(2020) 12 NCLT CK 0129

In the National Company Law Tribunal

Case No : Company Petition No. (CAA) 1001/MB-I Of 2020, Company Application No. (CAA) 1022/MB-I Of 2020

Vishvaraj Infrastructure Limited And Anr. Vs

Date of Decision : 08-12-2020

Acts Referred:

Companies Act, 2013 — Section 230, 230(1), 230(1)(a), 230(1)(b), 230(3), 230(4), 230(5), 231, 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(19AA)

Citation : (2020) 12 NCLT CK 0129

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi, Vidisha Poonja, Rupa Sutar

Final Decision : Allowed

Judgement

Sr.

No. &

Para

No.","RDâ??s Report / Observation 3 rd

December, 2020",Response of Petitioner Companies

(a),"In addition to compliance of

AS14(IND AS-103) the Transferee

Company shall pass such

accounting entries which are

necessary in connection with the

Scheme to comply with other

applicable Accounting Standards

such as AS-5 (IND AS-8) etc","In so far as the observations made in
paragraph IV(a) of the Report of Regional
Director is concerned, the Petitioner
Companies through their Counsel submit
that the Petitioner Companies shall pass
such accounting entries as may be
necessary in connection with the Scheme to
comply with the accounting standard AS-14
(IND AS 103 is not applicable to Petitioner
Companies) and any other applicable
accounting standards such as AS-5 (IND
AS -8 is not applicable to Petitioner
Companies) to the extent applicable.
(b),"As per Part - I Definitions Clause 1
(1.2 & 1.5 & 1.11) of the Scheme.
Appointed Date"" means the 1 st
April, 2019.
Effective Date"" means the last of
the dates on which the conditions
specified in Clause 16 are complied
with. Any references in this Scheme
to the date of â??coming into effect
of this schemeâ?? or
â??effectiveness of the schemeâ??
or â??scheme taking effectâ?? shall
mean the Effective Date.
â??Record Dateâ?? shall mean the
date to be fixed by the Board of
Directors of the Resulting Company
for the purpose of issue of

Preference Shares of the Resulting
Company to the Equity shareholders
of the Demerged Company
In this regard, it is submitted that
Section 232(6) of the Companies
Act, 2013 states that the Scheme
under this section shall clearly
indicate an appointed date from
which it shall be effective and the
Scheme shall be deemed to be
effective from such date and not at
a date subsequent to the appointed
date. However, this aspect may be
decided by the Honâ??ble
Tribunal taking into account its
inherent powers.
Further, the Petitioners may be
asked to comply with the
requirements and clarified vide
circular no. F. No. 7/12/2019/CL1
dated 21.08.2019 issued by the
Ministry of Corporate Affairs.","In so far as the observations made in
paragraph IV(b) of the Report of Regional
Director is concerned, the Petitioner
Companies submit that the Appointed Date
i.e. 1 st April, 2019 has been clearly
indicated in the Scheme in accordance with
provision of Section 232(6) of the
Companies Act, 2013 and the scheme shall
become effective from the Appointed Date.

The Petitioner Companies further submit that they have already complied with the requirements and clarification of circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs by clearly specifying the Appointed Date in the Scheme and hence the question of undertaking for compliance to the requirements of the said circular does not arise.

(c),"The Honâ??ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.","In so far as the observations made in paragraph IV(c) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that by the Order delivered on 17th July 2020 passed in C.A. (CAA) 1022/MB-I/2020, the requirement to convene meeting of the Equity Shareholders and the Secured and Unsecured Creditors of the Petitioner Companies was dispensed with by this Tribunal.

(d),"Honâ??ble NCLT may kindly direct
the petitioners to file an affidavit to
the extent that the Scheme enclosed
to Company Application &
Company Petition, are one and
same and there is no discrepancy /
any change/ changes are made, for
changes if any, liberty be given to
Central Government to file further
report if any required.","In so far as the observations made in
paragraph IV(d) of the Report of Regional
Director is concerned, the Petitioner
Companies through their Counsel submit
that the Scheme enclosed to the Company
Application and the Scheme enclosed to the
Company Petition are one & same and
there is no discrepancy / change in the
Scheme.
(e),"The Petitioners under provisions of
section 230(5) of the Companies
Act, 2013 have to serve notices to
concerned authorities which are
likely to be affected by
Amalgamation. Further, the
approval of the scheme by this
Honâ??ble Tribunal may not deter
such authorities to deal with any of
the issues arising after giving effect
to the scheme. The decision of such
Authorities is binding on the

Petitioner Company(s).","In so far as the observations made in paragraph IV(e) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioners have served the notices under section 230(5) of the Companies Act, 2013 to:

i. Central Government through the office of Regional Director, Western Region, Mumbai;

ii.Registrar of Companies, Mumbai;

iii.Concerned Income Tax authority;

on 24th and 25th July 2020. Further, the Petitioner Companies have also filed a compliance report with this Tribunal submitting the proofs of serving the notices to aforementioned regulatory authorities. Further, the approval of the Scheme by this Tribunal may not deter any such authorities to deal with any of the issues arising after giving effect to the scheme and the Petitioner Companies submit that any issues arising out of the Scheme will be met and answered in accordance with the law.

(f),"The Petitioner Companies be directed to place on record of this Tribunal the list of assets to be demerged with complete details its respective valuation","In so far as observations made in paragraph IV(f) of the Report of Regional Director is

concerned, the Petitioner Companies
through their Counsel submit that list of
assets and liabilities (with complete details
and respective valuation) to be demerged is
submitted with the Office of Registrar of
Companies, Mumbai and is hereby placed
on record of this Tribunal:

(Amount in INR)

Particulars Water Infrastructure
Business Undertaking

I. Liabilities

(1) Non - current Liabilities:

(a) Other Long-Term Liabilities
(9,60,74,907)

(2) Current Liabilities:

(a) Trade Payables 5,52,27,893

(b) Short Term Provisions 9,84,99,025

Total Liabilities 5,76,52,012

II. Assets

(1) Non â?" current Assets:

(a) Non â?" current Investments
12,10,51,000

(b) Long Term Loans & Advances
76,72,349

(2) Current Assets:

(a) Inventory 6,93,07,610

(b) Trade Receivables 15,50,59,515

(c) Cash & Cash Equivalents 43,21,107

(d) Short-Term Loans &
Advances 2,97,95,636

Total Assets 38,72,07,217

(g),"As regards Part-II-Clause 9(9.1.1) of the Scheme, (Accounting Treatment in the books of VEPL or Resulting Company), the Scheme provide that the scheme is in compliance of Section 2(19AA) of the Income Tax Act, 1961. In this regard it is submitted that to be eligible for Section 2(19AA) compliance, the Demerged Company and the Resulting Company shall have the same set of shareholders in same ratio. In the instant scheme, the Resulting Company has different Shareholders (including one corporate shareholder). Then how the scheme shall be in compliance of the section 2(19AA). The Petitioner Company be directed to place on record full facts in the matter.","In so far as the observations made in paragraph IV(g) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Companies have served the notices under section 230(5) of the Companies Act, 2013 to concerned Income-tax authorities on 24th July 2020 and 25th July 2020. Further, the Petitioner Companies have also filed a compliance report with this Tribunal submitting the proofs of serving the notices to concerned Income-tax authorities. Further, the approval of the Scheme by this Tribunal may not deter Income-tax authorities to deal with Income-tax related issues arising after giving effect to the Scheme and the Petitioner Companies submit that any Income-tax related issues arising out of the Scheme will be met and answered during the course of regular Income-tax assessment in accordance with the provisions of the Income-tax Act, 1961.

(h),"As regards Part-II-Clause 9(9.1.4) of the Scheme, (Accounting Treatment in the books of VEPL or Resulting Company), it is provided that the excess of the Net Assets value of the subject undertaking to be demerged shall be accounted as General Reserves in the books of Resulting company. In this regard it is stated that such excess should be treated as reserves arising out of Demerger and shall not be available for declaration of dividend.","In so far as the observations made in paragraph IV(h) of the Report of Regional

Director is concerned, the Petitioner Companies through their Counsel submit that Part-II-Clause 9(9.1.4) of the Scheme provides that â??the difference being the excess of the Net Assets Value (i.e. excess of value of assets over the value of liabilities set forth in the closing balance sheet of VIL as on the close of business hours on the date immediately preceding the Appointed Date) of the Water Infrastructure Undertaking, transferred to and recorded by VEPL over the face value of Preference Shares issued as per Clause 7.1 above, after considering the adjustments mentioned in Clause 9.1.3 above, if surplus, shall be credited to General Reserve Account of VEPL.â??

The Petitioner Companies through their Counsel submit that, pursuant to aforesaid clause, General Reserve (if any) to be recorded in the books of Resulting Company shall not available / utilized for declaration of dividend.

(i),"As regards Part-II-Clause 9(9.1.5) of the Scheme, (Accounting Treatment in the books of VEPL or Resulting Company), it is stated that subsequent to issue Preference Shares by Resulting Company to the equity shareholders of Demerged Company the equity shares held by the VIL (Demerged) Company in VEPL (Resulting) Company shall stand called. This clause is not convincing since, the Resulting Company is already paying the consideration part by way of Preference shares. There is no logic to cancel the equity shares (above 51%) held in the subsidiary company by the Demerged Company. This clause is against the interest of Shareholders. The Petitioner Company be directed to place on record full facts of the matter","In so far as the observations made in paragraph IV(i) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Scheme provides for Demerger of Water Infrastructure Business Undertaking of the Demerged Company (VIL) into the Resulting Company (VEPL). Water Infrastructure Business Undertaking is defined under Part-I- Clause 1 (1.17) of the Scheme which includes: (i) infrastructure development projects related to Water & Waste Water carried out by the Demerged Company (VIL); (ii) Demerged

Companyâ??s (VILâ??s) 51% equity investment in the Resulting Company (VEPL); and (iii) the Demerged Companyâ??s (VILâ??s) investment in preference shares of Vishvaraj Waste Water Management Private Limited.
Since the Demerged Companyâ??s (VILâ??) 51% equity investment in Resulting Company (VEPL) is getting transferred (as a part of Water Infrastructure Business Undertaking) upon Demerger to the Resulting Company itself, the Scheme provides for cancellation of such equity investment.
Further, Learned Counsel for the Petitioner Companies submits that as on date there are 7 (Seven) equity shareholders in the Demerged Company and 4 (Four) equity shareholders in the Resulting Company.
Learned Counsel of the Petitioner Companies further submits that Petitioner Companies have obtained Consent Affidavits from all the Equity Shareholders of the Demerged Company as well as the Resulting Company. The Consent Affidavits of the Equity Shareholders of the Demerged Company are annexed as Annexures G1 to G7 to the Company Petition (page no. 207 to 231). The Consent Affidavits of the Equity Shareholders of the

Resulting Company are annexed as
Annexures H1 to H4 to the Company
Petition (page no. 232 to 243).
(j),"As regards Part II-Clause 10(10.1
to 10.4 of the Scheme (Increase of
authorized share capital of VEPL),
and fee payable by the Petitioner
Company shall be in accordance
with the provisions of Section
232(3)(i) of the Companies Act,
2013, or other applicable
provisions of the Act.","In so far as observations made in paragraph
IV(j) of the Report of Regional Director are
concerned, the Petitioner Companies submit
that as per Clause 10 of the Scheme the
increase in its authorized share capital
pursuant to the Scheme becoming effective
shall be done by filing of the respective e-
forms with Registrar of Companies along
with the copy of this Order and the Scheme
and payment of the necessary fees as per
Section 232(3)(i) of the Companies Act,
2013, or other applicable provisions of the
Act.
(k),"In view of the observation raised by
the ROC Mumbai, mentioned at
para 22 above Honâ??ble NCLT
may pass appropriate orders/ order
as deem fit
ROC Mumbai vide report/letter No.

ROC/ST A(S)/ 186950/ 230-
232/1249 dated 05-11-2020 has
mentioned that No investigation,
inspection, inquiry proceedings, No
Complaint Prosecution.
Observation of the ROC, Mumbai is
as under:-

1. As per the financial statement as
at 31-03-2019, the company has
huge liabilities in term of
borrowings and payable.
2. Interest of the creditors should be
protected.

May be directed on its merit","In so far as the observations made in paragraph IV(k) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that there is no Compromise or Arrangement with any of the Creditors of the Petitioner Companies and no sacrifice is called for In view of the fact that the present Scheme is an arrangement between the Applicant Companies and their respective shareholders as contemplated under section 230(1)(b) and not in accordance with the provisions of section 230(1)(a) of the Companies Act, 2013; and there is no Compromise or Arrangement with any of the Creditors, by the Order delivered on 17th July 2020 passed in C.A.

(CAA) 1022/MB-I/2020, the requirement to convene meeting of the Secured and Unsecured Creditors of the Petitioner Companies was dispensed with by this Tribunal. However, the Petitioner Companies were directed to issue notice to all its Creditors to whom the amounts are due and payable by R.P.A.D./Speed Post/E-mail with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal and copy of such representations shall simultaneously be served upon the Petitioner Companies.

As directed by this Tribunal, Petitioner Companies have duly served notice to all its Creditors (Secured as well as Unsecured). Further, the Petitioner Companies have also filed an affidavits with this Tribunal submitting the proofs of serving the notices to aforesaid Secured and Unsecured Creditors which are annexed as Annexures J1 to J2 to the Company Petition (page no. 250 to 386).

The Petitioner Companies through their Counsel submit that till date no representations / objections have been received by the Petitioner Companies from any of the aforesaid Secured and

Unsecured Creditors of the Petitioner

Companies.

iv. The Petitioner Companies shall comply with all the undertakings given by them.,,

v. All concerned shall to act on a copy of this Order along with Scheme duly authenticated by the Registrar of this Tribunal.,,

vi. The Petitioner Companies are directed to issue newspaper publications with respect to approval of the Scheme, in the same newspapers in which",,

previous publications were issued.,,

vii. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.,,

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

ORDER,,

The matter is taken up on VC. Heard Mr. Hemant Sethi Ld. Counsel and Ms. Rupa Sutar, Dy. Director from the office of RD (WR), Mumbai. The",,

Company Petition allowed, vide separate order.",,

