(2023) 05 NCLT CK 0103

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : CA(CAA) No. 26/ND/2023

M/s. Orange Education Pvt Ltd Vs

Date of Decision : 29-05-2023

Acts Referred:

Companies Act, 2013 — Section 52, 66, 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230, 232, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2023) 05 NCLT CK 0103

Hon'ble Judges : Bachu Venkat Balarm Das, Member (J);Rahul Bhatnagar, Member (T)

Bench : Division Bench

Advocate : Kartikeya Goel

Final Decision : Disposed Of

Judgement

Rahul Bhatnagar, Member (Technical)

1. This is a joint application filed by the Applicant Companies herein, Orange Education Pvt Ltd (for brevity "Demerged Company / Applicant Company No 1") and Orange House Pvt Ltd (for brevity "Resulting Company/ Applicant Company No 2") under Section 230-232 of Companies Act, 2013 read with Section 66 and 52 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the National Company Law Tribunal Rules, 2016, and other applicable provisions in relation to the Scheme of Arrangement by way of Demerger (hereinafter referred to as the "SCHEME") proposed between the applicants.

2. That both the Demerged Company and the Resulting Company under the Scheme of Arrangement have their respective registered office in the NCT of Delhi and hence are under the jurisdiction of the Hon'ble National Company Law Tribunal, Bench at New Delhi.

3. Affidavits in support of the above application, sworn by Mr. Ankur Gupta, Director and Authorised Signatory of Applicant Company No.1 who has been

authorised vide Board Resolutions dated 09.03.2023 and Mr. Atul Kumar Gupta, Director and Authorised Signatory of Applicant Company No.2, who has been authorised vide Board Resolutions dated 09.03.2023, have been duly signed and filed along with the application.

4. The Applicant Company No.1/Demerged Company – Orange Education Private Limited, bearing Corporate Identification No. (CIN): U74899DL1993PTC053476, was incorporated under the provisions of the Companies Act, 1956 as a Private Limited Company vide Certificate of Incorporation dated 10.05.1993, having its registered office at 9, Daryaganj, Near MTNL Office, New Delhi- 110002. The Authorised Share Capital of the Applicant Company No. 1/ Demerged Company is 4,97,00,000 divided into 4,97,000 Equity Shares of 100 each. The Present Issued, Subscribed and Paid-up Capital of the Company is 4,12,60,100 divided into 4,12,601 Equity Shares of 100 each.

5. The Applicant Company No. 2/Resulting Company – Orange House Private Limited, bearing Corporate Identification No. (CIN): U22110DL2011PTC227319, was incorporated under the provisions of the Companies Act, 1956 as Private Limited Company vide Certificate of Incorporation dated 11.11.2011 with the Registrar of Companies, NCT of Delhi & Haryana and having its registered office at 9 Part of 2nd and 3rd Floor & Basement Near LIC office Daryaganj Central Delhi 110002. The Authorised Share Capital of the Resulting Company is 25,00,000 divided into 2,50,000 Equity Shares of 10 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is 25,00,000 divided into 2,50,000 Equity Shares of 10 each.

6. The Demerged Company as well as the Resulting Company have filed their respective Memorandum and Articles of Association, inter alia delineating their object clauses, as well as their last Audited Annual Accounts for the Financial 31.03.2022.

7. The Applicant Companies, vide their respective meetings of the Board of Directors held on 09.03.2023, have unanimously approved the Scheme of Arrangement as contemplated above. Copies of the said Resolutions passed in the said Board Meetings have been placed on record.

8. It has been stated that the Demerged Company has 2 Equity Shareholders. Certificate from the Chartered Accountants certifying list of Shareholders was annexed. All the Shareholders have given their respective consents by way of affidavits, which were annexed to the application. It was further represented that the Demerged Company has 6 Unsecured Creditors and 3 Secured Creditors. All the Unsecured Creditors and 1 (having 92.07% of total value) of the 3 Secured Creditors has given its consent to the implementation of the proposed scheme by way of an affidavit, which were annexed to the application. Certificate from Chartered Accountants certifying list of creditors was annexed. In relation to the Shareholders and Secured/Unsecured Creditors, it seeks to dispense with the holding/convening of the meetings as their consent affidavits were placed on

record.

9. It has been stated that the Resulting Company has 4 Equity Shareholders, who have given their respective consents by way of affidavits. Certificate from Chartered Accountants certifying list of shareholders and consent Affidavits of the shareholders were annexed to the application. It was further represented that the Company has 8 unsecured creditors and 1 secured creditor. Certificate from the Chartered Accountants certifying the list of creditors was annexed. In relation to the Shareholders and Unsecured/ Secured Creditors, it seeks dispensing with holding/convening of the meetings as their consent affidavits were placed on record.

10. The Demerger of the Demerged and the Resulting Company are closely held un-listed private limited companies. Both the Companies are Group Companies under common management and control. The proposed scheme of demerger will have following benefits: -

• The proposed demerger of publication business of Orange Education Pvt Ltd into Orange House Pvt Ltd would result in business synergy, pooling of the resources of these Companies and would enable the Resulting Company to achieve benefits of economies of scale resulting in improved efficiencies. The Resulting Company will have stronger financials with higher turnover and better margins.

• The proposed demerger of publication business into the Resulting Company would enable the Demerged Company to focus on its remaining business of investments in real estates and securities.

• It will impart better management focus, will facilitate administrative convenience and will ensure optimum utilization of various resources by these Companies.

• The proposed Demerger will enable the Demerged Company and the Resulting Company to raise necessary funds, invite strategic investors and other stakeholders for their respective businesses.

• The proposed demerger will provide scope for independent expansion of various businesses. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business.

• The proposed Demerger will have beneficial impact on the Demerged Company and the Resulting Company, their employees, shareholders and other stakeholders and all concerned.

11. The Applicant Companies have stated that the provisions relating to the accounting treatment for the proposed scheme were in conformity with the applicable provisions of the Companies Act, 2013. Certificates from the Statutory Auditor of the Applicant Companies on the accounting treatment, as proposed in

the Scheme, were annexed to the application and it is clearly stated that the Accounting treatment is in conformity with that prescribed under Section 133 of Companies Act, 2013.

12. The Applicant Companies have stated that no litigation, proceedings or any investigation under Sections 235 to 251 of the Companies Act, 2013 or Sections 210 to 227 of the Companies Act, 2013 were pending against any of the Applicant Companies.

13. The Appointed Date, as specified in the Scheme and confirmed by this Tribunal, is 01.04.2023.

14. Taking into consideration the submissions and the documents filed therewith, the following directions are issued forthwith in respect of convening/holding or dispensing with the meetings of the Shareholders. Secured and Unsecured Creditors as well as issue of notices including by way of paper publication as follows:

A. In relation to the Demerged Company:

a) With respect to Equity Shareholders: In view of consent affidavits from the 2 Equity Shareholders, having 100% voting share, been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect to Secured Creditors: In view of consent affidavit from 1 Secured Creditor, having 92.07% of total value convening the meeting of Secured Creditors is dispensed with.

c) With respect to Unsecured Creditors: In view of consent affidavit from all the 6 Unsecured Creditors, convening the meeting of Unsecured Creditors is dispensed with.

B. In relation to the Resulting Company:

a) With respect to Equity Shareholders: In view of consent affidavits from the 4 Equity Shareholders, having 100% voting share been filed, convening the meeting of shareholders/members is dispensed with.

b) With respect of Secured Creditors: In view of consent affidavit from 1 Secured Creditor, convening the meeting of Secured Creditor is dispensed with.

c) With regard to Unsecured Creditors: In view of consent affidavit from all the 8 Unsecured Creditors, convening the meeting of Unsecured Creditors is dispensed with.

15. Notice of this application shall be served on the following:

i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New

Delhi-110019;

iii. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.

iv. Any other sectoral regulators required to be served.

The application stands allowed on the aforesaid term and accordingly disposed off.