(2020) 07 NCLT CK 0112

In the National Company Law Appellate Tribunal

Case No : CAA- 96/ND Of 2019 In Company Application (CAA) -21(ND) Of 2019

Gematria Technologies Private Limited APPELLANT

Vs

Gemini Solutions Private Limited RESPONDENT

Date of Decision : 03-07-2020

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

Citation : (2020) 07 NCLT CK 0112

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Ananya Madhusudan, Tania Sharma, Raghvendra Kishore Singh, Tania Sharma

Final Decision : Disposed Of

Judgement

Ch. Mohd. Sharief Tariq, J

1. Under consideration is the CAA- 96/ ND/ 2019 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The present petition has been filed by the Petitioner Companies named above for the purpose of the approval of the Scheme of Amalgamation, as contemplated between the Companies and its Shareholders by way of Amalgamation of Transferor Company with the Transferee Company. As per the Scheme of Amalgamation (in short, 'Scheme'), "M/S Gematria Technologies Private Limited, is proposed to get merged with M/s. Gemini Solution Private Limited" (Transferee Company) as a going concern.

2. The Transferor Company is a private Company limited by shares, was incorporated on 22nd May, 2016, under the Companies Act, 1956. The Transferor Company is having its Registered Office at H-324, Old Plot number 5, KH No. 62/16, Gali No. 6, Raj Nagar 2, Palam Colony, New Delhi- 110077. Its Corporate Identification Number (in short "CIN") is U72900DL2016PTC300126.

3. The Transferee Company is a private Company limited by shares, was incorporated on 22nd January 2014, under the Companies Act, 1956. The Transferor Company is having its Registered Office at H-324, Old Plot number 5, KH No. 62/16, Gali No. 6, Raj Nagar 2, Palam Colony, New Delhi-110077. Its Corporate Identification Number (in short "CIN") is U72900DL2014PTC344614.

4. The Transferor Company's main object is to offer, render and support in India and abroad of various consultancy services, advice in the field of management, information technology, accounts, legal, economics, international trade infrastructure and chemical engineering, commerce, patents and copy rights, collaborations, strategic alliances, commercial, and to act and represent as agents or otherwise.

5. The Transferee Company's main object is to provide, offer, render and support in India and abroad of various consultancy services, advise in the field of management, information technology, accounts, legal, economics, international trade infrastructure and chemical engineering, commerce, patents and copyrights, collaborations, strategic alliances, commercial and economic laws, joint ventures, technology transfers, export, import, resource mobilization and to act and represent as agents or otherwise.

6. The Board of Directors of the Applicant Companies have approved the present Scheme vide its Resolution dated 2nd January 2019 and 3rd January 2019. The other necessary requirements have also been fulfilled as per the Order dated 12.06.2019 passed by this Bench in CA (CAA) - 21(ND)/2019.

7. The Counsel appearing for the Petitioner Companies has submitted that with effect from the appointed date,(i) the Transferor Company shall stand transferred and vested in Transferee Company, the assets and the liabilities of Transferor Company will become assets and liabilities of Transferee Company (ii)any legal proceedings instituted by or pending against the Transferor Company shall be enforced by or against the Transferee Company etc.

8. Further, the RD filed its report on 02.3.2020 and stated that the Transferor Company is regular in filing the statutory returns. It has further submitted that no objection/complaint/inspection/investigation or prosecution are pending against the Transferee Company. The RD has not raised any objection with regard to the sanction of the scheme.

9. The Official Liquidator (In short, 'OL') in his Report dated 26.02.2020, based on the information submitted by the Petitioner Companies, is of the view that the affairs of the aforesaid Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

10. Report of the Income tax Department ('IT') has been filed with the Tribunal dated 26.2.2020 which states as follows; -

(i) The IT department must be permitted to retain its recourse for recovery in respect of demand and any other future liabilities of the Transferor Company and the Transferee Company in respect of the assets sought to be transferred under the proposed scheme and that this protection must be made explicitly by the Court in its final order and has to bind all the parties to the scheme. There should be no limitation on the power of IT department for recovery, including imposition of penalties etc.

11. Paragraph 12 of the Scheme provides for the accounting treatment for amalgamation and stated that the company will follow the method of accounting as prescribed for the pooling and Interest method under Accounting Standard 14 as notified under the Companies (Accounting Standard) Rules, 2006.

12. Paragraph 2 of the Scheme provides for the rationale of the scheme of amalgamation, it states that the proposed amalgamation of the Transferor Company with the Transferee Company expected to achieve the following results (a) the proposed amalgamation is in business trends to achieve size, scale, integration and greater financial strength financial strength and flexibility, (b) the amalgamation will provide the amalgamated company a strong and focused base to undertake the business more advantageously and thereby increase their profitability and shareholder's net worth, (iii) the proposed amalgamation will make available greater resources be it financial, managerial, technical, personnel know-how, skill sets and intellectual property, (iv) the amalgamation will improve the corporate image of the Transferee Company in the market which will benefit the shareholders of the Transferor Company as well etc.

13. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutoiy compliances have been made under Sections 230 to 232 of the Companies Act, 2013.

14. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of Amalgamation annexed with the Petitions is hereby Sanctioned. The Scheme approved shall be binding on the Shareholders, Creditors and employees of the Companies involved in this Scheme. The Appointed date of the Scheme is 01.04.2018.

15. While approving the Scheme as above, it is further clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

16. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

17. A certified copy of this Order shall be filed with the concerned Registrar of

Companies within 30 days of the receipt of this Order.

18. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned Registrar of Companies.

19. Upon receiving the certified copy of this Order, the RoC concerned is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.

20. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14.12.2016.

21. Accordingly, the Scheme stands sanctioned and CAA - 96/ ND/ 2019 stand disposed of.

