(2022) 02 NCLT CK 0028

In the National Company Law Tribunal

Case No : CP (CAA) No.10/Chd/Hry/2020 (2nd Motion)

Career Launcher Education Infrastructure and Services Limited (?CLEIS?)	APPELLANT
Vs	
Vs Registrar of Companies	RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:
Companies Act, 2013 — Section 13, 14, 61, 133, 230, 231, 232
Income Tax Act, 1961 — Section 72A

Citation : (2022) 02 NCLT CK 0028

Hon'ble Judges : Harnam Singh Thakur, Member J;Subrata Kumar Dash, Member, T

Bench : Division Bench

Advocate : Rohit Khanna, Raghav Kapoor, Yogesh Putney

Final Decision : Disposed Of

Judgement

,

Subrata Kumar Dash, Member (Technical)",

1. ThisÂ isÂ aÂ JointÂ SecondÂ MotionÂ ApplicationÂ filedÂ byÂ Petitioner Companies namelyC; areer Launcher Education,

Infrastructure and Services Limited (Amalgamating Company No.1/Petitioner Company No.1),C L Media PrivateÂ LimitedÂ",

(AmalgamatingÂ CompanyÂ No.2/PetitionerÂ CompanyÂ No.2)A, ccendere Knowledge Management Services Private Limited",

(Amalgamating Company No.3/Petitioner Company No.4),G .K. Publications Private Limited (Amalgamating Company No.4/Petitioner Company",

No.4), Kestone Integrated Marketing Services Private Limited (Amalgamating Company No.5/Petitioner Company No.5) withC L Educate", Limited (Amalgamated Company/Petitioner Company No.6) under Section 230-232 of Companies Act, 2013 (the Act) and other applicable",

provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules).",

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Arrangement between the respective companies. The said Scheme is,

attached as Annexure A-1 to the application.,

3. The Petitioner Companies filed First Motion Application bearing CA (CAA) No.39/Chd/Hry/2019 before this Tribunal for seeking directions for,

dispensing with the meetings of equity shareholders of the Applicant Company No.1 to 5, secured creditors of all the Applicant Companies and",

unsecured creditors of the Applicant Company No.1 to 4 and 6 and to convene the meetings of Equity Shareholders of Applicant Company No.6 and,

Unsecured Creditor of Applicant Company No.5.,

4. The First motion application was disposed of vide order dated 11.12.2019, with directions to dispense with the meetings of equity shareholders of",

the Applicant Company No.1 to 5, secured creditors of all the Applicant Companies and unsecured creditors of the Applicant Company No.1 to 4 and",

6 as the written consents/affidavits of the equity shareholders, secured and unsecured creditors of the Applicant Companies were filed and placed on",

record and the meetings of unsecured creditor of Applicant Company No.5 and Equity Shareholders of Applicant Company No.6 were directed to be,

convened on 01.02.2020. In the meetings held on 01.02.2020, the Scheme was unanimously approved by all the equity shareholders and unsecured",

creditors present and voting in their respective meetings.,

5. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme had been discussed in detail in the",

order dated 11.12.2019.,

6. In the second motion application proceedings, certain directions were issued by this Tribunal vide order dated 25.11.2020 and the same were",

complied by an affidavit of compliance filed vide Diary No.00464/2, 00464/3, 00464/4, 00464/5, 00464/6 and 00464/7 all dated 14.01.2021. The",

Petitioner Companies have made newspaper publications in ""Financial Express"" (English) and ""Dainik Bhaskar"" (Hindi) both Delhi NCR Edition on",

16.12.2020. The original copies of the newspapers were attached as Annexure-2 of the aforesaid affidavits. It was also stated in the affidavits for,

Petitioner Companies No.1 to 6 respectively, that copies of notices were served upon the (a) Central Government through Regional Director",

(Northern Region), Ministry of Corporate Affairs, (b) Registrar of Companies, NCT of Delhi and Haryana, (c) the Official Liquidator, Punjab,",

Haryana and Chandigarh, (d) Income Tax Department of all the Petitioner Companies. Copies of the acknowledgement of receipt (in original)",

evidences service and delivery of notice by the Petitioner Companies are attached as Annexure-3 to Annexure-4 of the aforesaid affidavits. The,

petitioner Company No.6 has also served notices to Securities Exchange Board of India (SEBI), National Stock Exchange of India (NSE), Bombay",

Stock Exchange of India (BSE) through speed post. Copy of postal receipts as well as tracking reports are part of Annexure A-3 and A-4 of Diary,

No.00464/7 dated 14.01.2021.,

7. It is also deposed by the authorised signatory of the petitioner companies by way of affidavit that the Petitioner Companies have not received any,

representations from any objectors, expressing their desire to be heard by this Honâ??ble Tribunal in relation to the Scheme, as on date of this",

affidavit and no objections to the Scheme have been received by the Petitioner Companies from any of the relevant statutory authorities/sectoral,

regulators or by any other person. The aforesaid affidavit is filed vide Diary No.00464/19 dated 27.12.2021.,

8. In response to the abovementioned notices, the statutory authorities have furnished their replies.",

8.1Registrar of Companies/Regional Director The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director,

(RD) by diary No.00464/1 dated 24.08.2020. The R.D. in its report has observed that as per the report of Registrar of Companies the Amalgamating,

and Amalgamated/Applicant Companies have filed Annual Returns and Balance Sheets upto 2018-2019. No prosecution has been filed and no,

inspection or investigation has been conducted in respect of the petitioner companies. That as per Para 24 of the report of Registrar of Companies it,

has been inter alia stated that,

â??The shares of Transferee Company is listed in the stock exchanges of BSE and NSE. The company has obtained observation letters, both dated 04.06.2019,", from the said stock exchanges granting their no objection with certain terms and conditions to file the Scheme with the Tribunalâ??.,

In response to the Report of RoC/RD, the Petitioner Companies have filed affidavit vide Diary No.00464/8 dated 27.12.2021 and it is stated that the",

key observations raised in the RD Report are as under:-,

(a) Honouring of cheques and other negotiable instruments of the Amalgamating Companies by the Amalgamated Company.,

(b) Alteration of main object of the Memorandum of Association of the Amalgamated Company.,

It is submitted by the Petitioner Companies that, all the bank accounts of the Amalgamating Companies shall be vested into Amalgamated Company",

and the bank accounts would continue in the name of the Amalgamated Company which is an entity whose legal existence would continue post the,

sanction of the Scheme. Therefore, the Amalgamated Company has legal existence and authority to honour the cheques and negotiable instruments",

issued by the Amalgamating Companies. Thus, they shall be accepted by the bankers of the Amalgamated Company. Accordingly, it is humbly",

submitted and prayed that the clause is not required to be deleted from the Scheme.,

The reference to the due process of Section 13, Section 14 and Section 61 has been expressly provided in the Para 17.5. It has been duly provided in",

the Scheme that the Amalgamated Company shall file the amended Memorandum of Association and Articles of Association along with all the,

requisite forms with the Registrar of Companies. Further, it is clearly provided that all the compliance and procedural requirements under Companies",

Act, 2013 to give effect to such amendment of the Object Clause as required by Registrar of Companies would be undertaken by the Amalgamated",

Company in response.,

Thus, the observations of RD/RoC inÂ respectÂ ofÂ theÂ petitioner Companies stands satisfied.",

8.2 Official Liquidator,

Name of the Company,Demand Outstanding (in Rs.)

Petitioner Company No.1,Nil

Petitioner Company No.2,"Rs. 35,17,470/-

Petitioner Company No.3,"Rs. 2,91,540/- (A.Y. 2018-19) and

Rs. 4,720/- (A.Y. 2019-20)

Petitioner Company No.4,Nil

Petitioner Company No.5,Nil

Petitioner Company No.6,"Rs. 16,09,78,116/-

9. The certificate of the Statutory Auditors with respect to the Scheme between Applicant-Companies to the effect that the accounting treatment,

proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules",

thereunder and other Generally Accepted Accounting Principles was filed as Annexure A-50 of the petition.,

10. The Petitioner Company No. 6 has also issued notices to Bombay Stock Exchange of India Limited (B.S.E.), National Stock Exchange of India",

Limited (N.S.E), and Securities and Exchange Board of India (S.E.B.I) and copies of notices issued via Speed Post and tracking report are attached",

as Annexure- 3 and 4 of Diary No. 00464/7 Dated 14.01.2021. However, the National Stock Exchange of India Limited and Bombay Stock Exchange",

of India Limited has issued observation letter dated 04.06.2019 wherein no objection in terms of Regulation 94 of S.E.B.I (LODR) Regulation 2015.,

Moreover, there is no reply from the concerned authorities till now. Considering the lapse of time in the matter, it is presumed that there is no objection",

to the proposed Scheme of Arrangement..,

11. We have heard the learned Counsel for petitioner companies and learned Senior Standing Counsel for the Income Tax Department and perused,

the record carefully.,

12. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with",

all the requirements stipulated under the relevant Sections of Companies Act, 2013. In the absence of any objections before us and since all the",

requisite statutory compliance have been fulfilled, this Tribunal sanctions the scheme of arrangement appended as Annexure â??A-1â? with the",

company petition.,

13. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, violation",

committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit,",

in accordance with law, against the concerned persons, directors and officials of the petitioners.",

14. While approving the scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from",

payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any",

permission/compliance with any other requirement which may be specifically required under any law.,

15. THIS TRIBUNAL DO FURTHER ORDER:,

(i) That all the property, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and",

accordingly, the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for",

all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same;,

(ii) That all the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and",

accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the",

Transferee Company;,

(iii) That the Appointed Date for the scheme shall be 01.04.2019 as specified in the scheme;,

(iv) That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;",

(v) That the employees of the Transferor Companies shall be transferred to the Transferee Company in terms of the 'Scheme';,

(vi) That the fee, if any, paid by the Transferor Companies on its authorized capital shall be set off against any fees payable by the Transferee",

Company on its authorized capital subsequent to the sanction of the 'Scheme';,

(vii) That the transferee company shall file the revised memorandum and articles of association with the Registrar of Companies, N.C.T. of Delhi &",

Haryana and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the transferee company;, after setting off the fees paid by the transferor companies;,

(viii) That the Transferee Company shall deposit an amount of ☐ 50,000/-(Rupees Fifty Thousand Only) in favour of ""The Company Law Tribunal Bar",

Association"" Chandigarh within a period of four weeks from the date of receipt of the certified copy of this order;",

(ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary;,

(x) That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the",

Registrar of Companies for registration in prescribed form and on such certified copy being so delivered, the Transferor Company shall be dissolved",

without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company,

registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Company and Transferee Company",

shall be consolidated accordingly, as the case may be.",

16. The Petitioner Companies shall to file the Schedule of Assets of the Transferor Companies in the form as prescribed in the Schedule of the,

Companies (Compromises,Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order.",

17. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this,

Bench.,

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

19. The Company Petition CP (CAA) No.10/Chd/Hry/2020 is disposed of accordingly.,