(2020) 12 NCLT CK 0130

In the National Company Law Tribunal

Case No : Company Petition No. (CAA) 1070/MB Of 2020, Company Application No. (CAA) 1043/MB Of 2020

Eurokids International Private Limited And Ors. Vs

Date of Decision : 17-12-2020

Acts Referred:

Companies Act, 2013 — Section 230, 231, 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2020) 12 NCLT CK 0130

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi, Vidisha Poonja, Rupa Sutar

Final Decision : Allowed

Judgement

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1. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the",,

Scheme of Arrangement and Amalgamation (the Scheme) between EuroKids International Private Limited, EuroSchool Properties & Infrastructure",,

Private Limited, Kangaroo Kids Education Limited and EuroSchool International Private Limited and their respective Shareholders.",,

2. We have heard the Learned Counsel for the Petitioner Companies and the representative of the Regional Director. No objector has come before,,

this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.,,

3. The Board of Directors of the Petitioner Companies have approved the Scheme in their respective meetings held on 19th June, 2020. The",,

Appointed Date for the purposes of merger in the Scheme is 5th September

2019.,,

4. The Transferor Company 1 is engaged in the business of providing education by setting up owned schools across India and outside India and,,

through franchisees. The Transferor Company 2 is engaged in the business of providing assets on lease rentals. The Transferor Company 3 is,,

authorized to engage in the business of providing education to children by setting up owned schools across India and outside India and through,,

franchisees. The Transferee Company is engaged in the business of purchase and sale of school related welcome kits, support services in relation to",,

admissions and examination process and providing education to children by setting up K-12 Schools through franchisee across India.,,

5. Learned Counsel for the Petitioner Companies submits that the rationale for the Scheme is as follows:,,

â??With the ultimate objective of acquiring the ongoing business carried on by the Transferor Companies, the Transferee Company has, on",,

5 September 2019 acquired 83.206% of outstanding equity shares in Transferor Company 1 from the erstwhile shareholders of Transferor,,

Company 1. Transferor Company 3 and Transferor Company 2 are directly and indirectly held by Transferee Company.,,

Pursuant to the above referred acquisition of shares in Transferor Company 1, the Transferor Companies and Transferee Company now",,

form part of the same management. Thus, with a view to achieve the main objective of consolidation of business carried on by Transferor",,

Companies and Transferee Company, it is desirable to merge the Transferor Companies into Transferee Company in this Scheme.",,

Further, Merger of the Transferor Companies into the Transferee Company would inter alia have the following benefits:",,

a) The arrangement shall provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the",,

arrangement will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capacities, experience",,

and infrastructure of all the Transferor Companies and Transferee Company.,,

b) Reducing managerial overlaps involved in operating multiple entities, enable cost savings and effective utilization of valuable resources",,

which will enhance the management focus thereby leading to increase in operational and management efficiency; integrate business,,

functions; eliminate duplication and rationalization of administrative expenses.,,

c) Greater efficiency in cash management of the Transferee Company and unfettered access to cash flows generated by the combined,,

businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value.,,

d) Synchronization of efforts to achieve uniform corporate policy, greater integration and greater financial strength and flexibility for the",,

Transferee Company.,,

e) Better value creation for the shareholders of the company and improved competitive position of the combined entity in the market.,,

f) Consolidation of businesses of the Transferor Companies and the Transferee Company under a single entity and achieve simplified,,

corporate structure;,,

g) Upon completion of the Merger, the Transferor Companies will be dissolved. Consequently, there would be lesser regulatory and legal",,

compliance obligations including accounting, reporting requirements, statutory and internal audit compliance requirements, tax filings,",,

company law compliances, etc. and therefore reduction in administrative costs.",,

h) The intended Scheme is not prejudicial to the interest of the creditors or the employees of the Transferor Companies and the Transferee,,

Company.,,

The Transferee Company has certain outstanding Class A Equity Shares, Class B Equity Shares, and Class C Equity Shares. These Class A",,

Equity Shares, Class B Equity Shares, and Class C Equity Shares shall no more be required after the Effective Date due to simplification of",,

group structure. Therefore, and with the objective of providing exit to the holders of these shares, it is proposed to undertake reduction of",,

capital of these Class A Equity Shares, Class B Equity Shares and Class C Equity Shares at fair value, as an integral part of this Scheme.",,

The Merger of the Transferor Companies into the Transferee Company pursuant to and in accordance with this Scheme shall take place,,

with effect from the Appointed Date and shall be in accordance with Section 2(1B) of the Income-tax Act, 1961.â??",,

6. The Company Petition is filed in consonance with sections 230 to 232 of the Act and the Order dated 21st August 2020 passed in C.A. (CAA),,

1043/MB-I/2020 by this Tribunal.,,

7. The Petitioner Companies have complied with all the requirements as per directions of this Tribunal and they have filed necessary affidavits of,,

compliance with the Tribunal. Moreover, the Petitioner Companies through their Learned Counsel undertake to comply with all the statutory",,

requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.",,

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed a Report dated 26th November 2020, inter alia stating",,

therein its observations on the Scheme as stated in para IV (a) to (e) of the Report. In response to the observations made by the Regional Director,",,

the Petitioner Companies have also given necessary clarifications and undertakings. 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

(IV)","RD Report / Observation dated 26th

November, 2020",Response of the Petitioner Companies

(a),"In compliance of AS-14 (IND AS-

103) the Petitioner Companies

shall pass such accounting entries

which are necessary in connection

with the Scheme to comply with

other applicable Accounting

Standards such as AS-5 (IND AS-

8) etc;","In so far as the observations made in

paragraph IV(a) of the Report of

Regional Director is concerned, the

Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with the accounting standard AS-14 (IND AS 103) and any other applicable accounting standards such as AS-5 (IND AS 8) to the extent applicable.

(b),"As per Definition of the Scheme:

â??Appointed Dateâ?? means 5th September 2019 for the purposes of Merger of Transferor Companies with Transferee Company under this Scheme.

â??Effective Dateâ?? means the date or last of the dates on which the certified copy of the order of the NCLT sanctioning this Scheme is filed with the Registrar of Companies, Mumbai by the Transferor Companies and the Transferee Company.

Further, the Petitioners may be asked to comply with the requirements as to Appointed Date and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.","In so far as the observations made in paragraph IV(b) of the Report of

Regional Director is concerned, the Petitioner Companies submit that the Appointed Date i.e. 5th September 2019 for the purposes of Merger of Transferor Companies with Transferee Company under the Scheme has been clearly indicated in the Scheme in accordance with provision of Section 232(6) of the Companies Act, 2013 and the merger as per scheme shall become effective from the Appointed Date. The Petitioner Companies further submit that they have already complied with the requirements and clarification of circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs by clearly specifying the Appointed Date in the Scheme and hence the question of undertaking for compliance to the requirements of the said circular does not arise.

(c),"Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the

transferee company on its authorized capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.","In so far as the observations made in paragraph IV(c) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Company undertakes that the fee payable by the Transferee Company shall be in compliance with the provisions of Section 232(3)(i) of the Companies Act, 2013, and where the transferor companies is dissolved, the fee, if any, paid by the transferor companies on its authorised capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.
(d),"As per clause 4.12 of the Scheme, Petitioner Companies have proposed that Upon the Scheme becoming effective in accordance with the terms set out herein, without any further act or deed,

the name of the Transferee Company shall stand changed to â??EuroKids International Private Limitedâ?? (name of the Transferor Company â?" 1) or such other name as decided by the Board of Directors of the Transferee Company and approved by the concerned jurisdictional Registrar of Companies by simply filing the requisite forms and subject to payment of fees with the appropriate Government authority. That adoption of new name of Transferor Company by the Transferee Company shall create confusion in the minds of general public and other stakeholders. Besides it will also create confusion with the regulators like Income Tax, GST, MCA, etc which give impression that Transferor Company is still in existence however it is not in existence. In this regards, as per clause 8(2)(8) of the Companies (Incorporation) Rules, 2014, â??The names released on change of name by any company shall remain in data base and shall not

be allowed to be taken by any
other company including the group
company of the company who has
changed the name for a period of
three years from the date of
change subject to specific
direction from the competent
authority in the course of
compromise, arrangement and
amalgamation.
Hence, the Transferee Company
i.e. Euroschool International
Private Limited may not be allowed
to change its name by the name of
Transferor Company 1 i.e.
Eurokids International Private
Limited and Petitioner Company
have to amend the scheme
accordingly.","In so far as the observations made in
paragraph IV(d) of the Report of
Regional Director is concerned, the
Petitioner Companies through their
Counsel submits that the Transferee
Company will change the name to any
other name as mentioned in clause
4.12.4 of the scheme subject to
availability of the name by the Registrar
of Companies at the time of such
application.
(e),"ROC, Mumbai Report dated

17.11.2020 has inter alia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection, no complaint are pending against Petitioner Companies.

Further mentioned following observations:-

1. Reduction of equity share capital of the Transferee Company
2. Interest of the creditors should be protected.
3. On reduction of the paid up equity share capital, the transferee company shall pay consideration to the respective shareholders. The companies have filed their financialstatements and Annual Returns for the year 2019. Petitioner Companies have to undertake to clarify the same.","In so far as the observations made in paragraph IV(e) of the Report of Regional Director is concerned with regard to the ROC Mumbai Report, the Petitioner Companies through their Counsel submit that the Petitioner Companies confirm that there are no prosecution, no technical scrutiny, no inquiry, no inspection, no complaint

pending against the Petitioner Companies. Further, the Petitioner Companies submit that notices have been served upon all creditors and no creditor has come forward to oppose scheme. Further the interest of all the creditors shall be protected on reduction of equity share capital of the Transferee Company and the Transferee Company shall pay consideration to the respective shareholders on reduction of paid up equity share capital and all the creditors will be paid off in the ordinary course of business. Further, the companies have filed their financial statements and Annual Returns for the year 2019.