(2023) 06 NCLT CK 0007

In the National Company Law Tribunal

Case No : C.P.(CAA)/9 (MB-IV)/2023 In C.A (CAA)/92(MB-IV)/2022

Neterson Technologies Private Limited Vs

Date of Decision : 07-06-2023

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

Citation : (2023) 06 NCLT CK 0007

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Harsh Ruparelia, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kuldip Kumar Kareer, Member (Judicial)

1. The Bench is convened through video conferencing.

2. Heard the Authorised Representative for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor have the Petitioner Companies controverted any averments made in the Petition to the said Scheme.

3. The sanction from the Tribunal is sought under Sections 232 r/w section 230 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation and Arrangement amongst Neterson Technologies Private Limited and Neterwala Consulting and Corporate Services Limited and Chemicals and Ferro Alloys Private Limited and Uni Tritech Private Limited (formerly known as Uni VTL Precision Private Limited) and their respective shareholders.

4. The Board of Directors of the Petitioner Companies have approved the said scheme by passing the Board Resolution dated 29th March 2022 and the Board of Directors of the Petitioner Companies have approved the said amended scheme by passing the Board Resolution dated 18th July 2022 (for the Second Petitioner Company, the Third Petitioner Company and Fourth Petitioner Company) and 22nd July 2022 (in for the First Petitioner Company), respectively.

5. The Company Scheme Petition has been filed in consonance with the order dated 20th October 2022 passed in C.A.(CAA)/92 (MB-IV)/2022 by this Bench.

6. The Petitioner Companies have complied with all the directions in C.A. (CAA)/92(MB-IV)/2022 by this Bench and the Petitioner Companies have also filed necessary affidavits of compliance before this Tribunal.

7. The Petitioner Companies submits that the First Petitioner Company is engaged in the business of manufacture of computer software and providing information technology solutions; Second Petitioner Company is engaged in the business of providing management services to other companies in the Neterwala Group; Third Petitioner Company is engaged in the business of Ferro Alloy Products, castings and services and Fourth Petitioner Company is engaged in manufacturing, selling and servicing of products like synchronizer rings, selector forks and machined components used in automotive industries.

8. The equity shares of the Petitioner Companies are not listed on any stock exchanges in India.

9. The rationale mentioned in the Scheme is as under:

"Neterson Technologies Private Limited, Neterwala Consulting and Corporate Services Limited and Chemicals and Ferro Alloys Private Limited, part of the Neterwala Group of Companies, are predominantly held by the same set of shareholders. The management of all the companies believe that amalgamation of Neterson Technologies Private Limited and Neterwala Consulting and Corporate Services Limited with Chemicals and Ferro Alloys Private Limited will achieve the following:

Ø Reduction in the number of companies in the Neterwala Group;

Ø Consolidating and improving the internal control systems and procedures which will bring greater management and operational efficiency due to integration of various similar functions being carried out by the entities such as human resources, finance, legal, management etc; and

Ø Elimination of administrative functions and multiple record keeping, thus resulting in reduced expenditure.

Ø The management of Chemicals and Ferro Alloys Private Limited and Uni Tritech Private Limited further believe that transfer of the Aerospace Components (Dharwad) Undertaking (as defined in sub clause 1.8 of the Scheme) from Chemicals & Ferro Alloys Private Limited into Uni Tritech Private Limited would lead to the following benefits:

Ø Consolidation of operations into Uni Tritech Private Limited;

Ø Economies of scale for the consolidated business;

Ø Permits the consolidated business to pursue a focused growth strategy which is suited to the strategic requirements of the Aerospace Components (Dharwad)

Undertaking thus helping in achieving structural and operational efficiency, enhanced competitiveness and greater accountability; and

Ø Enable potential fund raising for the consolidated business (both equity and debt) and provide better flexibility in accessing capital.”

10. Consideration:

Upon coming into effect of the Scheme and in consideration for the transfer and vesting of the business of the Transferor Company I and Transferor Company 2 into Transferee Company 1. Transferee Company 1 shall, without any further application or deed, issue and allot equity shares / preference shares, credited as fully paid up. to the equity shareholders and preference shareholders of the Transferor Company I and Transferor Company 2 whose names appear in the Register of Members of the Transferor Company 1 and Transferor Company 2 as on the Effective Date or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title, as the case may be, in the following manner:

A. for equity shares of transferor company 1

"I (One) fully paid-up Equity Share of INR 100 (Rupees Hundred) each of CFA shall be issued and allotted for every 85,480 (Eighty-Five Thousand Four Hundred and Eighty) fully paid-up Equity Shares of INR 100 (Rupees Hundred) each held in NTPL"

B. For preference shareholders of Transferor Company 1 holding 5% Cumulative Redeemable Preference Shares:

"1 (One) fully paid-up New Preference Share of INR 100 (Rupees Hundred) cach of CFA shall be issued and allotted for every 1 (One) fully paid-up Preference Share of INR 100 (Rupees Hundred) each held in NTPI."

C. For preference shareholders of Transferor Company 1 holding 0.001% Optionally Convertible Redeemable Preference Shares:

“1 (One) fully paid-up New Preference Share of INR 100 (Rupees Hundred) each of CFA shall be issued and allotted for every 1 (One) fully paid-up Preference Share of INR 100 (Rupees Hundred) each held in NTPL"

D. For preference shareholders of Transferor Company 1 holding 7% Cumulative Redeemable Preference Shares

"Upon the Scheme becoming effective, no preference shares of Transferee Company I shall be issued or allotted in lieu or exchange of its holding in Transferor Company 1 and, investment in the preference share capital of Transferor Company 1 held by Transferee Company 1 as on Effective Date shall stand cancelled accordingly."

E. For equity shareholders of Transferor Company 2:

"1 (One) fully paid-up Equity Shares of INR 100 (Rupees Hundred) each of CFA shall be issued and allotted for every 547 (Five Hundred and Forty Seven) fully paid-up Equity Shares of INR 10 (Rupees Ten) each held in NCCS" Transfer and vesting of the Aerospace Components (Dharwad) Undertaking of Transferor Company 3 by way of slump sale to the Transferee Company 2 will be for a lump sum consideration of INR 7,50,00.000 (Rupees Seven Crores Fifty Lakhs Only).

11. The Regional Director has filed his report dated 17.01.2023 making certain observations. The Petitioner Companies have submitted/undertaken that:

a. The fee, if any, paid by the Transferor Companies on its authorized share capital shall be set off against any fees payable by the Transferee Company 1 on its authorized share capital subsequent to the amalgamation, if applicable in accordance with the provisions set out in Section 232(3)(i) of the Companies Act, 2013. Also, the Transferee Company 1 shall pay the balance / difference amount of the fees and stamp duty, as applicable, at the time of increasing the authorised share capital.

b. The interest of the creditors will be protected.

c. The approval of the Scheme by the Hon’ble Tribunal would not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and that such issues arising out of the Scheme will be addressed in accordance with law.

d. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company; and

e. The Fourth Petitioner Company submits that the shares issued at premium are as per proper valuation.

12. Ms. Rupa Sutar, Deputy Director from the Office of Regional Director of Western Region, Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

13. The Official Liquidator has filed its report dated 3rd March 2023 in the C.A. (CAA)/92(MB-IV)/2022, inter-alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner not prejudicial to the interest of the shareholders of the Transferor Companies and that the Transferor Companies may be ordered to be dissolved by this Tribunal.

14. 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 considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.

15. The Income Tax Department will be at the liberty to examine the aspect of any tax payable because of this scheme and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

16. Since all the requisite statutory compliances have been fulfilled, C.P.(CAA)/9 (MB-IV) /2023 is made absolute in terms of prayer in the Company Scheme Petition.

17. The Transferor Companies will be dissolved, without winding-up.

18. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 days or an extended timeline with payment of additional fees, as may be applicable, from the date of receipt of the Order duly certified by the designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.

19. The Petitioner Companies shall lodge a copy of this Order along with the Scheme duly certified by designated Registrar of this Tribunal with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the certified copy of the Order from the Registry of this Tribunal.

20. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the designated Registrar of this Tribunal.

21. The Appointed Date of the Scheme is 1st April 2022.

22. Ordered Accordingly.

