

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

C.P. (CAA) No. 106/KB/2018

connected with

CA (CAA) No. 438/KB/ 2017

In the matter of:

In the matter of the Companies Act,
2013 – Section 230(6) read with Section
232(3) ;

And

In the matter of:

CESC Infrastructure Limited, a
Company incorporated under the
Companies Act, 1956 and being a
Company within the meaning of the
Companies Act, 2013, having its
registered office at CESC House,
Chowringhee Square, Kolkata – 700
001 in the State of West Bengal ;

And

Spencer's Retail Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 31, Netaji Subhas Road, 1st Floor, Duncan House, Kolkata – 700 001 in the State of West Bengal ;

And

Music World Retail Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 31, Netaji Subhas Road, Duncan House, Kolkata – 700 001 in the State of West Bengal ;

And

Spen Liq Private Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 31, Netaji Subhas Road, PS Hare Street,

Kolkata – 700 001 in the State of West Bengal ;

And

New Rising Promoters Private Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 31, Netaji Subhas Road, PS Hare Street, Kolkata – 700 001 in the State of West Bengal ;

And

CESC Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at CESC House, Chowringhee Square, Kolkata – 700 001 in the State of West Bengal ;

And

Haldia Energy Limited, a Company incorporated under the Companies Act, 1956 and being a Company within

the meaning of the Companies Act, 2013, having its registered office at Barick Bhawan, 6th Floor, 8, Chittaranjan Avenue, Kolkata – 700 072 in the State of West Bengal ;

And

RP-SG Retail Limited, a Company incorporated under the Companies Act, 2013, having its registered office at CESC House, Chowringhee Square, Kolkata – 700 001 in the State of West Bengal ;

And

RP-SG Business Process Services Limited, a Company incorporated under the Companies Act, 2013, having its registered office at CESC House, Chowringhee Square, Kolkata – 700 001 in the State of West Bengal ;

And

Crescent Power Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act,

2013, having its registered office at 6,
Church Lane, 1st Floor, Hare Street,
Kolkata – 7000 01 in the State of West
Bengal ;

1. CESC Infrastructure Limited
2. Spencer's Retail Limited
3. Music World Retail Limited
4. Spen Liq Private Limited
5. New Rising Promoters Private
Limited
6. CESC Limited
7. Haldia Energy Limited
8. RP -SG Retail Limited
9. RP-SG Business Process Services
Limited
10. Crescent Power Limited

- PETITIONERS

CORAM: Shri Jinan K.R., Member (Judicial)

For the Petitioners:

1. Mr. Ratnanko Banerji, Senior Advocate
2. Mr. DN Sharma, Advocate

3. Aniket Agarwal, Advocate

4. Mr. Suvam Sinha, Advocate

Date of pronouncement of the Order : 07-02-2018

ORDER

Per Shri Jinan K.R.. Member(Judicial)

This is a Petition under Section 230(6) read with Section 232(3) of the companies Act, 2013 filed by the Petitioner Nos. 1 to 10, namely, (1) CESC Infrastructure Limited, the Transferor Company No.1, (2) Spencer's Retail Limited, the Transferor Company No.2, (3) Music World Retail Limited, the Transferor Company No.3, (4) Spen Liq Private Limited, the Transferor Company No.4, (5) New Rising Promoters Private Limited, the Transferor Company No.5, (6) CESC Limited, (7) Haldia Energy Limited, (8) RP -SG Retail Limited, (9) RP-SG Business Process Services Limited and (10) Crescent Power Limited for sanction of the Scheme of Arrangement, being Annexure "A" to the Petition, between the Petitioners and their respective shareholders for reorganisation and reconstruction of the said Companies in the manner and on the terms and conditions fully stated in the Scheme of Arrangement, to be binding with effect from 01-10-2017 on the Petitioner Companies, their shareholders and all concerned.

It has been submitted that the Board of Directors of the Petitioner No.6, namely, CESC Limited, at its meeting held on 18-05-2017 and the Board of Directors of the Petitioner Nos. 1,2,3,4,5,7,8,9 and 10 at their respective meetings held on 22-05-2017 by resolutions passed unanimously, approved the Scheme of Arrangement between the Petitioner Companies and their respective shareholders whereby and where under it is proposed to reorganize and reconstruct the Petitioners in the manner and on the terms and conditions stated in the Scheme of Arrangement.

It has been submitted further in the Petition that the proposed restructuring, pursuant to the Scheme of Arrangement, is expected , inter alia, to result in segregation and unbundling of the generation, distribution, retail and business process outsourcing/management business of the Demerged Companies into the Resulting Companies and the Transferee Companies, which will enable enhanced focus on the Demerged Companies and the Resulting Companies for exploiting the opportunities of each of the said companies.

It has been further submitted in the Petition that the demerger of the Demerged Undertakings to the Resulting Companies is a strategic fit for serving existing market and for catering to additional volume linked to new consumers.

It will cause synergies in operational process and logistic alignment leading to economies of scale for the Resulting Companies and creation of sectoral

efficiencies and benefitting stakeholders as well as optimization of operation and capital expenditure.

It is also submitted that the proposed restructuring is in the interest of the shareholders, creditors, employees, and other stakeholders in each of the companies.

By an Order dated 26-10-2017, made in the Company Application CA(CAA) No. 438/KB/2017, the holding of the meetings of the shareholders of the Petitioner Nos. 1,2,3,4,5,7,8, 9 and 10 were dispensed with by this Tribunal, in view of the written consents given by the respective shareholders of the Petitioners and only the meeting of the Equity shareholders of the Petitioner No.6, namely, CESC Limited, was directed to be held.

Accordingly, the meeting of the Equity shareholders of the Petitioner No.6, namely, CESC Limited, was duly convened and held on 15-12-2017.

The said meeting, by requisite majority, approved the Scheme of Arrangement without any modification.

The Chairperson of the meeting has duly filed his report to this Tribunal, in respect of such meeting.

It is submitted in the Petition that in compliance with Section 230(5) of the Companies Act, 2013 and in compliance with the said Order of this Tribunal dated 26-10-2017, the Petitioners have also duly served the notices on the Statutory Authorities on 16/17-11-2017.

The notice of the meeting of the equity shareholders of the Petitioner No.6, namely, CESC Limited, was also published in The Economic Times and Aajkal on 13-11-2017.

The Petitioners have duly filed affidavit dated 06-11-2017 proving service and compliance of the aforesaid Order of this Tribunal dated 26-10-2017.

It has been stated in the Petition that no objection or representation has been made by any of the aforesaid statutory authorities.

The Official Liquidator, attached to the Hon'ble High Court, Calcutta, has filed his report on 30-01-2017.

The Official Liquidator in his report has observed that from the examination of the Books and Records produced before the Official Liquidator, it appears that the Transferor Companies, namely, (1) CESC Infrastructure Limited, the Transferor Company No.1, (2) Spencer's Retail Limited, the Transferor Company No.2, (3) Music World Retail Limited, the Transferor Company No.3, (4) Spen Liq Private Limited, the Transferor Company No.4, (5) New Rising Promoters

Private Limited, the Transferor Company No.5, had maintained proper books of accounts and records as required under Section 128 of the Companies Act, 2013 (Section 209 of the erstwhile Companies Act, 1956).

It has also been observed in the said report of the Official Liquidator that no adverse comment has been given by the Statutory Auditors of the Transferor Companies except in case of Spencer Retail Limited, the Transferor Company No. 2, for the Financial year 2012-13 to Financial year 2015-16, which comment is not subsisting in the latest Financial year 2016-2017.

Further, on the basis of verification carried out in accordance with the generally accepted auditing practices and conventions including the test checks, the Official Liquidator attached to the Hon'ble High Court, Calcutta is of the opinion that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members or to public interest.

After such due compliance, the petitioners have made the instant petition bearing C.P. (CAA) No. 106/KB/2018 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Arrangement.

Heard the arguments of the Ld. Counsels for the petitioners.

Let notice be served as per requirements of sub section (5) of section 230 of the Companies Act, 2013 along with all the documents including a copy of the

Scheme of Arrangement and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal and the concerned Assessing Officer, Income-Tax along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies, by hand delivery through personal messenger or by Speed post, or by registered post and E mail, both, and also on the Official Liquidator having jurisdiction over the Petitioner companies and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed Scheme, by sending the same by hand delivery through personal messenger or by Speed post or by registered post, within seven days from the date of this order for filing their representation, if any, on the petition with 30 days from the date of notice.

The petitioners are to file an affidavit, along with the copy of the notice within 7 days of serving of notice regarding service of the notice.

The petitioners are further directed to send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the petitioners and their authorized representative, if no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement.

Such notices shall be sent under section 230(5) of the companies act, 2013 in Form no. CAA.3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published once in the English daily, "The Economic Times" and another in the Bengali daily newspaper, "Aajkal", same as was earlier made in first motion, stating the PAN numbers of all the Petitioner Companies, 10 days before the date fixed for hearing under Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The petition is fixed for hearing on 26-03-2018.

Certified copy of this order may be issued, if applied for, upon compliance of all the requisite formalities.



(Jinan K.R.)

Member(Judicial)

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