(2023) 10 NCLT CK 0059

In the National Company Law Tribunal

Case No : C.A. (CAA) No. 04/441(1)/GB/2023

Star Cement Meghalaya Limited Vs

Date of Decision : 13-10-2023

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251
Companies Act, 2013 — Section 103, 230, 230(1), 230(5), 232, 232(1)
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 7

Citation : (2023) 10 NCLT CK 0059

Hon'ble Judges : H. V. Subba Rao, Member (J);Satya Ranjan Prasad, Member (T)

Bench : Division Bench

Advocate : Sudha Sharma, D. N. Choudhury

Final Decision : Disposed Of

Judgement

1. This is an Application under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 filed by the Applicant Nos. 1 to 4, namely, (1) STAR CEMENT MEGHALAYA LIMITED ("Transferee Company") and (2) MEGHALAYA POWER LIMITED, (3) MEGHA TECHNICAL & ENGINEERS PRIVATE LIMITED, (4) NE HILLS HYDRO LIMITED (collectively called the "Transferor Companies") and their respective shareholders in connection with a proposed Scheme of Amalgamation whereby and where under it is proposed to amalgamate the three Transferor Companies with the Transferee Company from the Appointed Date. i.e. 1st April, 2023 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

2. The object of this Application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation to be made between the Transferor Companies, Transferee company and their respective shareholders whereby and where under the entire undertaking of the Transferor Company with all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in the Transferee Company.

3. It is stated in the Application that all the Applicant Companies, namely, Star Cement Meghalaya Limited, Meghalaya Power Limited, Megha Technical & Engineers Private Limited, Ne Hills Hydro Limited are subsidiaries of Star Cement Limited having the same for registered office and business wherever exists and are also mainly concentrated in the same region and therefore, the consolidation of the business in one entity will strengthen the position of the merged entity. The amalgamation will also lead to better administrative control and will provide ease and convenience to the management to operate. Further, there will be prevention of cost duplication and the resultant operations would be substantially cost efficient. The amalgamation will provide an opportunity to leverage combined assets and build a stronger sustainable business while also preventing managerial overlaps. Accordingly, it would be in the best interests of the shareholders of the Transferor Companies and Transferee Company for the Transferor Companies to merge with the Transferee Company.

4. The Board of Directors of the Transferor Companies and Transferee Company have held their respective meeting held on 18th May, 2023, approved and resolved to carry out the Scheme.

5. It is stated in the Application that the assets of the Applicant Companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors of any of the Applicant Companies in any manner whatsoever.

6. The Application also states that the shares of all the Applicant Companies are neither listed on any stock exchange nor registered with the Reserve Bank of India as an NBFC.

7. The valuation of the shares of the Applicant Companies, based on which the share entitlement ratio has been arrived at, has been carried out and approved by Mr. Manish Gadia, Registered Valuer and stated to be bonafide and reasonable.

8. There are no investigations or proceedings pending under Section 235 to 251 of the Companies Act, 1956 and/or applicable provisions of the Companies Act, 2013 against the Applicant Companies. No winding up petitions have been admitted or filed against Applicant Companies.

9. As stated in the Application, the Transferee Company has 2 Secured Creditors amounting to Rs. 1,21,38,685.29 and 386 Unsecured Creditors amounting to Rs. 97,39,67,273.36 as on 31.05.2023. The transferee companies, Meghalaya Power Limited, Megha Technical & Engineers Private Limited, Ne Hills Hydro Limited have 163, 31 and 2 Unsecured Creditors with due amount Rs.29,48,40,061.62, Rs.13,63,53,727.58 and Rs.1,08,850 respectively as on 31.05.2023.

10. The Application states that 100% of the Equity Shareholders of all the Applicant Companies, 100% Unsecured Creditors of the Applicant Company No. 4 have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Amalgamation.

11. Directions are sought accordingly for :

a) Dispensing with the meetings of Equity Shareholders of all the Applicant Companies;

b) Dispensing with the meetings of Unsecured Creditors of the Applicant Company No. 4;

c) Holding of meeting of the secured creditors of Applicant Company No. 1;

d) Holding of meetings of the unsecured creditors of Applicant Company Nos. 1, 2 & 3.

ORDER

12. We have pursued the documents annexed to the Applications and have heard the submissions made on behalf of the Applicants and pass the following orders:

12.1 In view of the facts mentioned above, convening and holding of Meetings of Equity Shareholders and Unsecured Creditors of the Applicant Company No. 4 are hereby dispensed with;

12.2 The meeting of the secured creditors of Applicant Company No.1 being the Transferee Company shall be convened and held physically at the registered office of the Applicant Company No.1 at Vill: Lumshnong, P.O.: Khliehriat, Dist: East Jaintia Hills, Meghalaya-793210, on 27th November, 2023 at 11am for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.

12.3 The meeting of the unsecured creditors of Applicant Company No.1 being the Transferee Company shall be convened and held physically at the registered office of the Applicant Company No.1 at Vill: Lumshnong, P.O.: Khliehriat, Dist: East Jaintia Hills, Meghalaya-793210, on 27th November, 2023 at 12 Noon for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.

12.4 The meeting of the unsecured creditors of Applicant Company No.2 shall be convened and held physically at the registered office of the Applicant Company No.2 at Vill: Lumshnong, P.O.: Khliehriat, Dist: East Jaintia Hills, Meghalaya-793210, on 27th November, 2023 at 2 pm for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.

12.5 The meeting of the unsecured creditors of Applicant Company No.3 shall be convened and held physically at the registered office of the Applicant Company No.3 at Vill: Lumshnong, P.O.: Khliehriat, Dist: East Jaintia Hills, Meghalaya-793210, on 27th November, 2023 at 3 pm for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.

12.6 At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting, stating that copies of the Scheme and the statement containing necessary details required to be filed pursuant to section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is being sent with the notice of meeting, be published once each in the "The Shillong Times" in English and "U Nongsain Hima" in Khasi as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

12.7 At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Companies Act, 2013 shall be sent to each of the Secured Creditors of the Applicant Company No. 1 and Unsecured Creditors of the Applicant Companies No. 1, 2 & 3 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by registered post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notice along with accompanying documents shall also be displayed on the notice board of concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

12.8 Mr. Kanishk Kejriwal, Advocate (Mobile No. 9830692789) and email-id kanishk.kejriwal@gmail.com is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a sum of Rs. 25,000/- for conducting the aforesaid meetings as Chairperson.

12.9 Mr. Lalit Khandelwal, Practising CA (Mobile No. 9864155654) and email-id ca.lalitkhandelwal@gmail.com is appointed as the Scrutinizer of the meetings to be held, as aforesaid. The Scrutinizer shall be paid a sum of Rs. 30,000/- for conducting the aforesaid meetings as Scrutinizer.

12.10 The quorum for the said meetings of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. However, where the number of creditors are less than the specified number as per the Act, the quorum shall be 2. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum in the adjourned meeting.

12.11 The cutoff date for determining the eligibility to vote and value of votes shall be 31st May, 2023 for the meetings of the creditors of the Applicant Companies No. 1, 2 and 3. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

12.12 Voting shall be conducted physically by polling paper in accordance with the Companies (Management & Administration) Rules, 2014, and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

12.13 A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the Applicant Company not later than 48 (forty-eight) hours before the time for holding the meeting.

12.14 That the Chairperson appointed for the said meetings or any person authorized by the Chairperson shall issue and send the notices of the aforesaid meeting.

12.15 The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of Secured Creditors of Applicant Company No. 1 and Unsecured creditors of the Applicant No. 1, 2 & 3 casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

12.16 The Chairperson to report to this Tribunal the results of the said meetings within four weeks from the date of the conclusion of the said meetings. Such report shall be in Form No. CAA-4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

12.17 The value of each of the Secured Creditor of Applicant Company No. 1 and Unsecured Creditors of the Applicant Companies No. 1, 2 & 3 shall be in accordance with the books and records of the respective concerned Applicant and as on the cut-off date, where entries in the books are disputed, the chairperson shall determine the value for purposes of the said meetings.

12.18 The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meetings along with all papers relating to the voting to the chairperson of the meetings at the Scrutinizer’s earliest convenience and in any case within 3 days of the conclusion of the meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer. The declaration of results by the Chairperson shall also be displayed on the Notice Board of the concerned Applicants at its registered office and shall also be posted on the website, if any, of such Applicants.

13. Let notice be served jointly by the Applicant Companies, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the Scheme of Amalgamation and the statement disclosing necessary details, on the Central Government, through the Regional Director, North-Eastern Region, Ministry of Corporate Affairs, Guwahati; Registrar of Companies, North-Eastern Region, Guwahati, and the concerned Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Number of

the Applicant Companies through E-Mail and by Speed Post, both; as also on the Official Liquidator and the Reserve Bank of India (if applicable), having jurisdiction over the Applicant Company; CCI, New Delhi and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed Scheme, by sending the same by hand delivery through Special Messenger or by Registered Post or by Speed Post, by E-Mail, both, within seven days from the date of this order for filing their representation, if any, on the Application within 30 days from the date of the said notice.

14. The Applicant Companies shall file an affidavit of service with the registry in regard to the directions given in this Order to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.

15. The application being Company Application (CAA) No. 4/GB/2023 is allowed in terms of prayers clause and disposed of accordingly.

