(2020) 12 NCLT CK 0039

In the National Company Law Appellate Tribunal

Case No : Company Application No. 792/ND Of 2020 In Company Application No. (CAA)-68(ND) Of 2020

PJS Energy Private Limited APPELLANT

Vs

AJ Energy Private Limited RESPONDENT

Date of Decision : 24-12-2020

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 12 NCLT CK 0039

Hon'ble Judges : Dr. Deepti Mukesh, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Ashutosh Gupta, Gaurav Rana

Judgement

1. This is an application jointly filed by the applicant companies herein, PJS Energy Private Limited, Adidev Coal Private Limited, Goodbridge

Construction Private Limited, Iskcon Industrial Consultancy Private Limited, S K Y Gases Private Limited, Iskcon Finance Company Private Limited,

AJ Energy Private Limited jointly under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read

with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation

(hereinafter referred to as the â??SCHEMEâ??) proposed between the applicants.

2. An affidavit in support of the above application sworn by Mr. Sanjeev Kumar on behalf of all six Transferor Companies and Transferee Company

being the authorized representatives of the applicant companies, who have been authorized vide board resolution dated 20.01.2020for all the Applicant

companies. It is also represented that the registered office of all the applicant companies are under the domain of Registrar of Companies, NCT of

New Delhi & Haryana and within the territorial jurisdiction of this Tribunal.

3. The Transferor Company No. 1 is a private limited company incorporated under the provisions of Companies Act, 1956 vide CIN

U40108DL2010PTC201674 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of â??PJS Energy Private Limitedâ?.

The registered office of the company is situated at401 Mahavir Ji Complex LSC Rishab Vihar Delhi 110092. The Authorized Share Capital of the

Transferor Company is Rs. 1,00,000/- and the Paid-up Share Capital is Rs.1,00,000/-

4. The Transferor Company No.2 is a private limited company, incorporated under the provisions of Companies Act, 1956 vide CIN

U40104DL2010PTC201676with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??Adidev Coal Private Limitedâ?. The

registered office of the company is situated at 102, 1st Floor, Ajnara Tower Lsc Savita Vihar Delhi 110092. The Authorized Share Capital of the

Transferor Company No. 2 is Rs. 1,00,000/- and the Paid-Up Share Capital is Rs. 1,00,000/-

5. The Transferor Company No.3 is a private limited company, incorporated under the provisions of Companies Act, 1956 vide CIN

U45200DL2010PTCPTC195348with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??Goodbridge Construction

Private Limitedâ?. The registered office of the company is situated at Plot No. 3, Mahaveer Complex Rishab Jain Vihar Delhi 110092. The

Authorized Share Capital of the Transferor Company No. 3 is Rs. 25,00,000/- and the Paid-Up Share Capital is Rs. 1,00,000/-

6. The Transferor Company No.4 is a private limited company, incorporated under the provisions of Companies Act, 1956 vide CIN

U74140DL2009PTC195488 with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??Iskcon Industrial Consultancy

Private Limitedâ?. The registered office of the company is situated at Plot No. 3, Mahaveerji Complex Lsc Rishab Vihar Delhi 110092. The

Authorized Share Capital of the Transferor Company No. 4 is Rs. 5,00,000/- and the Paid-Up Share Capital is Rs. 1,00,000/-

7. The Transferor Company No.5 is a private limited company, incorporated under the provisions of Companies Act, 1956 vide CIN

U40200DL2012PTC233533 with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??S K Y Gases Private Limitedâ?.

The registered office of the company is situated at401, Mahaveerji Complex Lsc, Rishabh Vihar Delhi 110092. The Authorized Share Capital of the

Transferor Company No. 5 is Rs. 1,00,000/- and the Paid-Up Share Capital is Rs. 1,02,000/-

8. The Transferor Company No.6 is a private limited company, incorporated under the provisions of Companies Act, 1956 vide CIN

U65929DL2006PTCPTC148123with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??Iskcon Finance Company

Private Limitedâ?. The registered office of the company is situated at 401 Mahavir Ji Complex Lsc Rishab Vihar Delhi 110092. The Authorized Share

Capital of the Transferor Company No. 6 is Rs. 20,00,000/- and the Paid-Up Share Capital is Rs. 1,00,000/-.

9. The Transferee Company is a private limited company, incorporated under the provisions of Companies Act, 1956 vide CIN

U40107DL2010PTCPTC198189with Registrar of Companies, NCT of Delhi & Haryana in the name and style of â??AJ Energy Private Limitedâ?.

The registered office of the company is situated at Plot No. 3, Mahaveerji Complex Loc Rishab Vihar Delhi 110092. The Authorized Share Capital of

the Transferor Company No. 7 is Rs. 5,00,000/- and the Paid-Up Share Capital is Rs. 1,00,000/-

10. The Transferor Companies as well as the Transferee Company have filed their respective Memoranda and Articles of Association inter alia

delineating their object clauses, as well as their last Audited Annual Accounts for the year ended 31.03.2019.

11. The Board of Directors of all six Applicant companies i.e. Transferor Companies and Transferee Company, have unanimously approved the

proposed Scheme of Amalgamation as contemplated above. Copies of resolutions dated 20.01.2020 passed in the said board meetings have been

placed on record.

12. It is stated that the Transferor Company No. 1 is having four Shareholders, Certificate from Chartered Accountants certifying list of shareholders

is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented that the Company has NIL Secured Creditors and thirty Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors is annexed. In relation to the shareholders, it seeks dispensing with holding/ convening of the meetings as consents are placed on record. Since there are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise. In relation to the Unsecured Creditors, the Company seeks directions for convening and holding the meetings for the purpose of obtaining their approval to the Scheme, since no consents are obtained from unsecured creditors.

13. It is stated that the Transferor Company No. 2 is having two Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented that the Company has NIL Secured Creditors and fifteen Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors is annexed. In relation to the shareholders, it seeks dispensing with holding/ convening of the meetings as consents are placed on record. Since there are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise. In relation to the Unsecured Creditors, the Company seeks directions for convening and holding the meetings for the purpose of obtaining their approval to the Scheme, since no consents are obtained from unsecured creditors.

14. It is stated that the Transferor Company No. 3 is having two Shareholders, Certificate from Chartered Accountants certifying list of shareholders is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented that the Company has NIL Secured Creditors and five Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors is annexed. In relation to the shareholders, it seeks dispensing with holding/ convening of the meetings as consents are placed on record. Since there are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise. In relation to the Unsecured Creditors, all of them have given their respective consents by way of affidavits which are annexed to the application and thus, seeks dispensing with holding/convening of the meetings as consents are placed on record.

15. It is stated that the Transferor Company No. 4 is having four Shareholders, Certificate from Chartered Accountants certifying list of shareholders

is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented

that the Company has NIL Secured Creditors and twenty-seven Unsecured Creditors, Certificate from Chartered Accountants certifying list of

creditors is annexed. In relation to the shareholders, it seeks dispensing with holding/convening of the meetings as consents are placed on record.

Since there are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise. In relation to the Unsecured

Creditors, the Company seeks directions for convening and holding the meetings for the purpose of obtaining their approval to the Scheme, since no

consents are obtained from unsecured creditors.

16. It is stated that the Transferor Company No. 5 is having three Shareholders, Certificate from Chartered Accountants certifying list of shareholders

is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented

that the Company has NIL Secured Creditors and NIL Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors is

annexed. In relation to the shareholders, it seeks dispensing with holding/ convening of the meetings as consents are placed on record. Since there are

no Secured Creditors and Unsecured Creditors, therefore the necessity of convening and holding a meeting does not arise.

17. It is stated that the Transferor Company No. 6 is having five Shareholders, Certificate from Chartered Accountants certifying list of shareholders

is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented

that the Company has NIL Secured Creditors and nine Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors is

annexed. In relation to the shareholders, it seeks dispensing with holding/ convening of the meetings as consents are placed on record. Since there are

no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise. In relation to the Unsecured Creditors, the Company

seeks directions for convening and holding the meetings for the purpose of obtaining their approval to the Scheme, since no consents are obtained from unsecured creditors.

18. It is stated that the Transferor Company No. 7 is having four Shareholders, Certificate from Chartered Accountants certifying list of shareholders

is annexed and both of them have given their respective consents by way of affidavits which are annexed to the application. It is further represented

that the Company has NIL Secured Creditors and forty-four Unsecured Creditors, Certificate from Chartered Accountants certifying list of creditors

is annexed. In relation to the shareholders, it seeks dispensing with holding/ convening of the meetings as consents are placed on record. Since there

are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise. In relation to the Unsecured Creditors, the

Company seeks directions for convening and holding the meetings for the purpose of obtaining their approval to the Scheme, since no consents are

obtained from unsecured creditors.

19. The appointed date as specified in the Scheme is 01st April, 2019 subject to the directions of this Tribunal.

20. Taking into consideration the submissions and the documents filed therewith, we propose to issue the following directions with respect to calling,

convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same as well as issue of notices

including by way of paper publication as follows: -

A) In relation to the Transferor Company No 1:

(i) With respect to Equity shareholders:

In view of consent affidavits, from all the equity shareholders having 100% voting share of the company, convening the meeting of

shareholders/members is dispensed with.

(ii) With respect to Secured Creditors:

There are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise.

(iii) With respect to Unsecured Creditors:

It is represented by the Transferor Company No. 1 that there are 30 unsecured creditors in the Company. Meeting of the unsecured Creditors be

convened on 13.02.2021 at 10:00 A.M. through video conferencing/ online instead physical/offline via CISCO Webex. The quorum of the meeting shall be 10 in numbers.

B) In relation to the Transferor Company No 2:

(i) With respect to Equity shareholders:

In view of consent affidavits, from both the equity shareholders having 100% voting share of the company, convening the meeting of

shareholders/members is dispensed with.

(ii) With respect to Secured Creditors:

There are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise.

(iii) With respect to Unsecured Creditors:

It is represented by the Transferor Company No. 2 that there are 15 unsecured creditors in the Company. Meeting of the unsecured Creditors be

convened on 13.02.2021 at 11:30 A.M. through video conferencing/ online instead physical/offline via CISCO Webex. The quorum of the meeting

shall be 4 in numbers.

C) In relation to the Transferor Company No 3:

(i) With respect to Equity shareholders:

In view of consent affidavits, from both the equity shareholders having 100% voting share of the company, convening the meeting of

shareholders/members is dispensed with.

(ii) With respect to Secured Creditors:

There are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise.

iii) With respect to Unsecured Creditors:

In view of consent affidavits, from all the unsecured creditors having 100% voting share of the company, convening the meeting of unsecured

creditors is dispensed with.

D) In relation to the Transferor Company No 4:

i) With respect to Equity shareholders:

In view of consent affidavits, from all the equity shareholders having 100% voting share of the company, convening the meeting of

shareholders/members is dispensed with.

ii) With respect to Secured Creditors:

There are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise.

iii) With respect to Unsecured Creditors:

It is represented by the Transferor Company No. 4 that there are 27 unsecured creditors in the Company. Meeting of the unsecured Creditors be

convened on 13.02.2021 at 01:00 P.M. through video conferencing/ online instead physical/offline via CISCO Webex. The quorum of the meeting shall

be 9 in numbers.

E) In relation to the Transferor Company No 5:

i) With respect to Equity shareholders:

In view of consent affidavits, from all the equity shareholders having 100% voting share of the company, convening the meeting of

shareholders/members is dispensed with.

ii) With respect to Secured Creditors:

There are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise.

iii) With respect to Unsecured Creditors:

There are no Unsecured Creditors, therefore the necessity of convening and holding a meeting does not arise.

F) In relation to the Transferor Company No 6:

i) With respect to Equity shareholders:

In view of consent affidavits, from all the equity shareholders having 100% voting share of the company, convening the meeting of

shareholders/members is dispensed with.

ii) With respect to Secured Creditors:

There are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise.

iii) With respect to Unsecured Creditors:

It is represented by the Transferor Company No. 6 that there are 9 unsecured creditors in the Company. Meeting of the unsecured Creditors be

convened on 13.02.2021 at 02:30 P.M. through video conferencing/ online instead physical/offline via CISCO Webex. The quorum of the meeting shall be 3 in numbers.

G) In relation to the Transferee Company No 7:

i) With respect to Equity shareholders:

In view of consent affidavits, from all the equity shareholders having 100% voting share of the company, convening the meeting of

shareholders/members is dispensed with.

ii) With respect to Secured Creditors:

There are no Secured Creditors, therefore the necessity of convening and holding a meeting does not arise.

iii) With respect to Unsecured Creditors:

It is represented by the Transferee Company No. 7 that there are 44 unsecured creditors in the Company. Meeting of the unsecured Creditors be

convened on 13.02.2021 at 04:00 P.M. through video conferencing/ online instead physical/offline via CISCO Webex. The quorum of the meeting shall

be 15 in numbers.

21. The meetings of the unsecured creditors of all the applicant companies shall be convened as directed:

i. The chairperson appointed for all the meetings is Ms. Deepa Krishan, Former NCLT Member having email id deepakrishan@gmail.com and contact

no. 9818369200,

ii. The alternate Chairperson appointed for all the meetings is Mr. Ishwar Chandra Mohapatra, Advocate FCS, LLB having email id

lexforiconsulting@gmail.com and contact no.9818325183.

iii. The observer appointed for all the meetings is Mr. Harshit Pandey, Charted Accountant having Member id no. 553856, having email id:

harshitpandey1412@outlook.com and contact no. 9717384321.

iv. The consolidated fee for all the appointees above named in addition to meeting their incidental expense shall be as follows:

a) The chairperson, Ms. Deepa Krishan â?" Rs 1,50,000/-

b) The alternate chairperson, Mr. Ishwar Chandra Mohapatra - Rs.1,00,000/- and

c) The observer, Mr. Harshit Pandey -Rs. 75000/-

v. The chairperson(s) will file their reports within a week from the date of holding of the above said meetings.

vi. The notice of the above said meetings shall be sent by the Applicant companies through registered post or through courier or through email, 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 scheme of

amalgamation , copy of explanatory statement as required to be sent under the companies Act, 2013 , the prescribed from of proxy shall also be sent

along and in addition to the above and any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

vii. The Applicant Companies shall publish advertised in the newspapers namely, â??Business Standardâ? (English, Delhi edition) and â??Business

Standardâ?? (Hindi, Delhi edition) not less than 30 days before the aforesaid meetings.

viii. Voting shall be allowed on the proposed Scheme by voting in person, the chairperson shall be responsible to report the result of the meeting within

a period of 3 days of the conclusion of the hearing with details of voting on the proposal scheme.

22. In addition to the public notice, each of the Applicant(s) shall serve the notice of the application on the following Authorities namely, (a) Central

Government through Regional Director (Northern Region), Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhawan, CGO Complex,

New Delhi-110003 (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; at 4 floor, IFCI Tower, 61, Nehru Place,

New Delhi-110019, (c) the Income Tax Department through the Income Tax Cell at DCIT (High Court Cell), Lawyerâ??s Chamber, Block No. 1,

Room No. 428 & 429, Delhi High Court, New Delhi, along with full details of assessing officer and PAN numbers of all the applicant companies; (d)

Official Liquidator at 8 Floor, Khan Market, New Delhi-110001 and to such other Sectoral Regulatory Authorities who may govern the working of the

respective companies involved in the Scheme, so that timely and proper reply may be filed.

