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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA 43 of 2018 in CA(CAA) No. 161/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.02.2018

Name of the Company: Aspenpark Infra Coimbatore Pvt. Ltd.
Aspen Infra Padubidri Pvt Ltd
Aspenpark Infra Vadodara Pvt Ltd

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Yuvraj Thakore for D. N. Raval	Advocate	Applicant	Y. Thakore
2.				

ORDER

Learned Advocate Mr. Yuvraj Thakore i/b Learned Advocate Ms. Dharmishta Raval present for Applicants.

Order in IA 43/2018 in CA(CAA) 161/2017 pronounced in open court. Vide separate sheets.

MANORAMA KUMARI
MEMBER JUDICIAL

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 13th day of February, 2018.

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

I.A. No. 43 of 2018
In
CA(CAA) No.161/NCLT/AHM/2017

In the matter of :-

AspenPark Infra Coimbatore Private Limited,
A Company incorporated under
the Provisions of Companies Act, 1956
and having its Registered Office
at: 304, Super Plaza,
Sandesh Press Road,
Vastrapur,
Ahmedabad-380054. ... (Applicant Resulting Company–1)

Aspen Infra Padubidri Private Limited,
A Company incorporated under
the Provisions of Companies Act, 1956
and having its Registered Office
at: 304, Super Plaza,
Sandesh Press Road,
Vastrapur,
Ahmedabad-380054. ... (Applicant Resulting Company – 2)

AspenPark Infra Vadodara Private Limited
A Company incorporated under
the Provisions of Companies Act, 1956
and having its Registered Office
at: 304, Super Plaza,
Sandesh Press Road,
Vastrapur,
Ahmedabad-380054. ... (Applicant Resulting Company – 3)

Order delivered on 13th February, 2017

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)
And
Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Ms. Dharmishta Raval of M/s Raval and Raval, Advocates with Mr. Yuvraj Thakore, Advocates, for the Applicant Company.

ORDER

[per: Hon'ble Sri Bikki Raveendra Babu, Member (J)]

1. Heard learned Advocate, Ms. Dharmishta Raval, for Raval & Raval Advocates.

2. AspenPark Infra Coimbatore Private Limited, Applicant Resulting Company 1 and Aspen Infra Padubidri Private Limited, Applicant Resulting Company 2 and AspenPark Infra Vadodara Private Limited, Applicant Resulting Company 3 had filed a joint application, being Company Application (CAA) No. 161 of 2017, before this Hon'ble Tribunal, wherein this Hon'ble Tribunal vide an order dated 22nd November, 2017 was pleased to dispense with the holding of meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Resulting Companies.

3. By this Interlocutory Application, the Applicant Resulting Companies are seeking modification/amendment in Clause 1.2 of the Scheme. The amendment is sought to the limited extent of amending the Appointed Date from 1st April, 2017 to 1st April, 2018.

4. The Applicant Companies have stated that amendment of the Appointed Date as mentioned in Clause 1.2 of the Scheme is desired in view of the fact that the Appointed Date as proposed in the Scheme, i.e. 1st April, 2017, is prior to the date of incorporation of the Applicant Companies. It is stated that the date of incorporation of Applicant Resulting Companies 1 and 2 is 18th May, 2017 and the date of incorporation of Applicant Resulting Company 3 is 19th May, 2017. According to the

Applicant Companies, an inadvertent error had crept in while mentioning the Appointed Date in Clause 1.2 of the Scheme.

5. It is stated by the Applicant Companies that the Demerged Company, which has its registered office in Pune, has other operating business, i.e. Engineering, Procurement and Commissioning business (EPC Business), which is not a subject matter of the proposed demerger and would be left behind the Demerged Company itself. The Board of Directors of the Demerged Company, in its meeting held on 23rd October, 2017, passed a resolution, whereby the management was directed to evaluate the consolidation of the EPC Business in such a manner, so as to generate operational synergies, considering the rapidly changing competitive landscape and stress on the operating margins of EPC Business. Therefore, the management of the Demerged Company has proposed consolidation and, hence, it was considered more appropriate and less cumbersome to give effect to the whole restructuring of the Demerged Company's businesses of SEZ and EPC from the same Appointed Date, i.e. 1st April, 2018. In the above circumstances, the Applicant Resultant Companies have moved the present application seeking amendment of Clause 1.2 of the Scheme that was produced with CA(CAA) No.161 of 2017.

6. The Boards of Directors of Applicant Companies in their respective meetings held on 2nd January, 2018, passed resolutions approving the proposed amendment to Clause 1.2 to

the Scheme of Arrangement placed before the Boards. The Amended Scheme is annexed at Annexure – C to this Interlocutory Application.

7. It is stated in the application that all the equity shareholders of the Applicant Resulting Companies have given their consent affidavits approving the amendment to the Scheme. The Applicant Companies have produced lists of equity shareholders and their consent affidavits. The Applicant Companies have also produced Chartered Accountants' Certificates at Annexures "E", "J" and "O" to the application.

8. In view of the consent affidavits of all the equity shareholders of all the Applicant Companies, the meetings of equity shareholders of the Applicant Companies for the purpose of considering and, if thought fit, approving the amendment proposed in the Scheme are dispensed with.

9. The Applicant Resulting Companies have stated that there are no secured creditors of the Applicant Companies as on 3rd January, 2018. In support of this statement, the Applicant Companies have produced certificates of Chartered Accountants. Hence, the requirement of holding meetings of secured creditors of the Applicant Companies does not arise.

10. It is stated by the Applicants that all the unsecured creditors of the Applicant Companies have given their consent affidavits approving the proposed amendment to the Scheme of

Arrangement. Necessary certificates of Chartered Accountants are also produced along with the Application. In view of the consent affidavits of all the unsecured creditors of the Applicant Companies, the meetings of unsecured creditors of the Applicant Companies for the purpose of considering and, if thought fit, approving the amendment proposed in the Scheme are dispensed with.

11. Taking into consideration the reasons stated by the Applicant Companies for the proposed amendment to be carried out and the consent affidavits of all the shareholders and creditors of the Applicant Companies, this Tribunal is of the view that the proposed amendment to Clause 1.2 of the Scheme is genuine and this Interlocutory Application deserves to be allowed. Hence, this Interlocutory Application is allowed and the amendment sought to be carried out in the Scheme of Arrangement is permitted.

12. This Tribunal vide its order dated 22nd November, 2017 had directed all the three Applicant Resulting Companies that in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules 2016, the Applicant-Companies shall send notice in Form No. CAA.3 along with disclosures mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat, and (iii) the Income Tax authorities concerned stating that representations, if any, to the Scheme be made by them

shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. However, it is further directed that all the three Resulting Companies shall issue further notice to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat, and (iii) the Income Tax authorities concerned stating that representations, if any, to the proposed amendment to the Scheme be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. The said notice shall be sent forthwith by registered post or by speed post or by courier or by hand delivery at the office of the authority as required as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under subsection (5) of Section 230, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

13. This Interlocutory Application is disposed of accordingly.

(Ms. Manorama Kumari)
Member (J)

(Bikki Raveendra Babu)
Member (J)

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