

ACME Cleantech Infraventure Limited Vs Registrar of Companies

Court: National Company Law Tribunal, Chandigarh Bench

Date of Decision: Oct. 6, 2022

Acts Referred: Companies Act, 2013 " Section 133, 186, 186(7), 186(11), 230, 232, 232(3)
 Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 " Rule 15, 18

Hon'ble Judges: Harnam Singh Thakur, Member, (J); Subrata Kumar Dash, Member (T)

Bench: Division Bench

Advocate: Ajay Vohra, G.S. Sarin, Saheb Singh Chadha

Final Decision: Division Bench

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a Joint Second Motion company petition filed by the Petitioner-Companies, namely, ACME Cleantech Infraventure Limited (Petitioner

Company No.1/Transferor Company No.1), ACME Panipat Solar Power Private Limited (Petitioner Company No. 2/Transferor Company No.2) and

ACME Cleantech Solutions Private Limited (Petitioner Company No. 3/Transferee Company) under Section 230-232 of the Companies Act, 2013

(the Act) and Rules 15 and 18 Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of

Amalgamation between the petitioner companies.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is

attached as Annexure-1 of the petition.

3. The First Motion application seeking directions for dispensing/convening with the meetings of the Equity Shareholders and Secured and unsecured

Creditors of all the Applicant Companies and of preference shareholders of Applicant Company no. 3 was filed before this Tribunal vide Company

Application No. CA (CAA) No.18/Chd/Hry/2021 and based on such application moved under Sections 230-232 of the Companies Act, 2013, (for

brevery, the "Act" necessary directions were issued on 04.08.2021. The first motion application was disposed of vide order dated 04.08.2021,

with directions to dispense with the meetings of Equity Shareholders and Secured Creditors of all the Applicant Companies, Unsecured Creditors of

Applicant Company No. 2 and Preference Shareholders of Applicant Company No. 3 for the reasons mentioned in the aforesaid order. Further,

directions for calling and holding the meetings of Unsecured Creditors of the Applicant Company No. 1 and Applicant Company No. 3 were also

issued in order dated 04.08.2021.

4. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme had been discussed in detail in the

order dated 04.08.2021.

5. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 16.03.2022 and the same were complied by filing

affidavit vide Diary No. 01181/5 dated 25.04.2022. The notice of hearing was published in "Business Standard" (English) and "Jansatta" (Hindi) both Delhi NCR Edition on 26.03.2022. The original copies of the newspapers are attached as Annexure-H of the aforesaid affidavit. It has

also stated in the affidavits that copies of notices were served upon the (1) Central Government through Regional Director (Northern Region),

Ministry of Corporate Affairs; (2) Registrar of Companies, NCT of Delhi and Haryana; (3) Official Liquidator (attached to Punjab and Haryana High

Court); (4) the jurisdictional Income Tax Department, by way of speed post/courier. Original courier receipts/postal receipts are attached as Annexure

B to Annexure G of the aforesaid affidavit.

6. It is deposed by the authorised representative that till date, no objection to the Scheme has been received by the Petitioner Companies or the

Advocate on behalf of the Petitioner Companies on any of the addresses as mentioned in the notice of hearing. The aforesaid affidavit has been filed

vide Diary No. 01181/7 dated 09.05.2022.

7. In response to the abovementioned notices, the statutory authorities have furnished their replies.

7.1 Registrar of Companies (RoC)/Regional Director (RD)

7.1.1 The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director (RD), by Diary No.1181/11 dated

04.07.2022. In the report of Regional Director, the following observations has been made:-

(1) The Transferor Company has written off amount of Rs. 420.77 Lakhs and 323.80 Lakhs in Financial Year 2019-20 and 2020-21 as bad debt and those amounts were

substantially due from Dishnet Wireless Limited. It is stated by petitioner companies that dues are settled and claims are admitted at 1.07% only but no order of

Tribunal has been attached to substantiate the claims.

(2) The Transferor Company-2 had availed the loan from their related parties and also the said amount was given to the Transferee Company in related to the goods &

services to be provided by the Transferee Company. On examination of the financial statement filed by the Transferor Company-2 it is found that its turnover was NIL

from the operational activities during the Financial Year 2020-21 & 2019-20, thus, the Transferor Company-2 is not doing any activities rather than availing loan from

related parties and providing them to the Transferee Company. Therefore, there is no contravention of Section 186(7) of the Act by the Transferor Company-2.

(3) It is observed that In respect of consolidation of face value of share of the Transferee Company from Rs. 2/- per share to Rs. 50,000/- per share, the petitioner

companies has created a trust in which all the shareholders entitled to the fractional shares are being paid from the sale proceeds of those shares to the parent

company to the Transferee Company therefore, it is prayed to issue direction to the petitioner company to delete such para from the Scheme since the minority

shareholders are being squeezed out by increase the face value of the share from Rs. 2/- to Rs. 50,000/- per share and also creation of Trust is not in line with the

provision of Section 232(3) of the Act.

7.1.2 In response to the aforesaid observations made by the RoC, the Petitioner Companies have filed a response by Diary No.1181/13 dated

12.07.2022, wherein it has clarified that

1. It is submitted by the petitioner companies that bad debts amounting to Rs. 420.77 lakhs and Rs. 323.80 lakhs in the financial year 2019-20 and 2020-21 were written

off in pursuance to approval of the Resolution Plan by the Hon'ble NCLT, Mumbai by order dated 09.06.2020 and the copy of said order is attached subsequently

as Annexure-C of the reply.

2. It is submitted in respect to the observations of short term borrowings by the Transferor Company No. 2 and transfer of such amount to the Transferee Company

that the amounts were given as a bonafide business transaction towards provisioning of EPC services and the same is not be considered as inter-corporate loan in

terms of the provisions of section 186 of the companies act, 2013. It is also stated that Transferor Company No. 2 is itself engaged in the business of power

generation, i.e. providing infrastructure facilities and accordingly, in terms of the provisions of section 186 (11) of 2013 Act, the provisions of section 186 except

sub-section (1), are not applicable to the Transferor Company No. 2. Relevant extracts of the provisions of section 186(11) of 2013 Act are reproduced

hereinbelow:

"Nothing contained in this section, except sub-section (1), shall apply-

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course

of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any investment-

(i) made by an investment company;

(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body

corporate;

(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act,

1934 and whose principal business is acquisition of securities.

[Emphasis Supplied]

3. As regards the next objection of the RD/ROC, it is stated by petitioner companies that as per clause 20.1 of the scheme, the present, authorised, and,

issued, equity, share, capital of the Transferee Company Rs. 2/- (Rupees Two only) each shall be consolidated, into, fully, paid-up, equity, share,

capital, of, Rs. 50,000/- (Rupees Fifty Thousand only) each of the aggregate value equal to the amount paid by each shareholder on his existing fully paid- up

equity shares of Rs. 2/- each. Further, as per clause 20.2 of the scheme, in case members becomes entitled to a fraction of an equity share of face value of Rs. 50,000/-

(Rupees Fifty Thousand only) each, then the Transferee Company shall consolidate all such fractional entitlements and then shall issue and allot the consolidated

number of equity shares to a trustee nominated by the Transferee Company, and thereafter trustee shall sell such shares to the parent company of the Transferee

Company and keep the sale proceeds in a separate bank account which will be distributed to the equity shareholders entitled to the same in the proportion of their

fractional entitlements. It is further stated that such sale proceeds will be kept for a period of 7 years and the unclaimed amount shall be transferred to IEPF account in

terms of the applicable provisions of The companies act, 2013. Hence, It is submitted that the Scheme does not envisage creation of trust either for the purposes of

holding or distribution of proceeds of fractional entitlements, Nor there will not be any reduction of share capital as such of the Transferee Company. The Regional

Director was directed to file response to the reply of the petitioner company by order 12.07.2022. However, no reply has been filed by Regional Director. Considering

the lapse of time in this matter, it is presumed that Regional Director has no objection to the present scheme. Even then, if any violation is detected, the Regional

Director/Registrar of Companies is at liberty to initiate appropriate action.

On a perusal of the report and the response of the petitioners, it is seen that the observations raised by the RD/RoC stands duly satisfied.

7.2 Official Liquidator

The Official Liquidator has filed his report by 01181/8 dated 14.06.2022. The Official Liquidator in its report has reproduced the information on the

incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the

extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements. It is also stated that pursuant to the Scheme

becoming effective, the Transferor Companies shall stand dissolved without winding up.

On a perusal of the report, it is seen that the Official Liquidator has made no adverse observation against the petitioner companies.

7.3 Income Tax Department

The Income Tax Department filed its report by Diary Nos. 01181/9 dated 27.06.2022 wherein it has been stated that Demand are pending in respect

of transferee company and the department has no objection to the present scheme.

8. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment

proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules

thereunder and other Generally Accepted Accounting Principles is attached as Annexures- 11, 12 and 13 of the petition.

9. We have heard the learned counsel for petitioner companies and perused the record carefully.

10. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with

all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the objections from the Statutory Authorities have been

duly addressed by the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the

Scheme of Amalgamation attached as Annexure -1 with the petition.

11. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the 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 the 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:

i. That all the properties, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly, the

same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the

Transferor Companies but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly the same shall

pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;

iii. That the Appointed Date for the scheme shall be 01.04.2020 as specified in the scheme;

iv. That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;

v. That the employees of the Transferor Companies shall be transferred to the Transferee Company in terms of the 'Scheme';

vi. That the fee, if any, paid by the Transferor Companies on its authorized capital shall be set off against any fees payable by the Transferee Company on its

authorized capital subsequent to the sanction of the 'Scheme';

vii. That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the

requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor

Companies;

viii. That the Petitioner Companies shall, within 30 days after the date of 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, the Transferor Company shall be dissolved without undergoing the process of winding up.

The concerned Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file relating to the said Transferee

Company, and the files relating to the Transferor Companies and Transferee Company shall be consolidated accordingly, as the case may be.

13. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.

14. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this

Bench.

15. The Company Petition CP (CAA) No. 29/Chd/Hry/2021 is allowed and disposed of accordingly.