

NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW BOARD, CHENNAI HELD ON 01/02/2017 AT 10.30 AM

PRESENT: SHRI. K. ANANTHA PADMANABHA SWAMY, MEMBER – JUDICIAL
SHRI CH. MOHD SHARIEF TARIQ, MEMBER - JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER : CA/10/2017
NAME OF THE PETITIONER(S) : L&T SHIP BUILDING LTD
NAME OF THE RESPONDENT(S) : MARINE INFRA STRUCTURE DEVEP PVT LTD
UNDER SECTION : 230

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

1. PL. Narayanan

Counsel for the
Applicant

PL. Narayanan

P.T.O.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, DB, CHENNAI.

Arguments heard on 01.02.2017

Order passed on 01.02.2017

CA No.10 of 2017

Connected with

C.P.No.17 of 2017

(Under Sections 230 to 240 of Companies Act, 2013)

In the matter of Scheme of Arrangement between

M/s L&T Ship Building Ltd.

AND

M/s.Marine Infrastructure Developer Pvt Ltd and its respective shareholders

Applicant represented by : Advocates Shri PL.Narayanan, P.T.Rakesh,
K.Anandhasayanan & R.Vigneshkumar

CORUM

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL):- (ORAL)

Under consideration is a C.A.No.10 of 2017 which has been filed by the Applicant under Sections 230 to 240 of Companies Act, 2013 for seeking relief to dispense with calling of a meeting of creditors, both secured and unsecured, under sub-section (9) of Section 230 of the Companies Act, 2013. The Application reveals that there is a scheme for demerger of the transferor company which has decided to demerge the port business, thereby transferring and vesting the operation relating to the port business of the transferor company into a separate company, i.e. Marine Infrastructure Developers Private Ltd., the transferee company.

2. In this connection, the Board of Directors of the transferor company and the transferee company have held their respective meetings by resolution dated 22.07.2016 approved the scheme of arrangement (demerger). The transferor company, *inter alia*, filed the auditor's certificate dated 30.09.2016 which provides the list and the respective outstanding value of secured creditors and unsecured creditors. In short, the transferor company and the transferee company are stated to have aggregate assets which are more than sufficient to meet all their liabilities and the proposed scheme of demerger will not adversely affect the rights and interests of any of the creditors of the transferor company or the transferee company in any manner whatsoever. The transferor company has only two number of secured creditors i.e. IDBI Trusteeship Service Ltd and State Bank of India to whom the company owes Rs.1641,37,01,472/- as on 30.09.2016 and the amount due to unsecured creditors as on 30.09.2016 is Rs.2247,51,22,503/-. The IDBI Trusteeship Service Ltd and the State Bank of India's credit that has been given, if shown in percentage amounts to 81.09% and 18.91% respectively. The secured creditors have approved the arrangement of demerger by duly swearing in consent affidavits. It may not be out of place to mention that the unsecured creditors holding around 96.4% of the total value of the equity of L&T Ship Building Ltd, Larson & Toubro Ltd, have also accorded their approval by duly swearing in consent affidavits dated 28.12.2016 to this effect. It is also placed on record that the transferor company's shareholders [Larson & Toubro Ltd] are holding 81,86,79,994 equity shares of Rs.10/- each, along with TN Industrial Development Corporation Ltd., holding 253,20,000 equity shares of Rs.10/- each, being the transferor herein, and six nominee shareholders holding one equity share of Rs.10/- each jointly with Larson & Toubro Ltd, who have accorded their unconditional consent and approval to the scheme of demerger. In the light of the above stated facts and the documents placed on record, we see that the secured creditors and the unsecured creditors as well who are having more than 90% value did agree and confirm by way of affidavits, the scheme of

arrangement of demerger. The requirements provided under sub-section (9) of Section 230 of the Companies Act, 2013 seems to have been fulfilled. Therefore, after hearing the counsel for the applicant, and based on the above facts and record, we dispense with calling of meeting of the secured as well as unsecured creditors. Accordingly, the **application is allowed**.

3. The Company petition No.17 of 2017 has been filed in connection with C.A.No.10 of 2017 that provides the salient features of the scheme of demerger which indicates that the reduction in the share capital of the resulting company shall be effected as an integral part of the scheme in accordance with the provisions of Section 66 of the Companies Act, 2013. The said reduction will not involve even a diminution of liability in respect of the unpaid share capital or payment of paid up share capital. The petitioner also stated that in case this Bench is pleased to sanction this scheme, then it shall deem to be an order passed by this Tribunal under Section 66 of the Companies Act, 2013. Further, the staff, workmen and the employees of demerged undertaking on and from the effective date but with effect from the appointed date of the identified persons shall become the staff, workmen and employees of the resulting company. The petition further reveals that there is no likelihood that any of the creditors of the demerged company or resulting company would lose or be prejudiced as a result of the proposed scheme being passed. It has further been stated in the petition that the arrangements are in no way cause any additional burden on the shareholders of any of these companies nor it will be prejudicially affect the interest of any of the clauses of the creditors. It has also been stated in the petition that no investigation proceedings is pending either against the petitioner's company or against the resulting company. In short, the petition indicates that the scheme is not prejudicial to the interest of the creditors both secured and unsecured and other stakeholders.

4. We have heard the counsel for the petitioner and perused the record. Prima facie, it appear that the requirements under law are fulfilled for admission of the petition for hearing. In the light of the above discussions, the petition is admitted for hearing and the Registry is directed to issue notice to the Central Government, the Registrar of Companies concerned and the Income Tax authorities by Registered Post with Ack/Due or Speed Post immediately, so that they can make any representation if any, to this Bench within a period of 30 days from the date of receipt of such notice. In case, no representation is received within the stipulated period of time, this Tribunal shall presume that the authorities have no representation to make on the proposed scheme/arrangement of demerger, and the appropriate order will be passed.

5. There does not appear any requirement for issuance of notice to the Reserve Bank of India, SEBI, Competition Commission of India and the Stock Exchanges, because the Applicant Company in question is unlisted. There is no involvement of foreign exchange and the scheme will not have any effect on the subject administered by the Competition Commission of India. The Registry is directed to place the matter before this Bench on **06.03.2017 at 10.30 A.M.**, for further hearing.


(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)