
(2022) 02 NCLT CK 0084

In the National Company Law Tribunal

Case No : CA (CAA) No. 55/Chd/Hry/2021 (First Motion)

Sembcorp Green Infra Limited Vs

Date of Decision : 24-02-2022

Acts Referred:

Companies Act. 2013 — Section 133, 230, 230(2)(c), 230(3), 230(5), 230(7), 232, 232(3)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 8, 14

Citation : (2022) 02 NCLT CK 0084

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Atul V Sood

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint first motion Application filed by Applicant Companies namely; Sembcorp Green Infra Limited (Applicant Company 1/Transferor Company) and Green Infra Wind Energy Limited (Applicant Company 2/Transferee Company) under Section 230-232 of Companies Act. 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the sanctioning of Scheme of Amalgamation between the Applicant Companies. The said Scheme is also attached as Annexure A-1 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement for convening the meeting of the Equity Shareholders and Unsecured Creditors of both the Applicant Companies and of Preference Shareholders of Applicant Company 2. It is further prayed to convene the meeting of Secured Creditors of Applicant Company 2.

3. The Applicant Company 1/Transferor Company is presently engaged in the business of owning, operating, sourcing, acquiring, designing, developing,

engineering, constructing, maintaining, financing, investing, bidding, trading of green or clean technology infrastructure projects or related assets or products or activities like clean technology environment development. The Applicant Company

2 /Transferee Company is presently engaged in the business of of acquiring, selling or otherwise disposing of, importing, exporting, and trading, manufacturing, refining, treating, reducing, distilling, smelting, holding, bottling, transporting, using, experimenting with, prospecting for, mining, boring, extracting, marketing, distributing, exchanging, supplying, purchasing and generally dealing in any and all kind of petroleum, petroleum products including liquefied petroleum gas, oil, gas, fuels and other volatile substances, asphalt, bitumen, bituminous substances, carbon, carbon black, hydrocarbon and the products or the by-products or derivatives which may be derived, produced, prepared, developed, compounded, made or manufactured therefrom and substances obtained by mixing any of the foregoing.

4. It is submitted that the registered office of both the Applicant Companies are at 5th Floor, Tower C, Building No. 8, DLF Cybercity, Haryana Gurugram, which is situated in the State of Haryana, therefore, both applicant companies fall within the territorial jurisdiction of this Bench.

5. The benefits of the scheme is given below:-

- a. consolidation of entities;
- b. optimisation of the operations and operational costs of the Applicant Companies;
- c. ease of management;
- d. enhancement of asset base of the combined business to capitalise on future growth potential;
- e. pooling of resources, creating better synergies across the group, optimal utilisation of resources and greater economies of scale; and
- f. faster and effective decision making, better administration and cost reduction (including reduction in administrative and other common costs)

6. It is stated that the Board of Directors of the Transferor Company and Transferee Company in their respective meetings held on 29.11.2021 and 26.11.2021 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the Board Resolution of the Transferor Company and Transferee Company is at Annexure A-8 and A-9 of the application. The Applicant Company 1 and Applicant Company 2 have authorized Mr. Vipul Tuli, Mr. Appakudal Nithyanand, Mr. Eugene Cheng, Mr. Subrat Das, Ms. Goh Han Leng, Mr. Thoh Jing Li, Mr. Yogesh Lundia, Mr. Khoo Wei Khong, Mr. Juvenil Jani, Mr. Mahendra Gottipatti, Mr. Malay Rastogi, Mr. Pankaj Kapoor, Mr. Bhuvnesh Sah to do all acts and deeds and things in relation to the Scheme. The affidavit of Mr. Subrat Das, on behalf of the Applicant

Companies have been filed in support of contents of the application for seeking appropriate orders/directions.

7. The appointed date of the Scheme is 01.04.2021 as mentioned in the Clause 4 of Scheme of Amalgamation attached as Annexure A-1 of the application.

8. It is stated that the Transferor Company and Transferee Company have filed the audited financial statements as on 31.03.2021 at Annexure A-3 and A-6, respectively of the application. The Applicant Companies has also filed unaudited financial statements as on 30.09.2021 as Annexure A-4 and A-7 of the application.

9. It is submitted that there are no investigation or other legal proceedings pending against either of the Applicant Companies which have a material bearing effect on the aspect of sanction of the Scheme by this Hon'ble Tribunal. It is further submitted that the scheme does not provide for any corporate debt restructuring under Section 230(2)(c) of the 2013 Act of any of the applicant companies.

10. It is pleaded that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, the Applicant Company has filed the certificate dated 01.12.2021 issued by Statutory Auditors of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same is attached as Annexure A-22 and A-23 of the application.

11. It is further submitted by the counsel for applicant companies that as per Valuation Report dated 26.11.2021 submitted by CA Roshan Nilesh Vaishnav, Registered Valuer bearing registration No. IBBI/RV/06/2019/11653 (Annexure A-21 of the application) Share Swap Ratio is given below:-

"753 fully paid-up equity share of INR 10/- each of Green Infra Wind Assets Limited shall be issued and allotted for every 100 fully paid-up equity shares of INR 10/- each held in Sembcorp Green Infra Limited as consideration for the Proposed Merger."

12. It is contended by the learned counsel that the Scheme (Annexure A-1) also takes care of the interests of the staff/workers and employees of the Transferor Companies. By virtue of Clause 1.2 (h), it is stated that all the employees of the Transferor Company who are on its payroll shall become the employees of the Transferee Company, without any break or interruption in their services, on the same terms and conditions on which they are engaged as on the Effective Date.

13. It is further submitted that notification of the Scheme to the Competition Commission of India is exempted under Item 9 of Schedule I of the Competition Commission of India (Procedure in regard to the Transaction of Business relating to the Combination) Regulations, 2011 as the Applicant Company 1/Transferor Company hold more than 50% of the paid up equity share capital of the Applicant Company 2/ Transferee Company. The Applicant Companies have deposed by way of affidavit that notices are to be issued and sent only to

Regional Director, Northern Region, Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator (attached to Punjab and Haryana High Court). The aforesaid affidavits of Applicant Company 1 and 2 are attached as Annexure A-26 and A-27, respectively of the application.

14. The Applicant Companies have furnished the following documents:-

i. List of Secured and Unsecured Creditors of Applicant Company 1 duly certified by the Statutory Auditors (Annexure A-12 and A-13 of the application).

ii. List of Secured and Unsecured Creditors of Applicant Company 2 duly certified by the Statutory Auditors (Annexure A-18 and A-19 of the application).

iii. Certificates of Statutory Auditors to the effect that Accounting treatment proposed in the Scheme is in conformity with Section 133 of Companies Act, 2013 (Annexure A-22 and A-23 of the application).

iv. Proposed Share Exchange Ratio (Annexure A-21 of the application.)

v. Affidavit qua Sectoral Regulators of Applicant Companies (Annexure A-26 and A-27 of the application)

vi. Audited Financial Statement of Applicant Companies as on 31.03.2021 (Annexure A-3 and A-6 respectively of the application).

vii. Provisional Financial Statements as on 30.09.2021 (Annexure A-4 and A-7 of the application).

15. The Transferor Company i.e. Sembcorp Green Infra Limited CIN: U45400HR2008PLC068302 is a public limited company incorporated under the Companies Act, 1956 on April 3, 2008. The Certificate of Incorporation along with Memorandum and Articles of Association is attached as Annexure A-2 of the application. The details of the Share Capital Structure of the Transferor Company as mentioned in the application is given below:-

Particulars

Amount in Rupees

Authorised Capital

950,000,000 Equity shares of Rs.10/- each

Rs 9,500,000,000

50,000,000 Preference shares of Rs. 10/- each

Rs. 500,000,000

Issued, Subscribed and Paid-up Share Capital

349,210,001 Equity shares Rs. 10/- each

Rs 3,492,100,010

Total

Rs. 10,000,000,000

16. The Transferee Company i.e. Green Infra Wind Energy Limited CIN: U23200HR2005PLC078211 is a private limited company incorporated under the Companies Act, 1956 on June 6, 2005. The certificate of incorporation along with Memorandum and Articles of Association is attached as Annexure - A-5 of the application. The details of the Share Capital Structure of the Transferee Company as mentioned in the application is given below:-

Particulars

Amount in Rupees

Authorised Capital

2,100,000,000 Equity shares of Rs.10/- each

Rs. 21,000,000,000

4,000,000 Preference shares of Rs. 1000/-

Rs. 4,000,000,000

Issued, Subscribed and Paid-up Share Capital

1,616,072,450 Equity shares Rs. 10/- each

Rs.22,50,00,000

2,025,107 Preference shares of Rs. 1000/- each

Rs. 20,25,07,000

Total

Rs. 18,185,831,500

18. The Applicant Companies have furnished the details of the Shareholders. Secured Creditors and Unsecured Creditors as follow:

Company

Class of Shareholders

Class of Creditors

Equity Shareholders

Consent

Preference shareholders

Consent

Secured Creditors

Consent

Unsecured Creditor

Consent

Applicant Company 1/Transferor Company

7 (Seven) Equity Shareholders

100%

Nil

NA

Nil Secured Creditors

NA

Nil Unsecured Creditors

N. A.

Applicant Company 2/Transferee Company

7 (Seven) Equity Shareholders

100%

7 (Seven) Preference shareholders

100%

7 (Seven) Secured Creditor

Meeting To be Convened

12(Twelve) Unsecured Creditors

5

Unsecured Creditors Holding 99.51% in

value

19. It is further submitted that the list of Equity Shareholders of Transferor Company duly certified by the Statutory Auditors is attached as Annexure A-14 of application. As per the certificate dated 30.11.2021 issued by Statutory Auditors, there are 7 (Seven) Equity Shareholders of the Transferor Company and all the Equity Shareholders of the Transferor Company have given their consent by way of affidavit to the proposed scheme which are attached as Annexure A-15 of the application. The list of Secured and Unsecured Creditors of Transferor Company duly certified by the Statutory Auditors is attached as Annexure- A-12 and A-13 of the Application. As per the certificate dated 30.11.2021 issued by Statutory Auditors, there are Nil secured creditors and Nil

unsecured Creditors of the Transferor Company.

20. It is further submitted that the list of Equity Shareholders of Transferee Company duly certified by the Statutory Auditors is attached as Annexure A-14 of application. As per the certificate dated 30.11.2021 issued by Statutory Auditors, there are 7 (Seven) Equity Shareholders of the Transferee Company and all the Equity Shareholders of the Transferee Company have given their consent by way of affidavit to the proposed scheme which are attached as Annexure A-15 of the application. The List of Preference Shareholders of Transferee Company duly certified by the Statutory Auditors is attached as Annexure A-16 of application. As per the certificate dated 30.11.2021 issued by Statutory Auditors, there are 11 (Eleven) of Preference Shareholders of the Transferee Company. All the Preference Shareholders of the Transferee Company have given their consent by way of affidavit to the proposed scheme which are attached as Annexure A-17 of the application. The list of Secured and Unsecured Creditors of Transferee Company duly certified by the Statutory Auditors is attached as Annexure A-18 and A-19 of the application. As per the certificate dated 30.11.2021 issued by Statutory Auditors, there are 7 (Seven) Secured Creditors and 12 (Twelve) unsecured Creditors of the Transferee Company. The consent of 5 (five) Unsecured Creditors constituting 99.51% in value are attached as Annexure- A-20 of the application.

21. This Bench has decided the issue of dispensation of meeting of shareholders in the cases of :- CA (CAA) No.2/Chd/Hry/2021 Goibibo Group Private Limited & Ors. dated 23.12.2021; CA No 189/2021 & CA (CAA) No. 41/Chd/Pb/2021 G.N.A. Transmissions Pvt. Ltd. & Ors. Dated 23.12.2021; and CA (CAA) No. 35/Chd/Hry/2021 NAM Estates Private Limited dated 23.12.2021. In the aforementioned orders, after discussing the differing views of coordinate Benches, this Bench has followed the decisions of the Hon'ble NCLAT on this issue and has held that "depending on the facts and circumstances of each case, the NCLT has the powers to dispense with the meetings of shareholders and others by using judicial discretion".

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

I. In relation to Applicant Company 1/Transferor Company:

a. The meetings of the Equity Shareholders is dispensed with keeping in view the shareholding and ownership pattern of the company and the fact that the consent by way of affidavits has been received;

b. Since, there are NIL Secured Creditors and NIL Unsecured Creditors in the Applicant Company 1. Therefore, there is no scope for any meeting;

II. In relation to Applicant Company 2/Transferee Company:

a. The meetings of the Equity Shareholders is dispensed with keeping in view the shareholding and ownership pattern of the company and the fact that the consent by way of affidavits has been received;

b. The meetings of the Secured Creditors are to be convened as prayed for on 16.04.2022 at 10.30 AM through Video Conferencing with facility of remote e-voting, subject to notice of meeting being issued. The quorum of the meeting of the secured creditors shall be 3 in number or 40% in value of the unsecured creditors;

c. The meeting of the Unsecured Creditors of the Applicant Company No. 5 is dispensed with as it has 12 (Twelve) Unsecured Creditors and the consent of 5 (five) unsecured creditors holding 99.51% in value have been received by way of affidavit;

III. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.

IV. Justice Mr. S.D. Anand (Retd.), Address Flat No. A-9, Orbit Apartments,

VIP Road, Zirakpur, Mobile No.8968326699, email id: justicesdanand9@gmail.com, is appointed as the Chairperson for the meeting to be called under this order. An amount of ₹ 2,00,000/- (Rupees Two Lakhs Only) be paid for his services as the Chairperson.

V. Mr. Pankaj Khullar, Advocate, Address- SCO 34, 2nd Floor, Sector 31 D, Chandigarh-160031, Mobile No. 9780548899, e-mail id: pankaj.khullar999@gmail.com is appointed as the Alternate Chairperson for the meeting to be called under this order. An amount of ₹ 1,50,000/- (Rupees One Lakh Fifty Thousand Only) be paid for his services as the Alternate Chairperson.

VI. Mr. Vishawjeet Gupta, Company Secretary, Address: # 51, Adarsh Enclave, Dhakoli, Distt. Mohali, Mobile No. 9815284474, email id: vishawjeetgupta@gmail.com, is appointed as the Scrutinizer for the above meeting to be called under this order. An amount of ₹ 1,00,000/- (Rupees One Lakh Only) be paid for his services as the Scrutinizer.

VII. The fee of the Chairperson, Alternate Chairperson and Scrutinizer and other out of pocket expenses for them shall be borne jointly by the Applicant Company 1/Transferor Company and Applicant Company 2/ Transferee Company.

VIII. It is further directed that individual notices of the said meetings shall be sent by Applicant Company 2/Transferee Company through registered post or speed post or through courier or e-mail, 30 days in advance before the schedule date of meeting, indicating the day, date, the place and time as aforesaid, together with a copy of the Scheme, copy of explanatory statement with Valuation Report as discussed in paras 5 and 11 of this order required to be sent under the Companies Act, 2013 and the applicable Rules and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

IX. It is further directed that along with the notices, Applicant Company 2/Transferee Company shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members etc. along with effect of the arrangement on any material interests of the Directors of the Company or the debenture trustees, if any, as provided under sub-section (3) of Section 230 of the Act.

X. It is also directed that the provisional accounting statement of Applicant Company 2/Transferee Company as on 31.12.2021 or as on a subsequent date be also circulated for the aforesaid meeting in terms of Section 232(2)(e) of the Act.

XI. That the Applicant Company 2/Transferee Company shall publish advertisement with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and place and the time of meeting as aforesaid, to be published in "Financial Express" (English, Delhi NCR Edition) and "Jansatta" (Hindi, Delhi NCR Edition); It be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the Act. The Applicant Company 2/Transferee Company shall also publish the notice on its website, if any.

XII. It shall be the responsibility of the Applicant Company 2/Transferee Company to ensure that the notices are sent under the signature and supervision of the authorized representative of the company on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meeting.

XIII. Voting shall be allowed on the "Scheme" through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Company 2/Transferee Company under the Act and the Rules framed thereunder.

XIV. The Scrutinizer's report will contain his/her findings on the compliance to the directions given in Para VII to XIII above.

XV. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. He would be fully assisted by the authorized representative/Company Secretary of Applicant Company 2/Transferee Company and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

XVI. The Applicant Company 2/Transferee Company shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through

Regional Director (Northern Region), Ministry of Corporate Affairs, (ii) Registrar of Companies, (NCT of Delhi & Haryana) (iii) Official Liquidator attached to High Court of Punjab and Haryana (iv) Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Companies; and to such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any, stating that representation, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

XVII. The Applicant Company 2/Transferee Company shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any creditor entitled to attend the meeting as aforesaid.

XVIII. The authorized representative of Applicant Company 2/Transferee Company shall also furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.

XIX. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Company 2/Transferee Company

With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.