Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1142757

Court : Kolkata

Decided On : Jun-02-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER
SHEET CP No.163 of 2014 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE BINANI CEMENT LTD.And BINANI ENERGY PVT.LTD.BEFORE: The Hon'ble JUSTICE PATHERYA Date : 2nd June, 2014.

Mr.D.N.Sharma, Adv.for the petitioner Ms.Sima Adhikari, Adv.for Central Government The Court : Several objections have been raised by the Central Government.

The fiRs.objection is based on the letter dated 27th March, 2014 issued by the Income-tax Department wherein the Income-tax Department has objected to the demerger on the ground of evasion of tax.

It is made clear that in the event any tax is payable by the Power Undertaking of BCL, the same shall be paid by BEPL provided that such payment is in accordance with law.

The second objection raised is in respect of the delisting in the Bombay Stock Exchange and National Stock Exchange in May, 2011.

BSE in its letter dated 9th May, 2011 has categorically stated that the company has complied with all formalities for voluntary delisting of equity shares and it is on basis thereof trading was suspended on and from 23rd May, 2011.

Therefore the opinion of SEBI as sought by the Central Government would not be necessary because BSE would not issue letter contrary to SEBI guidelines.

In view of the letters issued by BSE and NSE such objection raised by the Central Government cannot be sustained in the eye of law.

The third objection raised is with regard to filing of necessary forms and creation of charge.

The applicants undertake to create necessary charge if so required in accordance with law and to file necessary forms in respect thereof.

The fourth objection raised is with regard to the nonconvening of meeting of credit ORS.In a scheme of demerger, a creditor would have no say in the matter as it is the shareholder who would be interested.

As the scheme of demerger has been approved and sanctioned by the shareholders of BCL and the shareholders of BECL dispensing with the convening of meeting, the objection raised by the Central Government cannot be sustained and is rejected.

The fifth objection raised is with regard to increasing the authorised share capital by the resulting company.

The applicants agree to increase the authorised share capital of the transferee resulting company, in the event the share capital is not sufficient.

In view of the aforesaid, there will be orders in terms of prayers (a) to (g) of the petition.

In the event the petitioners supply a legible computerized print out of the scheme and the schedule of assets in acceptable form to the department, the department will append such computerized print out, upon verification, to the certified copy of the order without insisting on a handwritten copy thereof.

Accordingly, C.P.163 of 2014 is disposed of.

Let costs of 200 GMs.be paid by the applicants to the Central Government .

Letters dated 9th May, 2011 issued by the BSE and NSE be kept on record.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(PATHERYA, J.) TR/