

(2023) 11 NCLT CK 0012

In the National Company Law Tribunal

Case No : C.P.(CAA) No. 29/MB/2023 In C.A (CAA) No. 208/MB/2022

Esencia Technologies India Private Limited Vs

Date of Decision : 29-11-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(5), 232, 232(i), 232(3)(i), 232(6)

Citation : (2023) 11 NCLT CK 0012

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Rashid Boatwalla, Lipsa Unadkat

Final Decision : Disposed Of

Judgement

1. Heard Learned Counsel for the Petitioner Companies and the Deputy Director, WR, MCA, Mumbai. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petitions to the Scheme.

2. The sanction of this Hon'ble Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of Esencia Technologies India Private Limited ("the First Petitioner/Transferor Company"), Graphene Semiconductor Services Private Limited ("the Second Petitioner/Transferor Company"), Seastar Labs Private Limited ("the Third Petitioner/Transferor Company"), with L&T Technology Services Limited ("the Fourth Petitioner/Transferee Company") ("Scheme"). This Scheme involves the amalgamation of three wholly owned subsidiaries, i.e., the Transferor Companies into the Transferee Company.

3. The Learned Counsel for the Petitioner Companies states that the Petitioner Company No. 1 is presently engaged in the business to provide, facilitate, develop, execute, design or otherwise deal with services in the field of video encoding, decoding and analytics, Digital signal processing and wireless communications, microprocessor, memory subsystems and other peripherals, security, surveillance & custom imaging solutions, compiling IC's and networking

services and any other related services including internal product development focused on IP Cores, Fab-less semiconductor in the field of Video and communications. The Petitioner Company No. 2 is presently carrying on business of manufacturing, processing, converting, repairing, servicing, buying, selling, importing, exporting, trading and dealing in Semiconductors, electronic components including Capacitors of all types, inputs required for Semiconductors, Assemblies, Radios, Television sets, Tape recorders, Loud Speakers, Record players, Stereophonic Equipment's and Assemblies, Computers both Digitals and Analogues, Microwave Equipment's and Communication Equipment's and Components of all sorts. The Petitioner Company No. 3 is presently carrying on business of exporters, importers, servicing, consulting, developing, designing, sales and marketing, trading, selling, distributing and licensing computer software and hardware of any description, particularly those used in or in connections with electronic data processing equipment, computers, micro processor based systems and providing software, hardware, programmes, data processing and consultancy services, computer software and hardware programmes, data processing and consultancy services, computer time sharing and CAD/CAM services for preparing, collecting storing, processing and transmitting data of every kind in India as well as abroad and to carry on the computer education institution imparting software & hardware courses & data processing either in India or elsewhere independently or under franchise and to take any type of franchise related thereto from any other companies/institutions/universities & organizations in India or abroad and to impart education by providing teaching and training in the field of information & computer technology, data processing, development of computer hardware and software, data processing and telecommunication technology and to establish and run Computer Training Centre either in India or elsewhere independently or under franchise arrangement for imparting education in information Technology viz Hardware, Software data processing and to act as call centre, mass media, print media and film media and to carry on in India or elsewhere business, as sellers, buyers, distributors, rent out service, marketing, fabricators, assemblers, importers, exporters, agents, stockists, repair & maintenance or otherwise deal in all kinds of computer, computers systems, software, hardware, photo copies and data processing equipment including components, spares, accessories and peripherals and to establish bureaus for providing computer service, to process data and develop systems of all kinds by processing jobs and hiring out machine, time machines and to set up, operate and supervise the operation of the data processing divisions of other companies or organizations in India or elsewhere. The Petitioner Company No. 4 is presently carrying on business of providing a range of Engineering Services and related technologies in the areas of Embedded Systems, Mechanical, Plant & Manufacturing Engineering services such as, Design & Consulting, Prototyping, Valve engineering, Test and Validation, Engineering Process Services, Sourcing support, Maintenance, Sustenance & After Market Support, Electrical and Electronics hardware and software, Technical Publications, Detail Engineering and Asset Information Management.

4. The Petitioner Companies have approved the said Scheme by passing respective Board Resolutions at the First, Second and Third Petitioner Companies Board meetings held on 20th April 2022 respectively and the Fourth Petitioner Company's Board meeting held on 21st April 2022 and thereafter approached this Tribunal by the captioned Petition for sanction of the Scheme.

5. Counsel for the Petitioner Companies further submits that the Transferor Companies are wholly owned subsidiaries of the Transferee Company.

6. Counsel for the Petitioner Companies further submits that the proposed Scheme will be beneficial to the Transferor Companies and the Transferee Company and their respective shareholders, creditors, employees and other stakeholders. The proposed amalgamation encapsulated in the Scheme will have the following benefits:

- The Transferor Companies and the Transferee Company are collectively operating in the business of providing Engineering Research & Development solutions to its customers in same geographies with similar profiles and can be conveniently combined and managed by the Transferee Company for leveraging superior delivery to customers and financial capability of the Transferee Company for mutual benefit;
- One of the chief reasons necessitating the amalgamation is that the Transferor Companies are wholly owned subsidiaries of the Transferee Company. Resultantly, the management of the Transferor and Transferee Companies have evaluated the plan and strategy for all the four Companies and feel that amalgamating the entities will be effective in obtaining synergy in the operations of all the four Companies;
- The management has decided to consolidate the various business lines of the Transferor Companies and the Transferee Company to enable cost competitiveness;
- The Scheme is commercially and economically viable and feasible and is in fact fair and reasonable;
- The proposed Scheme will also help to streamline the entire management structure and channelize resources to focus on the growing businesses. A lean management structure will also lead to focused administration and prospectively a reduction in costs for accounting, compliance, auditing, board meetings, secretarial procedures and administration, organizational efficiencies, reduction in overheads, personnel costs, costs of ERP, compliance cost and other administrative expenses. It will prevent cost duplication and will result in synergies in operations;
- The proposed Scheme will also stabilize the operating cost of entities and result in synergies, efficient utilization of capabilities and resources.

7. This Company Petition is filed in consonance with Sections 230 to 232 of the

Companies Act 2013 along with the Order passed in the connected CA (CAA) No. 208 of 2022 by this Tribunal.

8. Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per the directions of the Tribunal and have filed necessary Affidavits of compliance before the Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory/regulatory requirements if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The undertakings given by the Petitioner Companies are hereby accepted.

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Representation dated 23rd February 2023 inter alia stating therein that, the statement made in paragraph 1 is true to the best of his knowledge and those made in paragraph 2 (a) to (k) are information derived from the records of the case for the consideration and disposal of the case as deemed fit and proper in the facts and merits of the case. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr.

No.

Para 2

RD Representation/Observations dated 23rd February 2023

Response of Petitioner Companies

(a) 2

That on examination of the report of the Registrar of Companies, Mumbai dated 22.02.2023 for Petitioner Companies (Annexed as Annexure A-1) that that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2022.

....2. It is submitted that as per the provisions of Section 232(i) of the Companies Act, 2013, where the transferor Company is dissolved, the fee, if any, paid by the transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent³ to the amalgamation. Therefore, remaining fee, if any after setting-off the fees already paid by the transferee company on the increased authorized capital subsequent to the amalgamation.

With regard to the observation of the Regional Director,

Western Region, Mumbai as stated in paragraph 2 (a) (2), the Fourth Petitioner Company states that the fee paid by the Transferor Companies on its authorised share capital shall be set off against any fees payable by the Transferee Company on its authorised share capital subsequent to the amalgamation and dissolution of the Transferor Company.

(a) 3

Interest of the Creditor should be protected.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (a) (3), the Fourth Petitioner Company states that as per the preamble of the Scheme, the Scheme is in the interest of the creditors of each of the respective companies and the present Scheme does not call for any compromise or sacrifice from any of the creditors of each of the Petitioner Companies and the interest of the creditors

is protected.

(c)

Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (c), the Fourth Petitioner Company undertakes to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 insofar as it relates to the fees payable by the Transferee Company for increase of share capital on account of merger/amalgamation of the Transferor

Companies.

(d)

In compliance of Accounting

Standard-14 or IND-AS 103, as may

be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.

With regard to the observation of the

Regional Director, Western Region,

Mumbai as stated in paragraph 2 (d), it is stated that the Fourth

Petitioner Company shall, in addition to complying with accounting treatment under AS-14 (IND AS-103), also pass such accounting entries as are necessary in connection with the Scheme to comply with the Accounting Standards notified under Section 133 of the Companies Act, 2013 as may be applicable including AS-5 (IND AS-8).

(e)

The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (e), the Fourth Petitioner Company hereby undertakes and confirms that the Scheme enclosed to the Company Application and the Company Scheme Petition are one and the same and there is no discrepancy or change made therein and has also filed an Affidavit in regard thereto.

(f)

The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (f), the Fourth Petitioner Company states and confirms that it has served notices to all the concerned authorities and undertakes to address any issues that may arise after the Scheme is sanctioned.

(g)

As per Definition of the Scheme,

"Appointed Date" for the purposes of the Scheme means 1st April 2022 or such other date(s) as the National Company Law Tribunal at Mumbai, Maharashtra or the National Company Law Appellate Tribunal at New Delhi or such other Appropriate Authority may approve;

"Effective Date" shall mean the latter of the dates on which certified copy of the order(s) sanctioning the Scheme passed by the National Company Law Tribunal at Mumbai, Maharashtra is filed with the Registrar of Companies, Mumbai, Maharashtra. Reference in the Scheme to the date of "coming into effect of this Scheme" or "effectiveness

of this Scheme shall mean the Effective Date;

It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (g), the Fourth Petitioner Company hereby states and confirms that the Appointed Date mentioned in the Scheme is 1st April 2022

and that the Effective Date shall mean the

latter of the dates on which the certified copy of the order(s) sanctioning the Scheme passed by the National Company Law Tribunal at Mumbai, Maharashtra is filed with the Registrar of Companies, Mumbai, Maharashtra. In this regard, the Fourth Petitioner Company further confirms that upon the Hon'ble National Company Law Tribunal, at Mumbai, Maharashtra approving the Scheme, the Scheme shall take effect from the Appointed Date i.e., 1st April 2022 in terms of provisions of Section 232(6) of the Companies Act, 2013. The Fourth Petitioner Company undertakes to comply with the provisions and requirements clarified vide Circular No. F. No. 7/12/2019/CL-I dated 21-08-2019

issued by the Ministry of Corporate Affairs.

(h)

Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (h), the First/Second/Third Petitioner Companies do not have any specific sectoral regulator.

(i)

Petitioner Companies shall undertake to comply with the directions of Income-tax department, if any.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (i), the Fourth Petitioner Company undertakes to comply with the directions of the Income Tax department, if any.

(j)

Petitioner Companies has foreign shareholders; hence Petitioner Companies shall undertake to submit acknowledged copy of notice served to

RBI, FEMA, FERA u/s. 23.0(5) of

CA, 2013 in form CAA-3.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (j), the Transferee Company, i.e., the Fourth Petitioner Company states that the Scheme

contemplates a merger of the wholly owned subsidiaries with their holding company (First, Second and Third Petitioner Companies shall merge with the Fourth Petitioner Company) and there is no share exchange ratio involved. In view thereof, all the shareholders (including the foreign shareholders) of the Fourth Petitioner Company shall not receive any shares from the First, Second and Third Petitioner Companies. Thus, no separate intimation has been given to the RBI and/or under FEMA u/s. 230(5) of the Companies Act

2013 in form CAA-3.

(k)

Transferee Company is listed company, hence Petitioner Companies shall undertake to comply with listing/SEBI/LODR Regulations with observations of BSE & NSE, if any, in this regards.

With regard to the observation of the Regional Director, Western Region, Mumbai as stated in paragraph 2 (k), the Fourth Petitioner Company states that considering that the First, Second and Third Petitioner Companies are wholly owned subsidiaries of the Fourth Petitioner Company, an intimation had to be filed with BSE Limited and National Stock Exchange of India Limited in accordance with Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the SEBI Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0000

000665 dated November 23, 2021. The Fourth Petitioner Company vide its letters dated 21st April 2022 and 20th October 2021 intimated BSE Limited and National Stock Exchange of India Limited ("Stock Exchanges") about the particulars of the Scheme. The Fourth Petitioner Company is exempted from obtaining a NOC from the Stock Exchanges considering that the First, Second and Third Petitioner Companies are wholly owned subsidiaries of the

Fourth Petitioner Company.

10. The observations made by the Regional Director and clarifications & undertakings given by the Petitioner Companies have been verified and accepted.

11. The Official Liquidator, High Court, Bombay has filed his report on 28th February 2023 stating therein that the affairs of the Petitioner Company Nos. 1, 2 and 3 have been conducted in a proper manner.

12. No objections were received from the Income Tax Department of the Petitioner Companies.

13. The Petitioner Companies through their Counsel submit that all tax queries will be met and answered in accordance with law.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest.

15. As the entire Issued, Subscribed and Paid-up equity share capital and preference share capital of the Petitioner Company Nos. 1, 2 and 3 as the case may be is held by the Petitioner Company No. 4 and its nominees, upon the Scheme being effective, notwithstanding anything contrary in this Scheme, the said share capital of the Petitioner Company Nos. 1, 2 and 3 will stand automatically cancelled and there will be no issue and allotment of fresh shares to the Petitioner Company No. 4 as the Petitioner Company No. 4 and its nominees are the only shareholders of the Petitioner Company Nos. 1, 2 and 3.

16. Since all the requisite statutory compliances have been fulfilled, the Company Petition in CP (CAA) No. 29 of 2023 is made absolute in terms of the prayer clause of the Company Petition. Hence ordered.

ORDER

The Petition be and the same is allowed subject to the following:

i. The Scheme is hereby sanctioned, and the Appointed Date is fixed as 1st April 2022 as defined in Clause 5.4 of the Scheme. It shall be binding on the Petitioner Companies and all the concerned including their respective shareholders, Creditors /Trade Creditors and Employees.

ii. The Petitioner Company Nos. 1, 2 and 3 be dissolved without being wound up.

iii. The Registrar of this Tribunal shall issue certified copy of this Order along with the Scheme forthwith. 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.

iv. The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal within 30 working days from the date of receipt of the Order, with the concerned Superintendent of Stamps, if necessary for the purpose of adjudication of stamp duty payable, if any.

v. All concerned regulatory/public authorities shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.