(2019) 08 NCLT CK 0095

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application No. (CAA)-38, 92(ND) Of 2018

SSA Infosystems Pvt. Ltd. APPELLANT

Vs

SSATECH Software Technologies Pvt. Ltd. RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Companies (Compromises, Arrangements And Arrangements) Rules, 2016 — Rule 15
Companies Act, 2013 — Section 133, 230, 230(7), 231, 232

Citation : (2019) 08 NCLT CK 0095

Hon'ble Judges : R. Varadharajan, J;H.C. Suri, Member (Technical)

Bench : Division Bench

Advocate : Vishal Yadav, Puneet Rai, Sonam Sharma

Final Decision : Disposed Of

Judgement

1. The present joint petition has been filed by the Petitioner Companies under section 230-232 and other applicable provisions of the Companies Act,

2013 (for brevity 'the Act') read with rule 15 of the Companies (Compromises, Arrangements and Arrangements) Rules, 2016 (for brevity 'the Rules')

for approval of the Scheme of Arrangement by way of Demerger (hereinafter referred to as the 'SCHEME') of North American Business Group

Undertaking (the ""Demerged Undertaking "") of SSA Infosystems Private Limited (Demerged Company) to SSATech Software Technologies Private

Limited (Resulting Company) and their respective Shareholders and Creditors. The said Scheme is annexed as Annexure - 1 to the petition.

2. From the records, it is seen that the First Motion seeking directions for dispensing with the requirement of convening the meeting of the Equity

Shareholders of the Petitioner Companies was filed before this Tribunal vide CA (CAA) No. 38 (ND) 2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the meeting of the Equity Shareholders of both

the companies was directed to be dispensed with vide order dated 29.05.2018. It was also represented that there were no secured creditors and

Unsecured Creditors of both the Petitioner Companies, therefore, the necessity of convening the meeting did not arise.

3. Under the circumstances, the Petitioner Companies filed their joint petition for sanction of the Scheme of Arrangement before this Tribunal,

subsequent to the order of dispensation/convening of the meeting in relation to both the Transferor Company and Transferee Company. Directions

were issued in the 2nd Motion Stage, vide order dated 26.07.2018 in relation to the notice to the Statutory / Regulatory Authorities, namely Central

Government through the office of the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Income Tax

Department and Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers ""Business Standard

(English) and ""Jansatta"" (Hindi). Further, it is seen from the records that vide order dated 22.04.2019, in application CA No. 324/2019 filed by the

petitioner companies, the Tribunal has ordered that notice to the Official Liquidator may not be necessary as the Scheme envisages only a Demerger

and dissolution of either of the companies is not sought for Pursuant to the same notice has been served to the Regional Director, ROC, the Official

Liquidator and the Income Tax Department.

4. The petitioners, it is seen from the records have filed an affidavit on 07.09.2018 in relation to the compliance of the order passed by the Tribunal as

noted above and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Tribunal in one issue of the

'Business Standard' in English edition and `Jansatta' in Hindi edition on 29.08.2018. Further, the notices have been served to The Regional Director

(NR, MCA), Registrar of Companies (NCT of Delhi & Haryana), Office of the Official Liquidator, and Deputy Commissioner of Income Tax

Department in compliance with the directions passed by this Tribunal and in proof of the same acknowledgements/receipts have also been enclosed.

By way of Affidavit it is further represented that the Demerged Company has also filed e-Form GNL-1 vide SRN H05499850 dated 30.08.2018 and the Resulting Company has filled e-Form GNL-1 vide SRN H04454963 dated 27.08.2018 for the purpose of filing the Scheme of Arrangement by

Demerger of the Demerged Undertaking of the Demerged Company into the Resulting Company with the Ministry of Corporate Affairs.

5. That the Regional Director, Northern Region, MCA to whom notice was issued has made its observation filed on 13.09.2018 before this Tribunal,

and upon perusal of the same it is observed that that the Regional Director does not have any adverse observation/ remark against the Scheme of

Arrangement between the petitioner companies. It is also reflected in the Representation Affidavit filed by RD at paragraph 5 which is to the

following effect;

5.1 respectfully submit that as per clause 11.2 of Part B of the Scheme it has been inter-alia stated shareholders of the Demerged Company will be

allotted shares of the Resulting Company in ratio of 1:1 as per spare Entitlement Ratio for Demerger by M/ s Ashtosh Pandey & associates,

Chartered Accountants.

6. Further, the department of Income Tax has also filed its report on 04.12.2018 in relation to the Petitioner Companies. Income Tax has observed at

point 12 that, in relation to proceedings pending, that since this is a demerger , Income Tax Scrutiny is currently undergoing with respect to demerged

company for AY 2016-17 & 2017- 18 in the case of M/s. SSA Infosystems Pvt. Ltd. However, since both the companies, namely demerged company

and the Resulting Company will continue to be in existence recourse can be had by the Income Tax Department in relation to the proceedings if

contemplated and we make it clear that the sanction of the scheme will not affect in any manner for the Income tax Department to continue with

Income Tax, Scrutiny and all the rights of the Income tax Department stands preserved.

7. In compliance with the proviso to sub-section (7) of Section 230 of the Companies Act, 2013, the Demerged Company and Resulting Company

have placed on record the certificates of the Chartered Accountant dated 31.01.2018 confirming that the accounting treatment envisaged under the

Scheme of Arrangement is in compliance with the applicable accounting standards notified by the Central Government in Section 133 of the

Companies Act, 2013 and placed on record as Annexure - XIV to the Petition.

8. It is further seen from the records, that vide order dated 15.01.2019, the petitioner was directed to file details in relation to De-Merged Undertaking,

namely the assets and liabilities which are proposed to be transferred under the Scheme. The Petitioner Companies vide diary no:

0710200432172018/1, dated 19.02.2019 have filed the Statement of Assets and liabilities pertaining to De-merged Undertaking as on 01.04.2018.

9. The Petitioner companies at the stage of 1st Motion have submitted that no investigation proceedings are pending against them under provisions of

the Companies Act, 2013 or any other applicable provisions of the Companies Act 1956.

10. In view of absence of any other objections having been placed on record before this Tribunal and an affidavit been filed by the Petitioner

companies in relation to no objections been received neither by the Petitioner Companies nor the Authorized Representative and since all the requisite

statutory compliances having been fulfilled, this Tribunal sanctions the scheme of arrangement annexed as Annexure ""1"" with the Company Petition as

well as the prayer made therein.

11. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction

granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and

officials of the petitioners.

12. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from

payment of stamp duty, taxes or any other charges, if any payment is due or required in accordance with law or in respect to any

permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

1. All property, rights and powers of Demerged Undertaking be transferred without further act or deed, to the Resulting company and accordingly the

same shall pursuant to Section 232 of the Act, be transferred to and vested in the Resulting company for all intents, purposes and interests of the

Demerged undertaking subject nevertheless to all changes now affecting the same and;

2. All the liabilities (if any) and duties of Demerged Undertaking be transferred without further act or deed, to the Resulting company and accordingly

the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Resulting Company; and

3. Any proceedings pending by or against Demerged undertaking be continued by or against the Resulting Company, and

4. All the services of all Employees of the Demerged company employed in the Demerged undertaking shall stand transferred to the Resulting

company on the same terms and conditions at which these employees are engaged by the Demerged Company without any interruption of service as

a result of the transfer; and

5. That the resulting company do without further application allot to such members of the demerged company, as have not given such notice of dissent,

as is required by scheme of arrangement herein the shares in the resulting company to which they are entitled under the said scheme of arrangement

in terms of clause 11 of the Scheme.

6. The Petitioner Companies shall within thirty Days of the date of the receipt of this order cause a certified copy of this order delivered to the

Registrar of Companies for registration and the Demerged Undertaking shall be deemed to be transferred.

Any person shall be at liberty to apply to the Tribunal in above matter for any directions that may be necessary.

The petition stands disposed of in the above terms.

