

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P(C.A.A.)/2101/MB/ 2018

In the matter of Companies Act, 2013

AND

Under Sections 230 to 232 of Companies Act,
2013;

AND

In the matter of Scheme of Arrangement
between Aspen Infrastructures Limited
("Demerged Company or AIL") and AspenPark
Infra Coimbatore Private Limited ("Resulting
Company 1") and Aspen Infra Padubidri
Private Limited ("Resulting Company 2") and
AspenPark Infra Vadodara Private Limited
("Resulting Company 3") and their respective
shareholders

Aspen Infrastructures Limited, a company incorporated }
under the provisions of the Companies Act, 1956 having }
its registered office at Godrej Millennium, }
5th Floor, 9, Koregaon Park Road, Pune-411001 }
CIN:- U45202PN1998PLC016516 }

.....Petitioner Company

Order Delivered On: 31st August, 2018

CORAM:

Hon'ble Bhaskara Pantula Mohan, Member (J)
Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner(s): Mr. Hemant Sethi /b Hemant Sethi & Co., Advocates for
the Petitioner Companies.

Mr. S Ramakantha, Joint Director, RD

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement involving de-merger between Aspen Infrastructures Limited ("Demerged

Company or AIL") and AspenPark Infra Coimbatore Private Limited ("Resulting Company 1") and Aspen Infra Padubidri Private Limited ("Resulting Company 2") and AspenPark Infra Vadodara Private Limited ("Resulting Company 3") and their respective Shareholders.

3. The Demerged Company is engaged in the business of Engineering, Procurement and Commissioning Business in addition to three Special Economic Zones (SEZ Divisions/ Demerged Undertakings, as defined in detail in the Scheme), and various other business verticals. The Resulting Companies are newly incorporated companies and is proposed to carry on the each SEZ Business in separate companies upon vesting of the SEZ Division of the Demerged Company.
4. The Learned Counsel for the Petitioner states that the Demerged Company is desirous of hiving off its SEZs Division to the Resulting Companies for the various benefits and objectives as mentioned below in this Order; therefore, it is proposed to demerge the SEZs Division (including but not limited to its assets, liabilities, prequalifications, letters of intent, tenders, technical experience, other historical information pertaining to the SEZ Business, contracts and other assets and liabilities more particularly described in the Scheme) of the Demerged Company into the Resulting Companies under a Scheme of Arrangement. The Learned Counsel further submits that the rationale for the Scheme of Arrangement is as under –
Rationale for Scheme of Arrangement.

- i. The Demerged Company has Engineering, Procurement and Commissioning Business in addition to three Special Economic Zones, each of whom is distinct and separate from each other, with no operational synergies.
- ii. The Demerged Business 1 of AIL, being a distinct Special Economic Zone (SEZ) located at Karumatampatti and Kittampalayam villages, Palladam Taluk, Coimbatore District, Tamil Nadu, Demerged Business 2 of AIL, being a distinct Special Economic Zone (SEZ) located at Padubidri, Udipi Taluk and District, Karnataka, and Demerged Business 3 of AIL, being a distinct Special Economic Zone (SEZ) located at Alwa and Piparia villages, Waghodia, Vadodara District, Gujarat, each require a flexible ownership structure which will facilitate the independent focused operation and maintenance of the respective SEZ, legal and contractual aspects being ring-fenced, i.e.

the legal and contractual aspects are limited to the said SEZ and does not impact any other SEZ or other business and vice-versa.

- iii. The Demerged Business 1 of AIL, Demerged Business 2 of AIL, and Demerged Business 3 of AIL, being distinct SEZs, also require carve-out considering the possibility of implementing strategic initiatives like investor participation.
- iv. It is worth noting that AIL in the current legal entity structure cannot seek investor participation only for SEZs as all the Business are in single entity. The subject Demerger therefore facilitates value unlocking for AIL and its shareholders. Such demerger of a developer entity is generally allowed by the Board of Approval under the Special Economic Zones Act, 2005. AIL will therefore make an application to the Board of Approval for allowing the transfer or de-merger of the developer; simultaneous to the process of approval of this Scheme by NCLT.
- v. Segregation of the Demerged Business 1, Demerged Business 2, and Demerged Business 3 from the Business of AIL will allow concentrated focus on the Demerged Business 1, Demerged Business 2 and, Demerged Business 3, and on the Remaining Business by AIL, which is a complex business in nature.
- vi. Attribution of appropriate risk and valuation to the respective business activities based on risk return profile and cash flows which in turn enhances greater visibility of performance with a more focused management and dedicated leadership.
- vii. The Scheme shall keep the interest of all creditors, secured and unsecured, unaffected.
- viii. The Scheme will also keep the interest of all the unit-holders or lessees who are occupying space in the SEZs unaffected.

Accordingly, it is proposed that the SEZs Division be demerged and transferred to the Resulting Companies, in the manner provided under this Scheme, so as to maximise value for all the stakeholders of the Demerged Company.

Further, the management believes that this Scheme is in the interest and benefit of shareholders, creditors and there is no likelihood that the interests of any shareholder or creditor of the Demerged Company would be prejudiced as a result of this Scheme.

5. The Counsel for the Petitioner Companies submit that the Petitioners in their respective Board meetings have approved the said Scheme of Arrangement which are annexed to the Company Scheme Petition.
6. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Application No. 988 of 2017 and Company Scheme Petition No. 2101 NO OF 2018.
7. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary affidavits of compliance in the Hon'ble Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
- 8A. The Regional Director has filed a Report dated 17th May, 2018. In paragraph IV, of the said Report, the Regional Director has stated that:
 - a. *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 Compromise or Arrangement. Further, the approval of the Scheme by this Hon'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).*
 - b. *It is observed that the Petitioner Companies have not submitted admitted copy of Petition, and Minutes of Order for admission of the Petition. In this regard petitioner companies has to undertake to submit the same for the record of Regional Director and also to undertake that the Scheme as admitted with Hon'ble NCLT through company petition and the Scheme which is served to the Regional Director through company application is one and the same, and in*

case of deviation, if any, shall be brought to the notice of Regional Director.

- c. As per Clause 1.2 of the Scheme, Appointed date means opening of business on 1st day of April, 2018 or such other date as the NCLT may allow. 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 Hon'ble Tribunal taking into account its inherent powers.*
- d. The Registered Offices of all the Resulting Companies are situated in the State of Gujarat that is outside of the jurisdiction of NCLT of this tribunal and falls within the jurisdiction of NCLT of Ahmedabad. Accordingly, similar approvals be obtained by all the Resulting Companies from Hon'ble NCLT at Ahmedabad*

8B. Petitioner Company's reply and submission:

- a) In so far as observations made in paragraph IV(a) of the Report of Regional Director are concerned, the Petitioner Company has clarified in its affidavit that the notices have been served to the applicable regulatory authorities as required under Section 230(5) of the Companies Act, 2013. Further, it is submitted that approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and the decision of such authorities would be binding on the Petitioner Company.
- b) In so far as observations made in paragraph IV(b) of the Report of Regional Director are concerned, the Petitioner Company has stated that a copy of Joint Petition along with all exhibits thereto have been submitted to the Hon'ble NCLT. The Petitioner Company has further undertaken that the Scheme as admitted with Hon'ble NCLT through company petition and the Scheme which has been served with the Regional Director subsequent to the shareholders' meeting of the Petitioner Company, is one and the same, and there is no deviation in the Scheme.

Further, the Petitioner Company has undertaken to submit the copy of Joint Petition and copy of the minutes of order for admission of petition along with copy of the minutes of the final order.

- c) In so far as observations made in paragraph IV(c) of the Report of Regional Director are concerned, the Petitioner Company has confirmed that the Appointed Date shall be 1st April, 2018 and further, the Petitioner Company has confirmed that there will not be any change in the Appointed Date. It is further confirmed and undertaken by the Petitioner Company that the upon the Hon'ble NCLT approving the Scheme, the Scheme shall take effect from the Appointed Date in terms of provisions of Section 232(6) of the Companies Act, 2013.
 - d) In so far as observations made in paragraph IV(d) of the Report of Regional Director are concerned, it is clarified that the NCLT of Ahmedabad vide its order dated 21st August, 2018, has approved the Scheme.
 - e) It is also stated that no objector has approached neither to the Petitioner nor before this Tribunal to oppose the Scheme.
9. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8B(a) to (d) above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
10. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy or public interest. And hereby this bench, to the Petitioner Company, **do Order that:**
- a) All Demerged liabilities including taxes and charges, if any, and duties of the Demerged Company/ Petitioner Company, shall pursuant to Section 232 of the Company Act, 2013 be transferred to and become the liabilities and duties of the Aspen Infra Padubidri Private Limited, Aspen Infra Padubidri Private Limited, AspenPark Infra Vadodara Private Limited.

- b) The clarifications and undertakings given by the Learned Counsel for the Petitioner to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently this Bench hereby directs petitioners to comply with the statements that the Petitioners undertakes herein.
- c) The consideration of the Scheme shall be as follows:
- i. 14 fully paid up Equity Share of Rs. 10 /- each of AspenPark Infra Coimbatore Private Limited shall be issued and allotted for every 9 Equity shares of Rs.10 /- each held in Petitioner Company and 1 fully paid up Equity Share of Rs. 10 /- each of AspenPark Infra Coimbatore Private Limited shall be issued and allotted for every 1 Preference shares of Rs.100 /- each held in Petitioner Company.
 - ii. 4 fully paid up Equity Share of Rs. 10 /- each of Aspen Infra Padubidri Private Limited shall be issued and allotted for every 2 Equity shares of Rs.10 /- each held in Petitioner Company and 1 fully paid up Equity Share of Rs. 10 /- each of Aspen Infra Padubidri Private Limited shall be issued and allotted for every 1 Preference shares of Rs.100 /- each held in Petitioner Company.
 - iii. 5 fully paid up Equity Share of Rs. 10 /- each of AspenPark Infra Vadodara Private Limited shall be issued and allotted for every 2 Equity shares of Rs.10 /- each held in Petitioner Company and 1 fully paid up Equity Share of Rs. 10 /- each of AspenPark Infra Vadodara Private Limited shall be issued and allotted for every 1 Preference shares of Rs.100 /- each held in Petitioner Company.
- d) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- e) Any concerned Authority (i.e. RD, RoC, Income Tax Authority etc.) is at the liberty to approach this Bench for clarification/directions under this Scheme.
- f) The sanctioning of this Scheme shall not deter any concerned Authority (i.e. RD, RoC, Income Tax Authority etc.) from assessing transactions, if need be, made under the Scheme.
- g) The Scheme is sanctioned hereby, and the Appointed date of the Scheme is fixed as 1st April, 2018.

11. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 2101 of 2018 has been made absolute in terms of prayer of the petition mentioned therein.
12. It is clarified that the implementation of the present order shall be together with the proceedings filed by the Resulting Companies before the Hon'ble National Company Law Tribunal Bench at Ahmedabad vide petition number 54/NCLT/AHM of 2018, which has been approved on 21st August, 2018.
13. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, within 30 days from the date of issuance of the order by the Registry.
14. The Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
15. The Petitioner Company to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of receipt of the order.
16. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
17. Ordered accordingly.

SD/-

V. Nallasenapathy
Member (T)

SD/-

Bhaskara Pantula Mohan
Member (J)