
(2020) 02 NCLT CK 0138

In the National Company Law Appellate Tribunal

Case No : Company Petation No. CAA-110 (PB) Of 2019

SV Power Private Limited And Ors

APPELLANT

Vs

ACB (India) Limited

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 231, 232, 233, 234

Citation : (2020) 02 NCLT CK 0138

Hon'ble Judges : Ina Malhotra, J; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Rakesh Kumar, Sahil Dhawan, Lakshya Sachdeva, Tania Sharma, Zohaib Hussain

Final Decision : Disposed Of

Judgement

Santanu Kumar Mohapatra, Member (T)

1. This Joint application has been filed by both the transferor companies and the transferee company under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company No. 1 and Transferor Company No. 2 into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme") has been placed on record.

2. The "Transferor Company No. 1", M/s. SV Power Private Limited was incorporated on 17.09.2003 under the provisions of the Companies Act, 1956, and its registered office is presently situated at Flat No. 18, SFS, First Floor Vasant Enclave Rao Tula Ram Marg, New Delhi 110057.

3. The "Transferor Company No. 2", M/s. Spectrum Coal and Power Limited was incorporated on 01.01.1966 under the provisions of the Companies Act, 1956,

and its registered office is presently situated at 18, Vasant Enclave, Rao Tula Ram Marg, New Delhi 110057.

4. The "Transferee Company", M/s. ACB (India) Limited was incorporated on 14.03.1997 under the provisions of the Companies Act, 1956, and its registered office is presently situated at C-102, LGF, New Multan Nagar, Surya Enclave, New Delhi- 110056.

5. It is seen from the records that the First Motion application seeking convening/dispensation from convening the meetings of Shareholders and Creditors of the petitioner companies was filed before the Principal Bench vide Company Application CAA No. 122(PB)/2019. Based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders and Secured Creditors of the all the petitioner companies were dispensed with, vide order dated 30.05.2019 passed by the Principal Bench. In respect of unsecured creditors of all the three petitioner companies, directions were issued to convene their respective meetings in order to obtain their approval in favour of the Scheme.

6. Subsequently, the aforesaid meetings of unsecured creditors were duly convened on 06.07.2019 and the Scheme was unanimously approved by the respective members participated in the said meetings. The reports of the chairperson and the scrutinizer have been placed on record.

7. Thereafter, on 25.07.2019 the Petitioners were directed to carry out publication in the 'Business Standard' English Delhi Edition as well as in 'Business Standard' Hindi Delhi Edition. In addition to above, notices were directed to be served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

8. It is seen from the records that the Petitioners have filed affidavits dated 03.09.2019 affirming compliance of the order passed by the Tribunal dated 25.07.2019. A perusal of the affidavit discloses that the petitioners have effected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 29.08.2019 as well as in 'Business Standard' Hindi edition again on 29.08.2019 in relation to the date of hearing of the petition.

9. Further, the affidavit also discloses that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been enclosed.

10. The Regional Director has filed its representation in which it has been submitted that the Petitioner Companies have filed their upto date annual returns and Balance Sheet upto 31.03.2018. It is also submitted that no prosecution has been filed and no inspection or investigation has conducted in respect of the petitioner companies. It is seen from the report of the Regional Director that no

specific objection has been raised against the approval of the Scheme in respect of the petitioner company.

11. The Official Liquidator has filed its report wherein no material objection has been raised in relation to the Scheme. It is submitted in the report that the Official Liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of both the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

12. Despite opportunity afforded to the Department of Income Tax, no reply has been filed by the Department of Income Tax till date of final hearing. It is pertinent to mention here that the Department of Income Tax should have filed their response within 30 days from the date of receipt of such notice as per the provisions of sub-section 5 of Section 230 of the Companies Act, 2013, failing which it is provided in the said Section that it shall be presumed that the authority has no representation to be made in respect of the Scheme. Therefore, inference can be taken that the Department of Income Tax has no observation against the Scheme.

13. Be that as it may, in order to protect the interest of the Revenue it is clarified that there shall be no limitation on the power of the Income Tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.

14. It is pertinent to mention here that Ld. Counsels for the Regional Director, Official Liquidator and Income Tax Department have not raised any objection against the Scheme at the time of final hearing on 16.12.2019. The same fact has been duly reflected in order dated 16.12.2019 passed by this Bench.

15. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

16. Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

17. The shareholders of the petitioner companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by

shareholders and creditors.

18. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited reported in (1995) 5 SCC 491, the three Judges Bench of Hon'ble Supreme Court has held that:

"A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process."

19. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

20. It has also been affirmed in the petition that the Scheme is in the interest of both the transferor companies and also the transferee company including their shareholders, creditors, employees and all concerned.

21. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, report filed by the official liquidator and also as no objection from any quarter against the Scheme has been received; there appears to be no impediment in sanctioning the present Scheme.

22. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

23. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

24. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme 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.

25. While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

26. THIS TRIBUNAL DO FURTHER ORDER

1. That both the Transferor Companies shall stand dissolved without following the process of winding-up; and

2. That all the property, rights and powers of both the Transferor Companies, be

transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.

3. That all the liabilities and duties of both the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

4. That all proceedings now pending by or against any of the transferor companies, be continued by or against the transferee company; and

5. That all the employees of both the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned transferor company on the said date.

6. That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered both the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor companies registered with him on the file kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and

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

The petition stands disposed of in the above terms. Let copy of the order be served to the parties.