(2021) 11 NCLT CK 0002

In the National Company Law Tribunal

Case No : C.P.(CAA)/92/MB-II/2021 Connected with C.A.(CAA) No. 1068/MB-II/2020

Kladenet Technologies Private Limited Vs

Date of Decision : 01-11-2021

Acts Referred:
Companies Act, 2013 — Section 230, 230(5), 231, 232, 232(3)(i)

Citation : (2021) 11 NCLT CK 0002

Hon'ble Judges : Ashok Kumar Borah, (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Ahmed M Chunawala

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member (Technical)

1. The hearing of the Bench conducted through videoconference.

2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.

3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of Merger by Absorption of KLADENET TECHNOLOGIES PRIVATE LIMITED, the Transferor Company with UNIFYND TECHNOLOGIES

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 21st July, 2020 which are annexed to the respective Company Scheme Petitions.

5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 1068 of 2020 of the Hon'ble Tribunal.

6. The Learned Advocate appearing on behalf of the Petitioners further states

that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

7. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company presently is engaged in business of Information technology design and development services and that the Second Petitioner Company presently is in the business of Software designing, development, customisation, implementation maintenance, testing and benchmarking, designing, developing and dealing in computer software and solutions.

8. The rationale for the Scheme of Amalgamation of the Petitioner Companies would, inter alia, all the Companies are under the same management. The management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits:

a. Both the Companies are under same business activities and it would be advantageous to combine the activities and operations in a single Company. The amalgamation would provide synergistic linkages besides costs cutting by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company. Also, the amalgamation shall enable effective management and unified control of operations. This would enable streamlining the activities.

b. It would be advantageous to combine the activities and operations of both the Companies into a single Company for leveraging financial and operational resources and for the benefit of lesser compliance issues.

c. The Scheme of Merger by Absorption will result in cost saving for both the Companies and is expected to result in administrative efficiency and higher profitability levels for the Transferee Company.

9. The Regional Director has filed his Report dated 1st September, 2021 inter-alia making the following observations in Paragraphs IV (a) to (g) which are reproduced hereunder:

Para

Observation by the Regional Director

Undertaking of the Petitioner Company/ Rejoinder

IV(a)

In addition to compliance of AS- 14 (IND AS-I03), the Transferee Company 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.

So far as the observation in paragraph IV (a) of the Report of the Regional

Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable.

IV(b)

The Petitioners 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 Amalgamation.

Further, the approval of the Scheme by this 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 is binding on the Petitioner Company(s). serve notices to concerned authorities which are likely to be affected by Amalgamation.

Further, the approval of the Scheme by this 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 is binding on the Petitioner Company(s).

So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel hereby confirm that notices have been served to the concerned authorities which are likely to be affected by Amalgamation.

IV

(c)

Hon'ble NCLT may kindly direct the etitioners to file an affidavit to the extent t hat the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy or deviation.

So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy / any change / changes are made.

IV

(d)

As per the Definition of the Scheme "Appointed Date" means 1st day of April, 2020 or such other date as the NCLT or such other competent authority may otherwise direct/ fix.

"Effective Date" or the "coming into effect of this Scheme" means the last of the date on which the certified true copy of the order of the NCLT, vestingthe assets, properties, liabilities, rights, duties, obligations and the like of all the Transferor Company in the Transferee Company are filed with the Registrar of Companies, Mumbai Maharashtra after obtaining the necessary consents, approvals, permissions,

resolutions, agreements, sanctions and order in this regard.

Further, the Petitioner 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

So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Appointed Date is 1st April, 2020. The Counsel further submits that the Petitioner will 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.

IV

(e)

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 authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.

So far as the observation in paragraph

IV (e) of the Report of the Regional

Director is concerned, the Learned

Counsel for the Petitioner Companies

submits that the setting off of fees paid

by the Transferor Company on its

Authorised Share Capital shall be

accordance with provisions of section

232(3)(i) of the Companies Act, 2013.

IV

(f)

As per Clause 12 of the Scheme

In case of any difference in the accounting policy between the transferor company and the Transferee Company, the impact of the same till the Appointed Date of the merger by Absorption will be quantified and adjusted in the Free/ General Reserves of the Transferee Company to ensure that the financial statements of the Transferee Company reflects the Financial position on the basis of consistent accounting policies.

Petitioner Companies have to undertake that the surplus shall be credited to Capital Reserve Account against out of amalgamation and deficits shall be debited to Goodwill Account.

Further Petitioner Companies have to undertake that reserve shall not be available for Distribution of Dividend.

So far as the observation in paragraph

IV (f) of the Report of the Regional

Director is concerned, the Learned

Counsel for the Petitioner Companies

submits that the surplus shall be

credited to Capital Reserve Account

against out of amalgamation and

deficits shall be debited to Goodwill

Account and further Petitioner

Companies undertakes that reserve

shall not be available for Distribution

of Dividend.

IV

(g)

RoC Mumbai Report dated 02.08.2021 has inter alia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies.

Further mentioned that:-

1. Interest of the Creditors shall be protected.

So far as the observation in paragraph

IV (g) of the Report of the Regional

Director is concerned, the Learned

Counsel for the Petitioner Companies

submits that the interest of Creditor

will be protected.

10. Thereafter, the Petitioner Company had filed the Rejoinder to the RD Report and the Regional Director, Western region had filed its Supplementary Report with the National Company Law Tribunal, Mumbai bench. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The Representative of the RD has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no objection to the Scheme.

11. The Official Liquidator has filed his report on 10th August, 2021 in the Company Scheme Petition No. 1068 of 2020, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved by this Tribunal.

12. 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 policy.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 1068 of 2020 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition.

14. The First Petitioner Company be dissolved without winding up.

15. Petitioners 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, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.

16. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

17. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.

18. The Appointed Date is 1st April, 2020.

19. Ordered Accordingly. Pronounced in open court today.

