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(2015) 05 DEL CK 0148

In the Delhi High Court

Case No : Company Petition No. 82 of 2015

In Re: NIIT Limited and Others

Date of Decision : 08-05-2015

Acts Referred:
Companies Act, 1956 — Section 101(2), 235, 250A, 391, 391

Citation : (2015) 05 DEL CK 0148

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Rajiv Nayar, Senior Advocate, Anirudh Das and Kamaljeet Singh, for the Appellant

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Composite Scheme of Arrangement between NIIT Limited (hereinafter referred to as the amalgamated company); Evolv Services Limited (hereinafter referred to as the amalgamating company no. 1); Scantech Evaluation Services Limited (hereinafter referred to as the amalgamating company no. 2); NIIT Online Learning Limited (hereinafter referred to as the amalgamating company no. 3); and Hole-in-the-Wall Education Limited (hereinafter referred to as the transferee company).

2. The registered offices of the amalgamated, amalgamating and transferee companies are situated at New Delhi, within the jurisdiction of this court.

3. The amalgamated company was originally incorporated under the Companies Act, 1956 on 2nd December, 1981 with the Registrar of Companies, Punjab, H.P. and Chandigarh under the name and style of Pace Education Private Limited. Thereafter, the word ''Private'' was deleted from the name of the company w.e.f. 27th October, 1988. The company changed its name to NIIT Limited and obtained the fresh certificate of incorporation on 16th November, 1990 from the

Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

4. The amalgamating company no. 1 was originally incorporated under the Companies Act, 1956 on 12th April, 1996 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name and style of Chezcouture India Private Limited. Thereafter, the company changed its name to e Placement Services Private Limited. The company again changed its name to Evolv Management Services Private Limited and obtained the fresh certificate of incorporation on 14th November, 2003. The company again changed its name to Evolv Management Services Limited and obtained the fresh certificate of incorporation on 3rd April, 2008. The company finally changed its name to Evolv Services Limited and obtained the fresh certificate of incorporation on 2nd May, 2008.

5. The amalgamating company no. 2 was originally incorporated under the Companies Act, 1956 on 17th July, 2002 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name and style of Scantech Evaluation Services Private Limited. The company changed its name to Scantech Evaluation Services Limited and obtained the fresh certificate of incorporation on 26th February, 2004.

6. The amalgamating company no. 3 was incorporated under the Companies Act, 1956 on 26th May, 2000 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

7. The transferee was originally incorporated under the Companies Act, 1956 on 16th July, 2001 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name and style of Minimally Invasive Education Company Limited. The company changed its name to Hole-in-the-Wall Education Limited and obtained the fresh certificate of incorporation on 7th February, 2003.

8. The present authorized share capital of the amalgamated company is Rs.75,00,00,000/- divided into 25,00,00,000 equity shares of Rs.2/- each aggregating to Rs.50,00,00,000/-; 25,00,000 redeemable preference shares of Rs.100/- each aggregating to Rs.25,00,00,000/-. The issued capital of the company is Rs.33,03,53,194/- divided into 16,51,76,597 equity shares of Rs.2/- each. The subscribed and paid up capital of the company is Rs.33,03,47,194/- divided into 16,51,70,597 equity shares of Rs.2/- each aggregating to Rs.33,03,41,194/- and 6000 forfeited equity shares (amount originally paid up) aggregating to Rs.6000/-.

9. The present authorized share capital of the amalgamating company no. 1 is Rs.1,60,00,000/- divided into 16,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,47,50,960/- divided into 14,75,096 equity shares of Rs.10/- each.

10. The present authorized share capital of the amalgamating company no. 2 is Rs.12,00,00,000/- divided into 1,20,00,000 equity shares of Rs.10/- each. The

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issued, subscribed and paid-up share capital of the company is Rs.9,91,00,000/- divided into 99,10,000 equity shares of Rs.10/- each.

11. The present authorized share capital of the amalgamating company no. 3 is Rs.50,00,00,000/- divided into 15,00,00,000 equity shares of Rs.1/- each aggregating to Rs.15,00,00,000/- and 35,00,00,000 8.5% cumulative redeemable preference shares of Rs.1/- each aggregating to Rs.35,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.43,87,998/- divided into 43,87,998 equity shares of Rs.1/- each.

12. The present authorized share capital of the transferee company is Rs.30,00,00,000/- divided into 2,00,00,000 equity shares of Rs.10/- each aggregating to Rs.20,00,00,000/- and 1,00,00,000 redeemable preference shares of Rs.10/- each aggregating to Rs.10,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.6,60,00,070/- divided into 10,00,007 equity shares of Rs.10/- each aggregating to Rs.1,00,00,070/-; 34,00,000 13.75% non-convertible cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.3,40,00,000/-; and 22,00,000 13.25% non-convertible cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.2,20,00,000/-.

13. Copies of the Memorandum and Articles of Association of the amalgamated, amalgamating and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the amalgamated, amalgamating and transferee companies, along with the report of the auditors, have also been filed.

14. A copy of the Composite Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is submitted by the petitioners that amalgamating companies no. 1, 2 and 3 are wholly owned subsidiaries of amalgamated company. It is further submitted that the Scheme, inter alia, provides for amalgamation of amalgamating companies no. 1, 2 and 3 into the amalgamated company and demerger of the School Business Undertaking of the amalgamated company into the transferee company. It is claimed that the proposed amalgamation will remove inefficiencies and combine similar business interest into one corporate entity, resulting in operational synergies, simplification, streamlining and optimization of the group structure and efficient administration. It is further claimed that the proposed demerger will facilitate creation of a separate, focused entity to take advantage of the future emerging opportunities in the school segment, which shall efficiently and effectively cater to the independent growth plan for the School Business Undertaking Scheme and its future value recognition, expansion and diversification.

15. So far as the share exchange ratio is concerned, the Scheme provides as under:

"Upon amalgamation of the amalgamating companies no. 1 to 3 into the amalgamated company, no consideration shall be payable by the amalgamated

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company and no shares shall be allotted by the amalgamated company as the amalgamating companies no. 1 to 3 are wholly owned subsidiaries of the amalgamated company."

"A lump sum consideration of Rs.1,08,06,40,649/- shall be payable by the transferee company to the amalgamated company for the transfer and vesting of the School Business Undertaking."

16. It has been submitted by the petitioners that no proceedings under Sections 235 and 250A of the Companies Act, 1956 and the applicable provisions of the Companies Act, 2013 are pending against the amalgamated, amalgamating and transferee companies.

17. The Board of Directors of the amalgamated, amalgamating and the transferee companies in their separate meetings held on 26th August, 2014 have unanimously approved the proposed Composite Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the amalgamated, amalgamating and transferee companies have been placed on record.

18. The petitioner companies had earlier filed CA (M) No. 166/2014 seeking directions of this court to dispense with the requirement of convening the meetings of the shareholders and creditors of the amalgamating and transferee companies and for convening of separate meetings of the equity shareholders, secured and unsecured creditors of the amalgamated company, which are statutorily required for sanction of the Composite Scheme of Arrangement. Vide order dated 19th December, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the shareholders and creditors of the amalgamating and transferee companies, and directed convening of separate meetings of the equity shareholders, secured and unsecured creditors of the amalgamated company, to consider and, if thought fit, approve, with or without modification, the proposed Composite Scheme of Arrangement. The Court also dispensed with the requirement of the transferee company from following the procedure prescribed under Section 101(2) of the Companies Act, 1956 with regard to reduction of its share capital.

19. The Chairpersons of the ordered meetings of the equity shareholders, secured and unsecured creditors of the amalgamated company have filed their reports stating that the meetings were duly held on 31st January, 2015, as directed, and that the Composite Scheme of Arrangement has been approved unanimously/by majority by the equity shareholders, secured and unsecured creditors of the amalgamated company, present and voting, in the meetings.

20. The petitioner companies have thereafter filed the present petition seeking sanction of the Composite Scheme of Arrangement. Vide order dated 20th February, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in ''Indian Express'' (English) and ''Jansatta'' (Hindi) editions.

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Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 14th March, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

21. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 27th March, 2015 wherein he has stated that he has not received any complaint against the proposed Composite Scheme of Arrangement from any person/party interested in the Scheme in any manner and that the affairs of the amalgamating companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

22. In response to the notices issued in the petition, Mr. A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 10th April, 2015. Relying on Clauses 3.1(vii) of Section-A of Part-III, 4.1(viii) of Section-B of Part-III and 5.1 of Section-C of Part-III of the Scheme, he has stated that, upon sanction of the Composite Scheme of Arrangement, all the employees of the amalgamating companies no. 1, 2 and 3 shall become the employees of the amalgamated company respectively, without any break or interruption in their services. He has further submitted that in Clause 8.1 of Part-IV of the Scheme, it has been stated that accounting for the amalgamation of the amalgamating companies and treatment of goodwill and reserves, if any, in the financial statements of amalgamated company, shall be in accordance with the provisions of the Accounting Standard-14, dealing with accounting for amalgamations, issued by the Institute of Chartered Accountants of India. He further submitted that in Clauses 3.7 of Section- A of Part-III, 4.7 of Section-B of Part-III, and 5.7 of Section-C of Part-III of the Scheme, it has been stated that, upon this scheme becoming effective, the amalgamating companies no. 1, 2 and 3 shall stand dissolved without the process of winding up.

23. Although no objection has been raised by the Regional Director in his report, but in para 10 of his report, he has observed that as per Clause 11 of Part-V of the Scheme, it has been stated that with effect from the effective date, the name of the transferee company shall stand changed to Mindchampion Learning Systems Limited or such other name as may be approved by the Registrar of Companies, Delhi and Haryana. He, therefore, prays that the petitioner company may be directed to comply with the provisions of the Companies Act, 1956/2013 in this regard. In reply to the aforesaid observation, the transferee company in the affidavit dated 14th April, 2015 of Mr. Ashok Arora, authorized signatory of the transferee company, have undertaken to comply with the relevant procedures under the Companies Act, 1956/2013 with regard to the change of name of the transferee company. The undertaking is accepted and the petitioner company

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shall remain bound by the same. In view of the above, the observation raised by the Regional Director stands satisfied.

24. No objection has been received to the Composite Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 8th April, 2015 of Mr. Ashok Arora, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 14th March, 2015.

25. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Composite Scheme of Arrangement and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Composite Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Composite Scheme of Arrangement. Consequently, sanction is hereby granted to the Composite Scheme of Arrangement under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Arrangement, i.e. 1st April, 2014, the amalgamating companies no. 1, 2 and 3 shall stand dissolved without undergoing the process of winding up; and the School Business Undertaking of the amalgamated company shall stand merged in the transferee company.

26. Learned counsel for the Official Liquidator prays that costs may be imposed on the petitioner companies in view the fact that the matter has involved examination of voluminous record and prioritized hearings. He submits that cost of at least Rs.3,00,000/- be imposed. Learned senior counsel for the petitioners states that the petitioner companies are ready and willing to pay cost of Rs.3.0 lakh. Looking to the circumstances, the petitioner companies shall deposit cost of Rs.3.0 lakh in the Common Pool Fund of the Official Liquidator within two weeks from today.

27. The petition is allowed in the above terms.

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