manner and on the terms and conditions contained in the Scheme.

g) Upon the scheme becoming operative, the investment in shares held in Resulting Company as appearing in the Books of Accounts of Demerged Company shall stand cancelled and extinguished and result in capital reduction in the Resulting Company. This would enable the shareholders of the Demerged Company to hold shares in the Resulting Company in the same proportion in which they currently hold shares in the Demerged Company.

h) The Purpose of the Scheme is to give effect to the bonafide rationale of the

Scheme which includes but not limited to long term vision of the Demerged Company with respect to independent management and growth of both the business undertakings, value addition to various stake holders (including government authorities) and contribution to the development of social-economic parameters based on commercial substance of the Scheme.

7. The Learned Counsel for the Applicant Companies states and submits that all the Equity Shareholders of the Demerged Company and the Resulting Company have given their individual consent affidavits to the proposed Scheme, therefore it is prayed that the meeting of the Equity Shareholders may be dispensed with.

8. It is further submitted that the Demerged Company does not have any Secured Creditor and therefore the question of holding meeting with the Secured Creditor does not arise. As far as the Un-secured Creditors of the Demerged Company are concerned it is further submitted that the proposed Scheme does not seek any arrangement with such Creditors and hence, it is proposed that the Demerged Company will issue individual notices to each of its Unsecured Creditor and will seek representation, if any, from such Unsecured Creditor within 30 days from the receipt of such notice by such Creditor.

9. It is further submitted that the Resulting Company does not have any Secured and Unsecured Creditor and therefore the question of holding meeting with the Secured and Unsecured Creditor does not arise.

10. That, in light of the individual consent Affidavits of the Equity Shareholders of the Demerged Company the requirement of the meeting of the Equity Shareholder of the Demerged Company is hereby dispensed-with. That, in light of the individual consent Affidavits of the Equity Shareholders of the Resulting Company the requirement of the meeting of the Equity Shareholder of the Resulting Company is hereby dispensed-with.

11. That, as submitted by the Learned Counsel hereinabove, since, there are no Secured Creditor in the Demerged Company the question of holding meeting or sending notice does not arise and the said requirement is hereby dispensed-with.

12. That, as submitted by the Learned Counsel hereinabove, the Demerged Company is directed to issue individual notices to its Un- secured Creditor at the at their respective registered offices or at their last known addresses or by e-mail, as enlisted in the Application, with a direction that such Creditor shall submit its representation, if any, over the proposed Scheme within 30 days from receipt of such notice, before this Bench with an advance copy to the Demerged Company.

13. That, as submitted by the Learned Counsel hereinabove, the Resulting Company does not have any secured and Unsecured Creditor so question of issuing of notice does not arise.

14. That, the Demerged Company having PAN: AACCP5757C is further directed to serve notices along with copy of the Scheme, the explanatory statement and

the disclosures mentioned under Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 upon: (i) Dy. Commissioner of Income Tax, , Mumbai, where the Demerged Company's Income Tax assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai (iv) Commissioner of Goods and Services Tax, Maharashtra with a direction that they shall submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.

15. The Demerged Company is also directed to serve notice along with copy of Scheme upon Official Liquidator, Mumbai with a direction that the Official Liquidator shall submit its representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Demerged Company, failing which, it shall be presumed that the Authority have no representations to make on the proposal

16. That, the Resulting Company having PAN: AALCP1641A is further directed to serve notices along with copy of the Scheme, the explanatory statement and the disclosures mentioned under Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 upon: (i) Dy. Commissioner of Income Tax, Mumbai, where the Resulting Company's Income Tax assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai (iv) Commissioner of Goods and Services Tax, Maharashtra with a direction that they shall submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.

17. The Applicant Companies are directed to publish a joint Public Notice intimating about the proposed Scheme in two newspapers i.e. "Free Press" in English and "Navshakti" in Marathi, having wide circulation in the State in which the Registered Offices of the Applicant Companies are located with a direction to the concerned parties to represent with objections, if any, within 30 days from the date of the notice before this Tribunal with an advance copy of the same to the concerned Applicant Company.

18. That the Applicant Companies to file Affidavit of service along with Compliance Report with the Registry proving dispatch of notices to the regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

19. The Applicant Companies to file an affidavit of service along with compliance report proving dispatch of the notices upon the authorities, unsecured creditors and publication, within ten (10) days of the issue of such notices and to report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

20. Accordingly, this CA (CAA) No. 1102 of 2020 is hereby allowed and disposed of.