(2023) 06 NCLT CK 0008

In the National Company Law Tribunal

Case No : C.A. (CAA)/28(MB)/2023

Adityesh Educational Institute Privatelimited Vs

Date of Decision : 06-06-2023

Acts Referred:
Companies Act, 2013 — Section 103, 230, 230(1)(a), 230(1)(b), 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 8

Citation : (2023) 06 NCLT CK 0008

Hon'ble Judges : H.V. Subba Rao, Member (J);Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Ashish Pyasi, Hemant Shetye

Final Decision : Disposed Of

Judgement

Anu Jagmohan Singh, Member (Technical)

1. This Bench is convened via Video Conferencing today.

2. Learned Counsel for the Applicant Companies states that the present Scheme provides for amalgamation of Adityesh Educational Institute Private Limited ('First Applicant Company' or 'ADITYESH') having CIN: U80100MH2005PTC152720 and Maxima Education Private Limited ('Second Applicant Company' or 'MAXIMA') having CIN: U80210MH2005PTC150983 and Vincent Edukare Private Limited ('Third Applicant Company' or 'VINCENT') having CIN: U80301MH2009PTC194665 and Ampersand Education Private Limited ('Fourth Applicant Company'or'AMPERSAND')havingCIN: U80301MH2010PTC200076 and VIPT Management & Consultancy Private Limited ('Fifth Applicant Company' or 'VIPT') having CIN: U80904MH2012PTC226997 and Kare Properties Private Limited ('Sixth Applicant Company' or 'KARE') having CIN: U45200MH2004PTC150337 and Precept Education Consultancy Private Limited (Seventh Applicant Company or 'PRECEPT') having CIN: U80301MH2011PTC214559 and Lakoji Trade-Invest Private Limited (Eighth Applicant Company or 'LAKOJI') having CIN: U51900MH1996PTC100685 With Creo Education Private Limited (Nineth Applicant Company or 'CREO') having

CIN: U80301MH2010PTC205577 and their respective Shareholders and Creditors ("Scheme of Amalgamation").

3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Companies and Transferee Company in their respective Board Meetings conducted on October 20, 2022 for the Transferor Companies and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is October 1, 2022.

4. Learned Counsel for the Applicant Companies further submits that the proposed Amalgamation would accomplish the following benefits:

i) The Scheme is presented under Section 232 of Company Act 2013 and it provides for amalgamation of Transferor Companies with the Transferee Company with a view to maintain a simple corporate structure, to take effect of synergy gains and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of Transferor Companies with Transferee Company;

ii) The amalgamation would create economy in administrative and managerial costs by consolidating operation and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

iii) For Efficient utilization of capital for better shareholder's return it is desirable to merge and amalgamate Transferor Companies into Transferee Company.

iv) The amalgamation of all undertakings of Transferor Companies with Transferee Company shall facilitate consolidation of all the undertakings and enable effective management and unified control of operations

v) The combined managerial resources of Transferor Companies would enhance the capability of the Transferee Company to invest in larger and sophisticated projects to ensure rapid growth and would consolidate the strategic strength of the Amalgamated Company/ Transferee Company.

vi) It would also lead to growth prospects for the personnel and organizations connected with these Companies.

5. Learned Counsel for the First Applicant Company submits that for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation, the Meeting of Equity Shareholders of the First Applicant Company be convened and held at place, date and time as may be directed and fix by the Hon'ble Tribunal.

6. At least 30 clear days before the said Meeting of the Equity Shareholders of the First Applicant Company to be held as aforesaid, a Notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent

by registered post or by air mail or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the First Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the First Applicant Company.

7. At least 30 clear days before the Meeting of the Equity Shareholders of the First Applicant Company to be held as aforesaid, a Notice convening the said Meeting, shall be published once each in 'Business Standard' in English and 'Navshakti' in Marathi.

8. The Applicant Companies undertake to:

a. Issue Notice convening Meeting of the equity shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

b. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;

c. Issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and

d. Advertise the Notice convening Meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

9. Mr. Nawal Karl Kerawalla (DIN: 09436967), Director failing him Mr. Rustom Pesi Kerawalla (DIN: 00450102), Director of the First Applicant Company/ Transferor Company is appointed as the Chairperson for the Meeting of Equity Shareholders of the First Applicant Company. The Scrutinizer for the Meeting shall be Mr. Ketan R. Shirwadkar (Membership No. A37829), and the remuneration is fixed as Rs. 20,000 /- per Meeting excluding taxes.

10. The Chairpersons appointed for the aforesaid Meeting to issue the Notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the Meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the Meeting by any person(s).

11. The quorum for the aforesaid Meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.

12. In case if the Quorum as noted above is not present at the Meeting, then the Meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of quorum valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the persons entitled to attend and vote at the Meeting is filed with the registered office of the Applicant Company atleast 48 hours before the Meeting.

13. The voting by proxy or Counsel in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the Meeting, is filed with the Applicant Companies at its Registered Office, not later than, 48 hours before the aforesaid Meeting as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

14. The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Companies and where the entries in the books / register are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid Meeting and his decision in that behalf would be final.

15. The Chairpersons of the Meetings of the First Applicant Company to report to this Tribunal, the result of the Meeting within seven days of the conclusion of the Meetings, and the said report shall be filed as per Form CAA. 4 of the Companies (Compromises, Arrangements &Amalgamations) Rules, 2016.

16. Learned Counsel for the Second to Nineth Applicant Company submits that the Meeting of Equity Shareholders of the Second to Nineth Applicant Company be dispensed with, in view of the Consent Affidavits given by the Equity Shareholders of the Second to Nineth Applicant Company which are annexed to the Company Scheme Application.

17. Learned Counsel submits that none of the Applicant companies have Secured Creditors therefore issuing Notice and conducting Meeting of the Secured Creditors does not arise. The affidavits confirming that there no secured creditors in the First to Nineth Applicant Company are annexed to the Company Scheme Application. Further, Fourth Applicant Company and Nineth Applicant Company does not have any unsecured creditors. The affidavits confirming that there no unsecured creditors in the Fourth and Nineth Applicant Company are annexed to the Company Scheme Application.

18. Learned Counsel submits that, Except Fourth and Nineth Applicant Company, all Companies have unsecured creditors. First and Fifth Applicant Company has 2 (Two) unsecured creditors each. Second, Third, Sixth, Seventh and Eight applicant Company has 1 (One) unsecured Creditor each. Further, the Meeting of Unsecured Creditors of the First, Second, Third, Fifth, Sixth, Seventh and Eighth Applicant Company be dispensed with, in view of the Consent Affidavits given by the Unsecured Creditor of the respective Applicant Companies. The said consent affidavits are annexed to the Company Scheme Application.

19. Learned Counsel for the Applicant Companies submits that present Scheme is contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no Compromise and/ or Arrangement with the creditors as no sacrifice is called for. Further there is no diminution of liability of any of the Creditors of the Transferor Companies who will be paid off in the ordinary course of business. In view of above the Meetings

of the Unsecured Creditors of Transferor Companies and Transferee Company are hereby dispensed with. However, Transferor Companies and Transferee Company are hereby directed to issue Notices to all its Unsecured Creditors, with a direction that they may submit their representation, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Transferor Companies and Transferee Company respectively. The Notices be sent by Registered Post AD/Speed Post/Courier/Hand delivery/Email as may be feasible in view of the lockdown owing to the Covid-19 pandemic.

20. The Applicant Companies to serve the Notice upon – (1) the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, (2)Registrar of Companies, Maharashtra, Mumbai, (3) the Income Tax Authority, (4) Goods & Service Tax Authority (GST Authority) within whose jurisdiction the Applicant Companies, whichever Applicant Company is registered, are assessed to tax, clearly indicating the PAN of the company concerned, pursuant to section 230(5) of the Companies Act, 2013 and as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

21. At least 30 clear days before the date fixed for hearing, Applicant Companies shall serve the Notice of hearing of Application upon the Official Liquidator, High Court, Bombay pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal hereby appoints WKD and Associates, Chartered Accountant (FRN:145219W) (Tel-7588053127) with remuneration of Rs.3,50,000/- and Applicable taxes for the services. If no response is received by the Tribunal from Official Liquidator within 30 days it may be presumed that Official Liquidator, High Court, Bombay has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

22. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.

23. The Applicant Companies to file affidavit of service within 15 (fifteen) days from the last of the compliances as stated in above paragraphs are made and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

24. Ordered Accordingly.