
(2024) 03 NCLT CK 0043

In the National Company Law Tribunal

Case No : CA(CAA)-265/MB/2023

Better World Technology Private Limited Vs

Date of Decision : 13-03-2024

Acts Referred:

Companies Act, 2013 — Section 230, 230(5), 232

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2024) 03 NCLT CK 0043

Hon'ble Judges : Kishore Vemulappalli, Member (J); Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi

Final Decision : Allowed

Judgement

1. This is an Application filed on 06.11.2023 jointly by Better World Technology Private Limited (Demerged Company) & Better World Digital Solutions Private Limited (Resulting Company) under sections 230 to 232 and other applicable provisions of the Companies Act, 2013, seeking directions of this Bench for Scheme of Arrangement between Better World Technology Private Limited (Demerged Company) and Better World Digital Solutions Private Limited (Resulting Company) and their respective shareholders (the ?Scheme?).

2. The Ld. Counsel for the Applicant Companies submits that the First Applicant Company / Demerged Company and the Second Applicant Company / Resulting Company are held by common shareholders. Both the companies belong to the same business sector i.e. Information Technology. Accordingly, it is proposed to transfer by way of demerger of two businesses viz, Zeta Distributor Business (Demerged Undertaking 1) and Zeta Managed Services Business (Demerged Undertaking 2) of the Demerged Company into the Resulting company as mentioned in the scheme.

3. The Applicants states that the Board of Directors of the Applicant Companies in their respective meetings held on 05.08.2023 have approved the Scheme. The Appointed Date for the Scheme is 1st April 2022. The Board Resolution approving

the Scheme for the Applicant Companies are part of the Joint Company Scheme Application.

4. The Appointed Date in the Scheme is kept as 01.04.2022. It is stated that -

a. there was a significant breakthrough in the businesses of Demerged Company in the last financial year i.e. 2022-2023;

b. nature of service and risk of the business divisions are different. The ZM division /Demerged Undertaking 1 distributes the SAAS products and provides related implementation support to customers in India. The ZM division / Demerged Undertaking 2 caters to the domestic customers in relation to software development, maintenance, deployment and upgradation services to foreign group company (situated in UAE, which is reported in geographical segment). Accordingly, all three divisions are functioning independent of each other. Further, the risks of ZD division / Demerged Undertaking 1 & ZM division / Demerged Undertaking 2 are higher as they are catering to third party customers wherein having risks viz contractual risk, entrepreneurial risk, fixed cost risk, financial risk, marketing risk, as against the remaining undertaking which is catering to the foreign UAE group company and undertakes almost no risk;

c. Demerging from the said appointed Date, will lead to focus on its captive operations which involves less risk and marketing on its own and to maintain complete segregation of the demerged businesses from its other businesses.

5. Rationale:

The Counsel for the Applicant Companies submits that after the Scheme coming into effect, the Applicant Companies will have the following benefits:

?The Demerged Company and the Resulting Company are held by the common shareholders. Both the companies belong to the same business sector i.e. Information Technology. Further, both the entities cater to the clients in the financial sectors and/or function as captive service providers. The Demerged Company is, inter alia, engaged in the business of

- Software development, maintenance, deployment, upgradation services in relation to payment processing and core banking platform related systems;
- Distributing Software as a Service (SAAS) on as is basis, Configuration, implementation of SAAS and other support service (hereinafter referred to as Zeta Distributor); and
- Integration and development of software, maintenance, deployment, upgradation, Customer support and other services, etc. to customers as per specific request (herein after referred to as Zeta Managed Service Business).

The Resulting Company was incorporated on 7 November 2016 and has been engaged in the business of providing end to end card management services and solutions to banks and fin-tech companies within India. The Demerged Company

primarily caters to the related parties and its services are captively used by the related party. It also distributes SAAS and provides Managed services in the form of software development and support services to third parties in India. There was a significant breakthrough in these businesses of Demerged Company in the last financial year i.e. 2022-2023. However, since the nature of service and risk of the above divisions are different, the management of BWTPPL is looking to separate its Distribution business and Managed Service business into a separate entity with effect from the Appointed Date (as defined hereinafter) so it could accordingly focus on its captive operations which involves less risk and marketing on its own and to maintain complete segregation of the demerged businesses from its other businesses.

The Board of Directors is looking at demerging the Zeta Distributor and Zeta Managed Services businesses into the Resulting company, so that the Zeta Distributor and Zeta Managed Services business being significant business can be housed in separate entity which will provide benefits such as focused management, focused operations, growth and expansion in future.

Apart from the above the scheme will also have the following benefits:

- Management focus and enhanced flexibility;
- Focusing on the right hiring and training strategies;
- Beneficial to all stakeholders of the Scheme, leading to growth and value creation in the long run and maximizing the value and return to the shareholders, unlocking intrinsic value of the assets, achieving cost efficiencies and operational efficiencies; and
- Segregating the business would enable independent business opportunities and would bring greater internal control on the business process and ease in decision making.?

6. The Counsel for the Applicant Companies submits that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31.03.2023:

First Applicant Company:

Particulars

Amount (in Rs)

Authorised Share Capital

2,30,00,000 Equity Shares of Rs. 10/- each

23,00,00,000

TOTAL

23,00,00,000

Issued, Subscribed and Paid-up Share Capital

1,67,35,385 Equity Shares of Rs. 10/- each

16,73,53,850

TOTAL

16,73,53,850

Second Applicant Company:

Particulars

Amount (in Rs)

Authorised Share Capital

1,00,00,000 Equity Shares of Rs. 10/- each

10,00,00,000

TOTAL

10,00,00,000

Issued, Subscribed and Paid-up Share Capital

60,00,000 Equity Shares of Rs. 10/- each

6,00,00,000

TOTAL

6,00,00,000

7. Consideration:

The Counsel for Applicant Companies submits that upon Scheme coming into effect, pursuant to demerger of two businesses viz, Zeta Distributor Business (Demerged Undertaking 1) and Zeta Managed Services Business (Demerged Undertaking 2) of the Demerged Company into the Resulting company, the Resulting Company shall, without any further act or deed, issue and allot to the equity shareholders of the Demerged Company, whose name is recorded in the register of members of the Demerged Company, on the Effective Date as follows:

?For 1,67,35,385 (One crore sixty-seven lakhs thirty-five thousand and three eighty five) Equity Shares of face and paid up value of INR 10/- (Ten Only) each held in the Demerged Company, 38,92,118 (Thirty eight lakhs ninety two thousand one hundred and eighteen) Equity shares ("New Equity Shares") of face and paid-up value of INR 10/- (Ten Only)?.

8. As regards the shareholders, the Counsel for the Applicant Companies submits that there are:

- i. 2 (two) Equity Shareholders in the First Applicant Company and the list of which is part of the Company Scheme Application,
- ii. 2 (two) Equity Shareholders in the Second Applicant Company and the list of which is part of the Company Scheme Application.

The Shareholders along with the nominee shareholders have provided their consent affidavit(s) to dispense from convening and conducting the Meeting of the Equity Shareholders of the First Applicant Company and Second Applicant Company. All the consent affidavit(s) are part of the Application.

In view of the consent affidavits obtained from the Equity Shareholders of the Applicant Companies, the Meeting of the Equity Shareholders of the First Applicant Company and the Second Applicant Company are hereby dispensed with.

9. There are no Secured Creditors in the First Applicant Company and the Second Applicant Company. Copy of CA certificates confirming the same are part of the Company Scheme Application. Therefore, no meeting of the Secured Creditors to be held.

10. As regards the Unsecured Creditors, the Counsel for the Applicant Companies submits that there are:

(a) 37 (Thirty-Seven) Unsecured Creditors having outstanding value of Rs.2,29,45,27,331 (Rupees Two Hundred Twenty-Nine Crores Forty-Five Lakhs Twenty-Seven Thousand Three Hundred and Thirty One Only) in the First Applicant Company. Out of the said list 4 (Four) unsecured creditors having a total outstanding amount of Rs.2,28,74,22,776 (Rupees Two Hundred Twenty Eight Crores Seventy Four Lakhs Twenty Two Thousand Seven Hundred and Seventy Six Only) representing 99.69% of the total outstanding value have provided their consent by way of an affidavit to the scheme;

(b) 10 (Ten) Unsecured Creditors having outstanding value of Rs.67,17,49,855 (Rupees Sixty-Seven Crores Seventeen Lakhs Forty-Nine Thousand Eight Hundred and Fifty-Five Only) in the Second Applicant Company. Out of the said list 3 (Three) unsecured creditors having a total outstanding amount of Rs.66,40,06,480 (Rupees Sixty-Six Crores Forty Lakhs Six Thousand Four Hundred and Eighty Only) representing 98.85% of the total outstanding value have provided their consent by way of an affidavit to the scheme.

Based on the above, the meetings of the Unsecured Creditors of the Applicant Companies are hereby dispensed with. However, both Applicant Companies to issue notices by Speed Post intimating about the filing of scheme of arrangement to remaining unsecured creditors whose consents have not been obtained.

11. The First Applicant Company and the Second Applicant Company are directed to serve notice along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016 upon the-

- i. Central Government through the office of Regional Director, Western Region, Mumbai;
- ii. Jurisdictional Registrar of Companies;
- iii. Jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made;
- iv. the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3 Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai ? 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in] and
- v. concerned GST authorities.

12. The above notice shall be served through Registered Post AD/Speed Post and by Hand Delivery pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said notice will contain a statement that "If no response is received by the Tribunal from such 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".

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

14. The Applicant Companies will submit ?

- a. details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;
- b. list of pending IBC cases, if any;
- c. details of all other litigation pending against the Applicant Company having material impact on the proposed Scheme;
- d. details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.

15. The Appointed Date is 1st April 2022.

16. The Applicant Companies to file an Affidavit of Service and Compliance Report within 10 working days after serving notice to all the Regulatory Authorities as stated above.

17. With the above directions, CA(CAA)-265/2023 is allowed.