IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 141
C.A.(CAA)/71(AHM)2021

Order under Section 230-232

IN THE MATTER OF:
Welspun Steel Ltd
Welspun Corp Ltd

.....Applicant

Order delivered on ..04/10/2021

Coram:
Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT –1

CA (CAA)/71/AHM/2021

[A Company Application filed under section 230-232 of the Companies Act, 2013]

In the matter of:

Welspun Steel Limited
(CIN:U27109GJ2004PLC044249)
Having its registered office at
Survey No. 650, Village
Varsamedital, Taluka Anjar, Dist.
Kutch, Gujarat – 370110

... Applicant Demerged Company

Welspun Corp Limited
(CIN:L27100GJ1995PLC025609)
Having its registered office at
Welspun City, Village Versamedi,
Taluka Anjar, Dist. Kutch,
Gujarat -370110

... Applicant Resulting Company

Order Reserved on 27.09.2021
Order Pronounced on 04.10.2021

Coram: Madan Bhalchandra Gosavi (Member Judicial)
Virendra Kumar Gupta (Member Technical)

Appearance:

Learned Counsel Ms. Dharmishta N. Raval appeared for the Applicant Companies

ORDER

[Per: Bench]

1. The present application is filed by Welspun Steel Limited and Welspun Corp Limited (**"the Applicant Companies"**) under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as **'the Act'**) read with Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 (hereinafter referred to as "**the Rules**"). The Scheme is an arrangement between Welspun Steel Limited (hereinafter referred to as the **"Applicant Demerged Company"**) and Welspun Corp Limited (hereinafter referred to as the **"Applicant Resulting Company"**) and its respective shareholders.

2. The registered office of both the Applicant Companies is situated in the State of Gujarat, and hence both the Applicant Companies are under the jurisdiction of the National Company Law Tribunal at Ahmedabad.

3. By this application, the Applicant Companies are seeking dispensation of the meetings of the Equity Shareholders in respect of the Applicant Demerged Company and appropriate directions for holding and convening of meeting of Equity shareholders of the Applicant Resulting Company and of Secured

and Unsecured Creditors of both the Applicant Companies in respect of the Scheme of Arrangement between Welspun Steel Limited and Welspun Corp Limited and their respective shareholders (**"the Scheme"**), with effect from the Appointed Date on the agreed terms and conditions as set out in the Scheme annexed at **Annexure F,** in accordance with Sections 230 to 232 of the Act and other applicable provisions of the Act.

4. The proposed restructuring pursuant to this Scheme is expected, inter-alia, to result in the following benefits:

a. The consolidation will result in earning predictability, stronger revenue and improved competitiveness, with diversification in product portfolio thereby reducing business risks for mutual benefit of the shareholders. This will result in strong presence across market segments; provide access to new markets and product offerings. Further, the operations of the Demerged Company could have access to the Resulting Company's marketing capabilities.

b. Greater economies of scale and will provide a larger and stronger base for potential future growth;

c. Consolidation and simplification of the group structure;

d. Reduction in overheads, administrative, managerial and other expenditure;

e. Operational rationalization and increase in operating efficiency; and

f. Synergistic benefits, expansion and acquisition opportunities.

5. It is submitted by the Learned Counsel that the Board of Directors of the Applicant Companies at their respective Board meetings which was held on 28th June 2021 passed a resolution approving the proposed Scheme as placed before the respective Board. The Applicant Companies have filed their audited Balance Sheet as on 31st March 2021 and provisional financial statement as on 30th June 2021 and is placed on record. The Applicant Companies have also placed on record the certificate issued by their respective statutory auditors certifying compliance with Section 133 of the Act.

6. It is further submitted that the Applicant Companies have placed on record report given by RBSA Valuation Advisors LLP and Drushti R. Desai and the same is annexed with the application.

7. The equity shares of the Applicant Resulting Company are listed on the Bombay Stock Exchange Limited and the National Stock

Exchange of India Limited. It is further submitted that the Applicant Resulting Company had submitted the Scheme (**Annexure F**) to the aforesaid stock exchanges for the requisite approvals and the aforesaid stock exchanges have issued their respective observation letters to the Applicant Resulting Company and the same is placed on record.

8. It is further submitted by the Learned Counsel that no investigation or proceedings under Sections 210 to 226 of the Companies Act, 2013 as well as Sections 235 to 251 of the Companies Act, 1956 are pending against the Applicant Companies.

9. It is further submitted that the Applicant Companies are part of Welspun Group. Further the De-minimis exemption provided under the Competition Act, 2002 is available. Accordingly, the provisions of the Competition Act, 2002 are not applicable in the present case.

10. It is submitted by the Learned Counsel for the Applicant Companies that notice to Reserve Bank of India is required as there is a foreign shareholder in the Applicant Demerged Company.

11. Heard the Learned Counsel for the Applicant Companies and perused the application and the documents placed on record.

12. It is submitted that as on 30th June 2021, the Applicant Demerged Company has 8 Equity Shareholders. The list of Equity Shareholders as certified by the Chartered Accountant is placed on record at **Annexure K**. It is submitted that all the Equity Shareholders of the Applicant Demerged Company have filed consent affidavit and the same are produced on record at **Annexure J (Colly).**

13. It is submitted that as on 30th June 2021, the Applicant Resulting Company has 1,00,828 Equity Shareholders. The number of Equity Shareholders as certified by the Chartered Accountant is placed on record at **Annexure L**.

14. It is submitted that as on 30th June 2021, the Applicant Demerged Company has 3 Secured Creditors. The number of Secured Creditors as certified by the Chartered Accountant is placed on record at **Annexure M**.

15. It is submitted that as on 30th June 2021, the Applicant Resulting Company has 12 Secured Creditors. The number of Secured Creditors as certified by the Chartered Accountant is placed on record at **Annexure N**.

16. It is submitted that as on 30th June 2021, the Applicant Demerged Company has 450 Unsecured Creditors. The number of Unsecured Creditors as certified by the Chartered Accountant is placed on record at **Annexure O**.

17. It is submitted that as on 30th June 2021, the Applicant Resulting Company has 1,310 Unsecured Creditors. The number of Unsecured Creditors as certified by the Chartered Accountant is placed on record at **Annexure P**.

18. Considering the entire facts and materials placed on record, this Tribunal passes the following order:

i. The meeting of Equity Shareholders of the Applicant Demerged Company is hereby dispensed with in view of the consent affidavits of all the Equity Shareholders.

ii. The meeting of the Secured Creditors of the Applicant Demerged Company shall be convened and held on 16.11.2021 at 11.45 am, in case of physical meeting, at the registered office of the

Applicant Demerged Company for the purpose of considering and, if thought fit, approving with or without modifications the proposed Scheme.

iii. The meeting the Unsecured Creditors of the Applicant Demerged Company shall be convened and held on 16.11.2021 at 1.15 pm, in case of physical meeting, at the registered office of the Applicant Demerged Company for the purpose of considering and, if thought fit, approving with or without modifications the proposed Scheme.

iv. The meeting of the Equity Shareholders of the Applicant Resulting Company shall be convened and held on 16.11.2021 at 2.30 pm, in case of physical meeting, at the registered office of the Applicant Resulting Company for the purpose of considering and, if thought fit, approving with or without modifications the proposed Scheme.

v. The meeting of the Secured Creditors of the Applicant Resulting Company shall be convened and held on 16.11.2021 at 11.00am, in case of physical meeting, at the Applicant Resulting Company for the purpose of considering and, if thought fit, approving with or without modifications the proposed Scheme.

vi. The meeting of the Unsecured Creditors of the Applicant Resulting Company shall be convened and held on 16.11.2021 at 12.30 pm, in case of physical meeting, at the registered office of

the Applicant Resulting Company for the purpose of considering and, if thought fit, approving with or without modifications the proposed Scheme.

vii. In view of the recent circulars of Ministry of Corporate Affairs; viz. Circular No. 14 of 2020 dated 8th April 2020, Circular No. 17 of 2020 dated 13th April 2020 and Circular No. 20 of 2020 dated 5th May 2020, the meetings of Secured Creditors and Unsecured Creditors of the Applicant Demerged Company and the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Resulting Company may be convened and conducted through video conferencing or other Audio Visual Means or other means as may be permitted under law.

viii. The Applicant Resulting Company being a listed public company is governed by SEBI circular no. CFD/DIL3/CIR/2017/21 dated March 10, 2017, and in view of Sections 230(4) of the Act as well as Rule 6(3)(xi) of the Companies (CAA) Rules, 2016 and SEBI (Listing Obligations and Disclosure Requirements Regulations), 2015; it is required to provide a facility of remote e-voting to the shareholders. Hence the Applicant Resulting Company is directed to carry out voting through (i) remote e-voting as well as (ii) voting at the time of meeting for all the Equity Shareholders, Secured Creditors and Unsecured Creditors.

ix. At least one month before the date of the aforesaid meetings, the respective Applicant Companies to publish the day, the date, the place and the time as aforesaid of the meetings, one in English Daily **'Financial Express'** Ahmedabad Edition and Gujarati translation thereof in **'Kutch Mitra'**. The publication shall indicate that the statement required to be furnished pursuant to Section 102 of the Act, read with Sections 230 - 232 of the Act and the prescribed proxy can be obtained free of charge at the registered office of the respective Applicant Companies in accordance with second proviso to sub-section (3) of Section 230 of the Act read with Rule 7 of the Companies (CAA) Rules, 2016.

x. At least one month before the date of the meeting of the Equity Shareholders of the Applicant Resulting Company to be held as aforesaid, a notice in respect of convening the said meeting indicating the day, date, place and time as aforesaid, together with a copy of the Scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and prescribed form of proxy shall be sent to each of the Equity Shareholders on records of the Applicant Resulting Company as on 30.06.2021 at their respective registered or last known addresses either by Registered Post or

Speed Post/Airmail or by Courier or by Email or by Hand delivery.

xi. At least one month before the date of the aforesaid meetings, of the Applicant Companies to be held as aforesaid, a notice in respect of convening the said meeting indicating the day, date, place and time as aforesaid, together with a copy of the Scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and prescribed form of proxy shall be sent to each of the respective Secured Creditors and Unsecured Creditors on records of the Applicant Companies as on 30.06.2021 at their respective registered or last known addresses either by Registered Post or Speed Post/Airmail or by Courier or by Email or by Hand Delivery.

xii. Mr. Atul Desai, Advocate & Solicitor, Partner of Kanga & Co. and failing him, Mr. Niral Patel, Chartered Accountant, Partner of RNPG & Co., shall be the Chairman of the aforesaid meetings of the Applicant Demerged Company and in respect of any adjournment or adjournments thereof.

xiii. Mr. Niral Patel, Chartered Accountant, Partner of RNPG & Co. and failing him Mr. Atul Desai, Advocate & Solicitor, Partner of Kanga & Co., shall be the Chairman of the aforesaid meetings of

the Applicant Resulting Company and in respect of any adjournment or adjournments thereof.

xiv. Mr. Sanjay S. Risbud, Practicing Company Secretary and, in his absence, Mr. Mihen Halani, Practicing Company Secretary is appointed as the Scrutinizer for the aforesaid meetings of the Applicant Demerged Company.

xv. Ms. Mansi Shah, Designated Partner of M/s. JMJA Associates LLP, and, in her absence, Mr. Jigar Shah Designated Partner of M/s. JMJA Associates LLP is appointed as the Scrutinizer for the aforesaid meetings of the Applicant Resulting Company.

xvi. The Chairman appointed for the aforesaid meetings shall issue advertisements and send out notices of the said meetings referred above. The Chairman is free to avail services of the respective Applicant Companies or any agency for carrying out the aforesaid directions.

xvii. The Chairman shall have all powers under the Articles of Association of the respective Applicant Companies and also under Rules in relation to conduct of the meetings, including for deciding any procedural questions, that may arise at the meetings or adjournment(s) thereof proposed for the said meetings, amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meetings by any person(s); and to ascertain the decision of the meeting of Secured Creditors and

Unsecured Creditors of the Applicant Demerged Company and of the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Resulting Company.

xviii. The quorum for the aforesaid meetings shall be as per Section 103 of the Companies Act 2013 present in person or through authorised representative or through proxy. If the requisite quorum is not present within half an hour from the time appointed for holding the respective meetings, then the said meeting shall be adjourned by half an hour and the quorum for the adjourned meeting shall be such number of persons that are present in person or through authorised representative or through proxy.

xix. Voting by proxy/authorized representative is permitted provided that the proxy in the prescribed form/authorization duly signed by the person entitle to attend and vote at the aforesaid meetings is filed with the relevant Applicant Companies at its registered office or at its corporate office not later than 48 hours before the said meetings, vide Rule 10 of the Companies (CAA) Rules, 2016 read with Section 105 and Section 113 of the Act.

xx. In view of Para A(X) of the MCA General Circular No. 14/2020 dated 8th April 2020, in case of meeting through video conference or other audio-visual means, the voting through Proxy shall not be permitted. However, voting through

Authorized Representative is permitted, provided the prescribed form / authorization duly signed by the person entitle to attend and vote at the aforesaid meetings is filed with the Applicant Demerged Company not later than 48 hours before the start of the said meetings, vide Rule 10 of the Companies (CAA) Rules, 2016 read with Section 113 of the Act.

xxi. The number and value of the vote of each of Equity Shareholders or the value of debt of the Secured Creditors and Unsecured Creditors of the Applicant Companies, as the case may be, shall be in accordance with the register or records of the Applicant Resulting Company for its Equity Shareholders and as per the entries in the books of accounts of the respective Applicant Companies for their Secured Creditors and Unsecured Creditors; and where the entries in the records are disputed, the Chairman of the meeting shall determine the value for the meeting.

xxii. The Chairman shall file an affidavit not less than 7 (Seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.

xxiii. It is further ordered that the Chairman shall report to this Tribunal on the result of the said meetings in Form No. CAA 4, verified by his affidavit, as per Rule 14 of the Companies (CAA)

Rules, 2016 within 7 (Seven) days of the conclusion of the meetings.

19. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant Demerged Company shall send a 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, (iii) the Income Tax authorities concerned, and (iv) the Reserve Bank of India stating that representations, if any, to 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 notices 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 by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 of the Act, 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.

20. This Company Application is allowed and disposed off accordingly.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Shweta Desai