(2023) 05 NCLT CK 0039

In the National Company Law Tribunal

Case No : C.P.(CAA)/204/MB-IV/2022 Connected with C.A.(CAA)/193/MB-IV/2021

Enterprisedb Software India Private Limited Vs

Date of Decision : 09-05-2023

Acts Referred:
Companies Act, 2013 — Section 66, 90, 230, 232, 232(3)(i)

Citation : (2023) 05 NCLT CK 0039

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rupa Sutar

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. The Bench is conveyed by videoconference.

2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme of Amalgamation and nor has any party controverted any averments made in the Petitions to the said Scheme.

3. The sanction of the Tribunal is sought under Sections 232 r/w section 230 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation between 2ndquadrant India Private Limited, (Transferor Company) and Enterprisedb Software India Private Limited (Transferee Company) and their respective shareholders and creditors.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 30th June 2021 which are annexed to the Company Scheme Petition.

5. The Petitioner Companies states that the Company Scheme Petition have been filed in consonance with the Order dated 20.09.2022 passed in the C.A.(CAA). 193/MB/2021 by this Tribunal; the Petitioner Companies have complied with all

requirements as per directions of the National Company Law Tribunal, Mumbai Bench, and have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

6. The Transferor Company is engaged in business of selling software subscriptions to PostgreSQL open source software, developing, and selling subscriptions to, proprietary software related to the PostgreSQL software, which subscription allows the customer the ability to use the software and receive customer support and maintenance. The Transferor Company is also engaged in providing related professional and consulting services and that the Transferee Company is engaged in the business of providing product development services, general and administrative support services and sales support services to its group entities. Second Petitioner Company/ Transferee Company also provides training and consulting services to group entities and third party customers.

7. The rationale for the Scheme of Amalgamation:

Pursuant to a global acquisition of the 2ndQuadrant group of companies by EnterpriseDB group, the shares of 2Q India were transferred by its holding company i.e. 2ndQuadrant Limited, a company registered as per the laws of the United Kingdom, to EnterpriseDB UK Limited, also a company registered as per the laws of the United Kingdom. Post the acquisition, in November 2020, pursuant to a Business Transfer Agreement, the business of 2Q India was transferred to EnterpriseDB India. It is now proposed to consolidate 2Q India with EnterpriseDB India through merger. The amalgamation of the companies would yield the following benefits:

(a) Reduced administrative, operative, marketing, and overhead costs and expenditure.

(b) Reduction of number of legal entities in India. Reduction in compliances and statutory filings with various government departments.

8. The Regional Director has filed his Report dated 14.02.2023 making certain observations. The Petitioner Companies have submitted/undertaken that :-

a. That no individual directly or indirectly holds 10% or more shares, voting rights or right to receive dividend in 2ndquadrant India Private Limited and EnterpriseDB Software India Private Limited. Further, no individual directly or indirectly holds 10% or more shares, voting rights or right to receive dividend of the ultimate holding company. Hence the provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 20l8 are not applicable to the Petitioner Companies and accordingly, e-form BEN-2 was not required to be filed with the Ministry of Corporate Affairs.

b. The Transferee Company undertakes to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 for fees payable by the Transferee Company for increase of authorised share capital on account of merger of Transferor Company.

c. The Transferee Company, in addition to compliance of AS-14 (corresponding IND AS-103) for accounting treatment, shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (corresponding IND AS-8) as applicable.

d. The Scheme enclosed to the Company Scheme Application and the scheme enclosed to the Company Scheme Petition are one & same and there is no discrepancy or change.

e. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

f. The Petitioner Company undertakes to comply with the FEMA/ FERA and RBI guidelines, if applicable, as there are foreign shareholders in the Petitioner Companies.

9. Ms. Rupa Sutar, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in

rejoinder are satisfactory and they have no further objection to the Scheme.

10. The Official Liquidator has filed his report on 27 December 2022 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved by this Tribunal.

11. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

12. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 204 of 2022 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition.

13. The Transferor Company be dissolved without winding up.

14. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.

15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

16. All authorities concerned to act on a copy of this Order along with the Scheme of Amalgamation duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

17. The Appointed Date is 1st April 2021.

18. Ordered Accordingly. Pronounced in open court today.