(2020) 01 NCLT CK 0013

In the National Company Law Tribunal

Case No : CP/1201/CAA/2O19 In CA/744/CAA/2019

In The Matter Of SRT Ascendancy Solutions Private Limited And Ors

Date of Decision : 10-01-2020

Acts Referred:

Companies Act, 2013 — Section 230, 230(7), 231, 232, 232(3), 232(3)(i), 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2020) 01 NCLT CK 0013

Hon'ble Judges : R. Varadharajan, J;Anil Kumar B., Member (Technical)

Bench : Division Bench

Advocate : V. Srinivasan, B. Palani

Final Decision : Allowed

Judgement

,,,

Anil Kumar B, Member (Technical)",,,

1. This Joint Company Petition has been filed by M/s. SRT Ascendancy Solutions Private Limited (hereinafter referred to as the â??Transferor,,,

Company - 1â?), M/s. MSE Financial Services Limited (hereinafter referred to as the â??Transferor Company - 2â?), M/s. Madras Enterprises",,,

Limited (hereinafter referred to as the â??Demerged Companyâ? or â??Transferee Companyâ?) and M/s. MEL Edutech Services Private,,,

Limited (hereinafter referred to as â??Resulting Companyâ?) for the purpose of the approval of the Composite Scheme of Arrangement (hereinafter,,,

referred to as â??Schemeâ?, as contemplated between the above mentioned companies, under Section 230 to 232 and other applicable provisions of",,,

the Companies Act, 2013 (for brevity â??the Actâ??) read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for",,,

brevity â??the Rulesâ??) and the said Scheme is also annexed as Annexure â??9â? at pages 190 to 225 to the typed set filed along with the,,, Company Petition.,,,

2. The Registered Office of all the Petitioner Companies is situated in Chennai and falls within the territorial jurisdiction of National Company Law,,,

Tribunal, Chennai.",,,

3. The Composite Scheme of Arrangement which is contemplated between the Companies involves four steps, which is;",,,

(a) Amalgamation of Transferor Company - 1 and Transferor Company - 2 with the Transferee Company; (Part - 3 and Part-4 of the Scheme),,,

(b) Demerger of Investment Division, Consultancy Division and capital Market Training Division (post-amalgamation) of Demerged Company and",,,

transferring/vesting of the same into Resulting Company; (Part - 5 of the Scheme),,,

(c) Upon Scheme coming into effect, the name of the Transferee Company i.e. M/s. Madras Enterprises Limited will be renamed/changed into M/s.",,,

MSE Financial Services Limited; and,,,

(d) Upon the Scheme coming into effect, the name of the Resulting Company i.e. MEL Edutech Services Private Limited will be renamed/changed",,,

into M/s. Madras Enterprises Private Limited;,,,

4. From the records, it is seen that in the First Motion Application which was filed before this Tribunal vide CA/744/CAA/2019 wherein all the",,,

Petitioner Companies had sought to dispense with the meeting of the Unsecured Creditors/Unsecured Trade Creditors and also sought for a direction,,,

for convening the meeting of the Equity/Preference Shareholders and the Chairman appointed by this Tribunal has also filed his report in relation to the,,,

same. Based on such application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal vide order dated",,,

07.08.2019.,,,

5. Under the circumstances, the Petitioner Companies have filed these petitions for sanction of the â??Schemeâ?? before this Tribunal. Directions",,,

were issued vide order dated 07.08.2019 in CA/744/CAA/2019 and order dated 19.11.2019 in CP/1201/CAA/2019, in relation to the notice to the",,,

Statutory/Regulatory Authorities as well as for paper publication in â??News Todayâ? (Tamil Nadu Edition), in English and â??Makkal Kuralâ?,",,,

(Tamil Nadu edition) in Tamil and pursuant to the same notices have been served to the Regional Director, RoC, Chennai, Official Liquidator, Security",,, Exchange Board of India (SEBI), National Stock Exchange of India Ltd., BSE Limited, Central Depository Services Limited, Metropolitan Stock",,,

Exchange of India Ltd., and other regulatory authorities.",,,

6. It is seen from the records that the Petitioner Companies have filed affidavit of service on 06.12.2019 in relation to the compliance of the order,,,

passed by the Tribunal as noted above and a perusal of the same discloses that the Petitioner Companies have effected the paper publication as,,,

directed by by the Tribunal in one issue of â??News Todayâ? (Tamil Nadu Editions) in English and â??Makkal Kuralâ? in Tamil on 28.11.2019.,,,

Further notices have been served to (i) The Regional Director, Southern Region, Chennai, (ii) Registrar of Companies Chennai, (iii) Assessing Officer,",,,

Income Tax Department (iv) Official Liquidator, Chennai (v) National Stock Exchange Limited, (vi) Bombay Stock Exchange Limited and (vii)",,,

Securities Exchange Board of India, (viii) Metropolitan Stock Exchange of India Limited, (ix) Multi Commodity Exchange of India Limited on",,,

28.11.2019, in compliance with the directions passed by this Tribunal and in proof of the same acknowledgements/receipts have also been enclosed.",,,

7. The Regional Director, (for brevity â??RDâ??) Chennai to whom the notice was issued in the First Motion itself, has filed his Report on",,,

31.10.2019 before this Tribunal and has made has two observations in relation to the Scheme contemplated between the Petitioner Companies and the,,,

relevant observations made by the RD are extracted hereunder;,,,

â??9. It is submitted that Clause 5.26 of Part 5 of the scheme has stated that the authorized capital of the 1st and 2nd applicant companies will be,,,

merged with the authorized capital of the 3rd applicant company. The 3rd applicant company may be directed to file the amended MOA and AOA,,,

with RoC, Chennai for its records. In this regard, the 3rd applicant Company is required to pay the differential fees for the enhanced authorized capital",,,

post amalgamation after taking credit for the fees already paid by the 1st and 2nd applicant companies as mandated under Section 232 (3)(i) of the,,,

Companies Act, 2013. Suitable directions may be incorporated in the order by the Hon'ble Tribunal.",,,

10. It is submitted that clause 3.15(d) and 4.15(d) of Part 3 and Part 4 of the scheme it has been proposed to add/include all the clauses under the,,,

main objects of the 1st and 2nd applicant companies with the main objects clauses of the 3rd applicant company so as to enable it to continue the,,,

business activities of the 1st and 2nd applicant companies. The 3rd applicant companies may be directed to file the necessary e-forms with RoC,",,,

Chennai to enable him to issue the Certificate of Change of objects as required under the provisions of Companies Act, 2013.â??",,,

8. Apart from the above observation, the Regional Director, after examining the Scheme has decided not to make any objection to the Scheme.",,,

9. In relation to the observation made by the Regional Director in para 9 and 10, the authorized signatory of the Petitioner Companies 1 to 4 viz. V.",,,

Nagappan, has filed a reply vide Diary No. 5838 on 14.11.2019, wherein it has been stated that the Petitioner Companies undertakes to comply with",,,

all the applicable statutory requirements as observed by the RD in para 9 and 10.,,,

10. The Official Liquidator has filed his report on 22.10.2019, and has stated that the affairs of the Transferor Companies were not conducted in a",,,

manner prejudicial to the interest of its members, or creditors or to the public.",,,

11. The Chartered Accountant appointed by the Official Liquidator verified the books of accounts of the Transferor Companies and has made certain,,,

13. Despite notice being served, there is no representation from the any other statutory authorities including the Department of Income Tax. However

in relation to the Income Tax dues, eventhough none appeared on behalf of the Income Tax authorities, it has been brought to the notice of this

Tribunal that the Office of the Assistant Commissioner of Income Tax, Corporate Circle - 4(1) had issued a letter (Letter No.AACCM3039N/C

4(l)/2019-20 dated 23th August 2019, objecting to the present Scheme based on the observation that the Transferor Company - 2 in the presen

Scheme is in arrears of tax demand to the tune of Rs. 24,86,454/- as follows;",,,

Sl. No.,Asst. years,Amount (Rs),

1,2001-02,"59,110/-",

2,2002-03,"3,14,052/-",

3,2004-05,658/-,

4,2006-07,"14,888/-",

5,2007-08,"2,26,147/-",

6,2008-09,"1,25,124/-",

7,2012-13,"8,89,180/-",

8,2013-14,"2,33,067/-",

9,2014-15,"28,616/-",

10,2015-16,"5,09,854/-",

11,2007-08 FBT,"49,328/-",

12,2009-10 FBT,"36,430/-",

,TOTAL,"24,86,454/-",

,,,

S.

No.","Assessment

Year","Tax

Demand

Amount

(Rs.)",Fact/Remark

1,2001-02,"59,110/-","Hon'ble Madras High Court held that depreciation was allowable on the cost of stock exchange membership card.

Actually, the Company is entitled for a refund of Rs. 84,392/- after considering the above said depreciation, request was

made vide letter dated 2.11.2012 addressed to the Asst. Commissioner of Income Tax, to pass orders based on the said

order of the Hon'ble Madras High Court. Nol iability will arise if they pass orders based on the order of Hon'ble Madras

High Court.

2,2002-03,"3,14,052/-","Hon'ble Madras High Court held that depreciation was allowable on the cost of stock exchange membership card.

Request made vide letter dated 02.11.2012 addressed to the Asst. Commissioner of Income Tax, to pass orders based

on the said order of the Hon'ble Madras High Court. No liability will arise if they pass ordersb ased on the order of

Hon'ble Madras High Court.

3,2004-05,656/-,Remitted on 27.05.2005

4,2006-07,"14,888/-","Vide letter dated 27.04.2011 addressed to Assistant

Commissioner of Income Tax requesting to correct the wrong

calculation of interest to the extent of Rs. 18,633/- u/s 234B & 234C. No reply received so far.

5,2007-08,"2,26,147","Refund of Rs. 4,41,190/- was available as per the letter of Assistant Commissioner of Income Tax dated 07.08.2009.

reminder letter dated 16.09.2009 was send for the refund of Rs. 4,44,190/- addressed to Asst. Commissioner of Income

Tax.

6,2008-09,"1,25,124/-","In fact, it should be a refund of Rs. 2,14,776 as per assessment order, but in the said assessment Oder refund was

mentioned as Rs. 1,25,124/- instead of Rs. 2,14,776/-. Letter dated 16.09.2011 addressed to ACIT for rectification of

error and requesting the refund. The difference in refund was allowed on 20.02.2015 and the actual refund adjustment

was done only for Rs. 86,160/-

7,2012-13,"8,89,180/-","As per assessment order a refund of Rs. 1,48,769/- has to be received as per assessment made u/s 154. Further the

Department has not taken into account the tax paid of Rs. 7,47,405/- on 28.09.2011 and the letter dated 25.03.2015 was

sent to the Assessing Officer for rectification.

8,2013-14,"2,33,067/-","As per assessment order a refund of Rs. 2,07,707/- has to be received as per assessment made u/s 143(1). Further, the

Department has not taken into account the tax paid of Rs. 3,24,450/- on 03.10.2012. A Letter dated 25.03.2015 was sent

to Assessing Officer for rectification.

9,2014-15,"28,616/-","As per assessment order a refund of Rs. 73,534/- has to be received as per assessment made u/s 143(1). Further, the

Department has not taken into account the tax paid of Rs. 4,24,900/- on 03.10.2013. There is no tax liability.

10,2015-16,"5,09,854/-","Rs. 4,24,900/- was paid on 23.09.2014. The Department has not taken into account the tax paid of Rs. 4,24,900/-.

Interest levied on the assumption that tax has not been paid. In fact tax has been paid in time. There will be no tax

11,2007-08 FBT,"49,328/-","liability.

No demand raised. As far as the 2nd Petitioner Company is concerned no due is pending.

12,2009-10 FBT,"36,430/-",

declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15, 2015 that the Department is",,,

entitled to take out appropriate proceedings for recovery of any statutorily dues from the transferor or transferee or any other person who,,,

is liable for payment of such tax dues the said protection be afforded is granted. With the above observations, the petition stands allowed",,,

and the scheme of amalgamation is sanctioned.â??,,,

18. The Independent Statutory Auditors of the Transferor Companies and the Transferee Company have filed the Certificate in relation to compliance,,,

with the Accounting Standards, and certified that the proposed scheme is in conformity with the accounting standards specified under Section 133 of",,,

the Act, read with relevant rules as applicable. Thus, the Petitioner Company has complied with proviso to Section 230 (7)/Section 232 (3) of the",,,

Companies Act, 2013.",,,

19. The Petitioner companies have submitted that no investigation proceedings are pending against them under the provisions of the Companies Act,",,,

1956 or the Companies Act, 2013 and no proceedings are pending against the petitioner companies under Section 235 to 251 of the Companies Act,",,,

2013 or under relevant provision of the Companies Act, 1956.",,,

20. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances,,,

having been fulfilled, this Tribunal, sanctions the Composite Scheme of Arrangement, annexed as Annexure â??9â? with the Company Petition as",,,

well as the prayer made therein.,,,

21. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction",,,

granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and",,,

officials of the petitioners.,,,

22. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from",,,

payment of stamp duty, taxes or any other charges, if any payment is due or required in accordance with law or in respect to any",,,

permission/compliance with any other requirement which may be specifically required under any law.,,,

THIS TRIBUNAL DO FURTHER ORDER:,,,

(i) That all properties, right and interest of the Amalgamating Companies shall pursuant to section 232(3) of the Companies Act, 2013 without further",,,

act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company as per the terms of the,,,

Scheme of Amalgamation.,,,

(ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Companies shall pursuant to Section 232(3) of the Companies",,,

Act, 2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the",,,

Transferee Company.,,,

(iii) That all proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.,,,

(iv) That all the employees of the Transferor Companies in service on date immediately preceding the date on which the Scheme finally take effect,,,

and as contemplated in the Scheme shall become the employees of the Transferee Company without any break or interruption in their service.,,,

(v) That the Transferee Company do without further application allot to such members of the Transferor Company - 1, as have not given such notice",,,

of dissent, as is required by 3.16 of the SCHEME herein the shares in the Transferee Company to which they are entitled under the said SCHEME.",,,

(vi) That the Transferee Company do without further application allot to such members of the Transferor Company - 2, as have not given such notice",,,

of dissent, as is required by 4.16 of the SCHEME herein the shares in the Transferee Company to which they are entitled under the said SCHEME.",,,

(vii) All properties, right and powers of the Demerged Undertaking be transferred without further act or deed, to the Resulting Company and",,,

accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred and vested in the Resulting Company for all intents,",,,

purposes and interests of the Demerged undertaking subject nevertheless to all changes now affecting the same and;,,,

(viii) All liabilities (if any) and duties of Demerged Undertaking be transferred without further act or deed, to the Resulting Company and accordingly",,,

the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company;",,,

and,,,

(ix) Any proceedings pending by or against the Demerged undertaking be continued against the Demerged Company or the Resulting Company, as the",,,

case may be, as per provisions contemplated in the SCHEME.",,,

(x) That the Resulting Company do without further application allot to such members of the Demerged Company, as have not given such notice of",,,

dissent, as is required by 5.17 of the SCHEME herein, the shares in the Resulting Company to which they are entitled under the said SCHEME.",,,

(xi) All the services of all the Employees of the Demerged Company employed in the Demerged Undertaking shall stand transferred to the Resulting,,,

Company on the same terms and conditions at which these employees are engaged by the Demerged Company without any interruption of service as,,,

a result of transfer; and,,,

(xii) That the Appointed date for the Scheme is 1st April 2019,,,

(xiii) That the name of the Transferee/Demerged Company viz. M/s. Madras Enterprises Limited is hereby changed to M/s. MSE Financial Services,,,

Limited and the Transferee/Demerged Company shall file requisite forms with the Registrar of Companies in this regard.,,,

(xiv) That the name of the Resulting Company viz. MEL Edutech Services Private Limited is hereby changed to M/s. Madras Enterprises Private,,,

Limited and the Resulting Company shall file the requisite forms with the Registrar of Companies in this regard.,,,

(xv) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies, Chennai and",,,

further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting,,,

off the fees paid by the Transferor Companies.,,,

(xvi) That the Transferee Company is directed to file the necessary e-forms for change of object clause as required under the provisions of the,,,

Companies Act, 2013 with RoC, Chennai to enable them to issue the Certificate to that effect.",,,

(xvii) That the Transferor Companies and the Transferee Company, shall within thirty days of the date of the receipt of this order cause a certified",,,

copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor",,,

Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him,,,

on the file kept by him in relation to all the Transferee Company and the files relating to both the said both companies shall be consolidated,,,

accordingly.,,,

(xviii) That any interest person shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.,,,

23. Accordingly, the Company Petition stands allowed on the aforementioned terms.",,,

