

Lurgi India International Services Pvt. Ltd. Vs Air Liquide Global E & C Solutions India Pvt. Ltd.

Court: National Company Law Tribunal New Delhi Bench

Date of Decision: Feb. 2, 2021

Acts Referred: Companies Act, 2013 & Section 230, 230(9), 231, 232, 234

Hon'ble Judges: P.S.N. Prasad, J; Dr. V.K. Subburaj, Member (Technical)

Bench: Division Bench

Final Decision: Allowed

Judgement

1. This petition is filed by way of a 1st Motion under Sections 230-232, Section 234 of the Companies Act, 2013 (hereinafter referred to as the Act')

by the Applicant/Transferor Company in connection with the Scheme of Merger (hereinafter referred to as the Scheme') for merging its business with

M/ a Air Liquide Global E & C Solutions India Private Limited (Transferee Company).

2. It is represented that the registered office of all the applicant companies is situated in New Delhi and therefore the subject matter of this joint

application falls within the Jurisdiction of this Bench.

3, The Transferor Company was incorporated under the Act on 26.09.2006 having CIN U74140 DL2006 PTC154313. Its authorized share capital is

Rs. 11,00,00,000/- divided into 1,10,00,000 equity shares of Rs. 10/- each while its issued, subscribed and paid up share capital is Rs, 2,38,77,000/-.

The main object is to carry on the business of engineering consultants, research engineers, process engineers and planning and construction engineers

and to provide other ancillary services in the field of upgrading of solid fuels, natural gas etc.

4. The Transferee Company was incorporated under the Act on 01.04.1964 having CIN U34203 DL1964 PTC004156. Its present authorized share

capital Rs. 2,06,00,00,000/- divided into 20,00,00,000 equity shares of Rs. 10/- each and 60,00,000 (Sixty Lakhs) 7.5% cumulative redeemable

preference shares of Rs. 10/- each while its issued, subscribed and paid up capital is Rs. 1,94,20,00,000/-. The Transferee Company is engaged in the

business of engineering consultants, research engineers, process engineers and planning and construction engineers and to provide other ancillary

services in the field of upgrading of solid fuels, natural gas etc.

5. It is submitted that both the Transferor and Transferee Companies are subsidiaries of Air Liquide Global E & C Solutions Germany GmbH

(referred as ""Air Liquide Germany"") holding 97.9% and 100% share capital of Transferor and Transferee Company respectively.

6. Copies of the Memorandum of Association and Articles of Association of each company provides for such amalgamation. Both the Applicant

Companies have filed their latest audited Annual Accounts as on 31.12.2019.

Reports of the Statutory Auditors of both the Applicant Companies have been filed on record, along with the certificate that the Accounting Standards,

as per Sec 133 of the Companies Act 2013 have been adhered to.

7. It has been stated on behalf of the Applicant Companies that the Scheme of Amalgamation is necessitated and justified on grounds that :-

a. Centralize and integrate the operations of the applicant companies so as to bring ease in administration and rationalization of administrative

expenses;

b. Focus operational efforts to enhance cost savings;

c. Simplify the group structure by eliminating multiple companies in India;

The Appointed date is 1st April, 2020.

8. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of

Shares & Share Exchange Ratio issued by Subodh Kumar, Registered Valuer dated 06.12.2020 as per the settled principles of valuation.

9. The Board of Directors of each of the applicant companies vide their respective meetings held on 27.09.2019 have unanimously approved the

proposed Scheme of Amalgamation. Copy of the board resolutions passed have been filed.

10. Vide the present application, a prayer is made for convening meetings in view of the following facts:-

A. In respect of the Transferor Company

It has 2 Equity Shareholders wherein the consent by way of affidavits has not been placed on record. Therefore, the necessity for convening the

meeting of the equity shareholders has arisen.

It has no Secured Creditor as certified by the Chartered Accountant.

It has 6 Unsecured Creditors wherein 90% consent have been accorded by way of affidavits. Therefore, the requirement of convening the

meeting is dispensed with.

In view of its 2 Equity Shareholders whose consent by way of affidavits has not been placed on record, the necessity of convening the meeting of the

shareholders has arisen and its 6 Unsecured Creditors constituting 90% of the consent by way of affidavit placed on record, thus the necessity of

convening the meeting is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

B. In respect of the Transferee Company

It has 2 Equity Shareholders wherein the consent by way of affidavit has not been placed on record. Therefore, the necessity for convening the

meeting of the equity shareholders has arisen.

It has no Secured creditors as certified by the Chartered Accountant.

It has 110 Unsecured Creditors out of which 12 Unsecured Creditors constituting 29.23% of the total value have given their consent affidavits in

favor of the scheme. Hence as per Section 230(9) dispensation cannot be given.

In view of its 2 Equity Shareholders whose consent by way of affidavits has not been placed on record and 110 Unsecured Creditors out of which 12

Unsecured Creditors constituting 29.23% of the total value have given their consent affidavits, therefore the necessity of convening the meeting of the

shareholders and unsecured creditors has arisen. Further, as there is no secured creditor, the question of convening their meeting does not arise.

11. The proposed Scheme of Amalgamation is annexed along with the present application.

12. It is pertinent to mention here that the applicants have relied upon order passed by the Chandigarh Bench in the matter of M/s DLF Limited, CA

No.741/2019 with CA (CAA) N0.39/Chd/Hry/2018 dated 21.11.2019 and M/s Kajaria Tiles Private Limited with M/s Kajaria Ceramics Limited in CA

No.1072/2019, 1074/2019, 1246/2019 and CA (CAA) N0.38/Chd/Hry/2019, order dated 03.02.2020 and have prayed to dispense meetings of the

shareholders and creditors of both the applicant companies.

13. In the both relied case the Scheme of Amalgamation, proposed merger of a wholly owned subsidiary company into its holding company. However,

in the present case both the applicant companies are subsidiary of a third company. Further, in both the cases the consent affidavits of shareholders of

transferor company were obtained and in the present matter consent by way of letters have been obtained instead of by way of affidavit. Further in

respect of 110 unsecured creditors of transferee company consent affidavits of 77% in value of the creditors have been placed.

14. In view of the above the facts of cases relied by the applicants are different from the facts of the present case.

15. Also, in the application alternative prayer for the convening of meeting has been made by the applicants. In terms of Section 230 (9) the meeting

of the creditors can only be dispensed when consent of atleast 90% in value by way of affidavits have been obtained by the applicants. Therefore, in

view of the mandatory provisions of the Act and prayers made by the applicant; following directions are now been issued:

i. With respect to Transferor Company:

a. In respect of Equity Shareholders:

The meeting of the Equity shareholders of the Transferor Company is directed to be held at the Registered Office of the applicant

companies/online/as decided by the parties on 5th March, 2021 at 11:00 am. The quorum of the meeting shall be 75% in value.

b. In respect of Unsecured Creditors

Since there are no secured creditors, the question of convening their meeting does not arise.

c. In respect of Unsecured Creditors

Since 90% consent have been accorded by way of affidavits, the question of convening the meeting is dispensed with.

ii. With respect to Transferee Company:

a. In respect of Equity Shareholders:

The meeting of the Equity shareholders of the Transferee Company is directed to be held at the Registered Office of the applicant

companies/online/as decided by the parties on 5th March, 2021 at 1:00 pm. The quorum of the meeting shall be 75% in value.

b. In respect of Unsecured Creditors

Since there are no secured creditors, the question of convening their meeting does not arise.

c. In respect of Unsecured Creditors

The meeting of the Unsecured Creditors of the Transferee Company is directed to be held at the Registered Office of the applicant

companies/online/as decided by the parties on 5th March, 2021 at 2:00 pm. The quorum of the meeting shall be 75% in value.

13. Mr. Sha.sharik Shekhar, Advocate (Mob-8109540985) is appointed as the Chairperson and Ms. Swaralipi Deb Roy, Advocate (Mob-8510094876)

is appointed as Alternate Chairperson and Mr. Aditya Aggarwal, C.A (Mob-9541870366) is appointed as the Scrutinizer for the meeting of the

applicant companies as has been directed to be convened by this Tribunal.

14. The Fee for the Chairperson for the aforesaid meeting shall be Rs. 1,50,000/- and the fee of the Alternate Chairperson and Scrutinizer shall be Rs.

1,25,000/- each in addition to meeting their incidental expenses. The Chairperson will file their reports within 2 weeks from the closing of the e-voting

and/ or postal ballot.

15. The individual notices of the said meetings shall be sent as required and prescribed by the Companies Act, 2013 through registered post or speed

post or through courier or through e-mail, 30 clays in advance before the scheduled date of the meeting, indicating the day, date, place and time as

aforesaid, together with a copy of scheme of arrangement, a copy of explanatory statement. The prescribed form of proxy shall be sent along with

and in addition to the above documents, any other documents as may be prescribed under the Act may also be duly sent with the notice.

16. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day,

date, place and time as aforesaid, to be published in the English Daily 'Business Standard' (Delhi Edition) and Hindi Daily 'Vansatta' (Delhi Edition)

stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of

proxy shall be provided free of charge at the registered office of the Applicant Companies.

17. Voting will be made through remote e-voting process in compliance with the guidelines issued by the Ministry of Corporate Affairs in this regard.

18. The Companies shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of

Delhi & Haryana, Official Liquidator, Income Tax Department and any sectoral regulators who may have significant bearing on the operation of the

applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with

Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

19. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the

Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants. The

application stands allowed in the aforesaid terms.