

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

**CA(CAA)NO.47/BB/17
Under Section 230 to 232 of Companies Act, 2013**

**IN THE MATTER OF
KARE POWER RESOURCES PRIVATE LIMITED**

Order delivered on: 10th July, 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

For the Petitioner (s) 1. Shri.Saji.P.John, Sr.Advocate

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 23.06.2017


ORDER

This Application is filed on behalf of the Applicant Company under Section 230 and 232 of the Companies Act, 2013 read with Rule 3 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016, praying to order for dispensing with the convening of Meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company for considering the Scheme of Amalgamation, where under South Star Distillers and Breweries Private Limited which is Transferor Company to be merged with Kare Power Resources Private Limited (Applicant/Transferee Company). The Scheme of Amalgamation shown as **Annexure-G**.

The averments made in the Company Application are briefly described hereunder:-

The Applicant seeks an order for dispensing with the convening of the Meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company for approving the Scheme of Amalgamation of South Star Distillers and Breweries Private Limited with Kare Power Resources Private Limited in terms of Scheme of Amalgamation shown as **Annexure-G**.

Application is filed by the Applicant Company alleging that the Applicant Company was incorporated on 18th August, 2003 as per the provisions of the Companies Act, 1956 under the name and style of Sanath Export Private Limited with Registrar of Companies, Karnataka. Subsequently on 10th September, 2009 the name of the Company was changed to



Kare Power Resources Private Limited. The Registered office of the Applicant Company is situated at 103, Eden Park, No.20, Vital Mallya Road, Bengaluru-560001.

The main objects of the Applicant Company is to generate electricity power by conventional, non-conventional methods including coal, gas, lignite, oil, bio-mass, waste, thermal, solar, hydel, geo-hydel, wind and tidal waves, to promote, own , acquire, erect, construct, establish, maintain, improve, manage, operate, alter, carry-on, control, take-on, hire/lease power plants, invest, co-invest in any such projects, companies, ventures, co-generation power plants, energy conversation projects, power houses, dams, water treatment and distribution systems for distribution systems for generation, distribution transmission and supply of electrical energy and buy, sell ,supply and any other purpose in India and elsewhere in any area. The copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure-A**.

The latest authorized share capital of Applicant Company is Rs.25,00,00,000/- divided into 2,50,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.21,10,00,000/- divided into 2,11,00,000 Equity Shares of Rs.10/- each fully paid up. The Audited balance sheet as on 31st March, 2016 shown as **Annexure -B**.

It is further stated that, the Board of Directors of the Applicant Company has approved and adopted a Scheme of Amalgamation at its meeting held on 15th March, 2017 by virtue of which South Star Distillers and Breweries Private Limited which is Transferor Company to be merged with Kare Power Resources Private Limited (Applicant/Transferee Company) subject to confirmation. A copy of the Board Resolution of Applicant Company dated 15th March, 2017 approving and adopting the Scheme of Amalgamation is shown as **Annexure-G**.

It is further stated in the scheme that, the integration, consolidation and amalgamation would inter alia have the following benefits:

1. The Amalgamation would increase the financial position of the Transferee Company, in terms of its net worth, assets and income.
2. The Amalgamation will result in financial resources of the Transferor Company and Transferee Company being merged and pooled leading to more effective, centralised and streamlined resource and fund management which would enable sharing of resources in an efficient manner and will reap financial benefits to the group and its shareholders through better management of funds and cash flows.

3. The Amalgamation will provide for pooling of the managerial, technical and financial resources of the Transferor Company and Transferee Company which will help in increasing the competitiveness of the Transferee Company.

It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company has certified the number of shareholders of the Applicant Company as on February 28, 2017. Certificate issued by the Chartered Accountant is marked as **Annexure-H**.


It is further stated that there are only two Secured Creditors in the Applicant Company as on 28th February, 2017 certified by the Chartered Accountant shown as **Annexure-J**.

It is further stated that the Chartered Accountant certified that there are seven Unsecured Creditors in the Applicant Company as on February 28, 2017. Certificate issued by the Chartered Accountant shown as **Annexure-K**.

We have seen the consent affidavits filed by the Three Equity shareholders shown as **Annexure- H** i.e., (i) Kare Ramanarasimhashetty Pradeep holding 20095000 equity shares, constituting 95.23% of the paid-up capital, (ii) Ajit Setu Ram holding 5000 equity shares, constituting 0.02% of the paid-up capital, (iii) Advait Motors Private Limited holding 1000000 equity shares, constituting 4.73% of the paid-up capital.

The Applicant is seeking an order to dispense with convening of the meeting of Secured Creditors on the ground that there are two Secured Creditors in the Applicant Company. It is stated that, the value of amounts due to the secured creditors of the Applicant Company is Rs.1,119,380,501/- and 100% of the secured creditors representing value of Rs.1,119,380,501/- have given their consent to the Scheme by way of affidavit. We have seen the consent affidavits given by the secured Creditors shown as **Annexure-J**.

There are 7 Unsecured Creditors as certified by the Chartered Accountant. The Certificate of Chartered Accountant is shown as Annexure-K. It is stated that, the value of amounts due to unsecured creditors of the Applicant Company is Rs.59,78,08,078/- and 99.41% of the unsecured creditors representing value of Rs.59,43,02,627/- have given their consent to the Scheme by way of affidavit. We have seen the consent affidavits given by the Unsecured Creditors shown as **Annexure-K**.



The Applicant Company is seeking an order to dispense with convening of meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company on the ground that, there are only three equity shareholders, two secured creditors and seven Unsecured Creditors. Three Equity Shareholders, Two secured Creditors and 99.41% of value of Unsecured Creditors have given their consent by way of affidavits for the proposed scheme of amalgamation.

We have heard the Counsel appearing for the Applicant Company. The Application filed by the Applicant Company which is a Transferee Company for dispensing with the convening of meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company for approving the Scheme of Amalgamation of South Star Distillers and Breweries Private Limited with Kare Power Resources Private Limited Textron India Private Limited in terms of Scheme of Amalgamation shown as **Annexure-G**.

In the result, the application is allowed and holding of meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors is dispensed with. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who are interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.


10/7/17
(RATAKONDA MURALI)
MEMBER, JUDICIAL