(2021) 02 NCLT CK 0054

In the National Company Law Appellate Tribunal

Case No : CAA- 44/ND Of 2020

Breaking Wave Software Pvt. Ltd. And Ors. Vs

Date of Decision : 23-02-2021

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2021) 02 NCLT CK 0054

Hon'ble Judges : P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This Joint application has been filed by the Applicant Companies under sections 230 and 232 of the Companies Act, 2013 read with the Company

(Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving

the Scheme of Amalgamation, as contemplated between the Transferor Companies with Transferee Company.

2. All the applicant companies have their registered offices which lie within the jurisdiction of this Tribunal.

3. A perusal of the petition discloses that the Applicant Companies (Applicant Nos.1-2) and Transferee Company had filed the first motion application

bearing C.A. No. (CAA)141/ND/2020. The Tribunal vide its order dated 14.01.2020 had dispensed with the meetings of the equity shareholders,

secured or unsecured creditors in all of the applicant companies.

4. The report of the statutory auditors certifying that the Accounting Standards as required u/s 133 of the Companies Act 2013 had been adhered to is

on record. The Audited Financial Statements for the year 2018-2019 of the applicant companies have been filed.

5. The applicant companies are group companies belonging to the same management. The MERGER is therefore sought to be justified for the

following reasons:

a. This Scheme would result in simplified organizational structure of all companies and their businesses, thereby leading to more efficient utilization of

capital and creation of a consolidated base for future growth of the Transferee Company.

b. Consolidation of entities will facilitate most optimum reflection of the combined resources of both the Transferor Companies and Transferee

Company.

c. Consolidation of the Transferor Companies and the Transferee Company will enable regulatory/ procedural compliances being made by a single

unified company, thus resulting in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by

the Transferor Companies and Transferee Company and also avoid duplication of administrative functions and eliminate multiple record-keeping;

d. To achieve gretater integration and greater financial strength and flexibility, to maximize overall shareholder value.

The Appointed Date of the Scheme is 1st April, 2019.

6. The applicant companies have now initiated the Second Motion. An affidavit discloses that the petitioners have effected publication in the daily

newspapers ""Business Standard"" in English and ""Jansatta"" in Hindi, (Delhi Edition) both dated 17.03.2020 inviting objections if any to the proposed

Scheme of Amalgamation. The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of Companies,

Regional Director, Northern Region, Income Tax Dept. and the Official Liquidator in compliance with the order of the Tribunal.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector has appeared before us.

Additionally, it has been deposed that no objection to the proposed Scheme has been received by the applicant companies or their counsel. The replies

of the Regional Director, NR, MCA, Report of Official Liquidator as well as the response of the IT Dept. have been placed before us.

7. We have heard the counsels for the petitioners and also considered the representation made by the Regional Director, Northern Region. . It is

submitted that based on the report from Registrar of Companies, no prosecution has been filed nor any inspection or investigation has been conducted

in respect of petitioner companies..

No observation has been made by the OL that the scheme would be against public policy or detrimental to the interest of the Shareholders.

The Income Tax Department has also not raised any objection to the sanction of the Scheme.

8. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and no

objections being raised by the office of the Regional Director or the Income Tax Dept, there appears to be no impediment in granting sanction to the

Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of

amalgamation shall be binding on the Transferor and the Transferee Companies and on all their respective shareholders and creditors. The Petitioners

shall also be bound to comply with the statutory requirements in accordance with law.

9. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction

granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons,

directors and officials of both the petitioner companies.

10. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from

payment of stamp duty, Statutory dues or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance

with any other requirement which may be specifically required under any law.

11. This tribunal cloth further order that upon scheme of Amalgamation by way of Merger coming into effect;

a. That Transferor Companies shall stand dissolved without being wound up.

b. That the entire business, properties and assets of the Transferor companies, be transferred without further act or deed to the Transferee company

and accordingly the same shall, pursuant to section 232 of the Act, be transferred to and vest in the Transferee company, but subject nevertheless to

all charges now affecting the same;

c. That all the assets and liabilities including Income Tax and all other Statutory dues, if any, of the Transferor companies, be transferred without

further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the

liability and duty of the transferee company;

d. All employees of the Transferor Companies in service on the effective date shall become the employees of the Transferee Company on and from

such date without any break or interruption in service and upon terms and conditions not less favorable than those subsidiary with the Transferor

Company on that date.

e. That all proceedings now pending by or against the transferor companies, be continued by or against the transferee company;

12. That petitioners shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the registrar of

Companies for registration and on such certified copy being so delivered, the transferor companies shall be dissolved and the Registrar of Companies

shall place all documents relating to the transferor company and registered with them and shall consolidate the files of the companies, is accordingly

duly approved and sanctioned in terms of the above.

13. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

14. The petition stands disposed of in the above terms. Let copy of the order be served to the parties.