(2023) 05 NCLT CK 0090

In the National Company Law Appellate Tribunal

Case No : CP(CAA)/25/ND/2022

Next Events Private Limited Vs

Date of Decision : 29-05-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232, 232(2)(i), 232(4), 232(7)
Companies Accounts Rules, 2014 — Rule 7

Citation : (2023) 05 NCLT CK 0090

Hon'ble Judges : P.S.N. Prasad, Member (J);Dr. Binod Kumar Sinha, Member (T)

Bench : Division Bench

Advocate : P. Nagesh, Anirudh Das, Aditya Thyagarajan, Hemlata Rawat, Shankari Mishra, Niharika Tanwar

Final Decision : Disposed Of

Judgement

P.S.N. Prasad, Member (Judicial)

1. The present Joint Petition is filed by the Petitioner Companies viz., M/s Next Events Private Limited (Petitioner/Transferor Company No. 1), M/s Parity Computing India Private Limited (Non-Petitioner/Transferor Company No. 2), M/s RELX India Private Limited (Petitioner/Transferee Company) and their respective Shareholders and Creditors under Section 230-232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the Sanction of the proposed Scheme of Amalgamation of the Transferor Company No. 1 and 2 with Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme") has been placed on record.

2. The Petitioner/Transferor Company No. 1 i.e. M/s Next Events Pvt Ltd was incorporated on 11th March, 2008 under the provisions of the Companies Act 1956 bearing CIN: U45400DL2008PTC175169 having its registered office at 818, 8th Floor, Indraprakash Building 21, Barakhamba Road, New Delhi-110001. The Authorized Capital is Rs. 5,00,000/- (Rupees Five Lakh) divided into 50,000 (Fifty Thousand) equity shares of Rs. 10/- each. The issued, subscribed and paid-up

share capital of the company is Rs. 1,10,000/- divided into 11,000 equity shares of Rs. 10 each.

3. The Non-Petitioner/Transferor Company No. 2 i.e. M/s Parity Computing India Private Limited was incorporated on 14th November 2005 in the State of Karnataka under the provisions of the Companies Act, 1956 bearing CIN: U72200KA2005FTC037664 having its registered office at 01-102-A, WeWork Embassy Tech Village Block L, Outer Ring Road, Bangalore Karnataka-560103. The Authorised Capital is Rs. 500,000 divided into 50,000 (Fifty Thousand) equity shares of Rs. 10/-each. The issued, subscribed and paid-up share capital of the company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10 each.

4. The Petitioner/Transferee Company i.e. M/s RELX India Private Limited was incorporated on 8th April, 1996 under the provisions of the Companies Act, 1956 bearing CIN: U72900DL1996PTC077903 having its registered office at 818, 8th Floor, Indraprakash Building 21, Barakhamba Road, New Delhi-110001. The Authorized Capital is Rs. 229,10,00,000 divided into 22,91,00,000 equity shares of Rs. 10/-each. The issue, subscribed and paid-up share capital of the company is Rs. 226,06,14,230 divided into 226,061,423 equity shares of Rs. 10 each.

5. The Petitioner Companies submit that the proposed scheme of amalgamation of the Transferor Companies and Transferee Company would have the following benefits: -

i. Consolidation of the businesses of the Transferor Companies and the Petitioner/ Transferee Company leading to synergies of operations;

ii. Streamlining the corporate structure of the Petitioner/Transferor Company 1, the Transferor Company 2 and the Petitioner/Transferee Company by reducing the number of legal entities which will provide several benefits including focused management in a single amalgamated entity, seamless implementation of policy changes, reducing the multiplicity of legal and regulatory compliances, rationalizing costs and also help to enhance the efficiency and control of the Transferor Companies and Petitioner/Transferee Company;

iii. Creating a stronger and wider capital and financial base for the Petitioner/ Transferee Company thus facilitating future growth and expansion;

iv. Efficient and optimal utilization of cash resources of the Transferor Companies and the Petitioner/Transferee Company under a single amalgamated entity;

v. Bringing about greater integration, operational and organisational rationalisation and effective utilisation of the combined resources of the Transferor Companies and the Petitioner/Transferee Company to enhance the operational efficiency of the combined entity; and

vi. Greater economies of scale and reduction in/avoiding duplication of overheads, administrative, managerial and other common costs.

6. The appointed date as fixed for the proposed scheme of Amalgamation is 1st April, 2021 or such other date as may be directed by the National Company Law Tribunal. Therefore 01.04.2023 be appointed date for the Amalgamation.

7. From the records, it is seen that the First Motion joint applications was filed before this Tribunal vide CA(CAA)117(ND)OF2021. Vide order dated 03.12.2021, the meeting of Equity Shareholders, Secured Creditors of the Transferor Company No.1 and Transferee Company and Unsecured Creditors of Petitioner/ Transferor Company No.1 was dispensed with. The meeting of the Unsecured Creditor of the Petitioner/Transferee Company was directed to be held through video conferencing/other audio visual means with facility of remote e-voting to consider and, if thought fit, to pass, the proposed Scheme of Amalgamation on 15.01.2022 therefore, vide order dated 03.12.2021 read with order dated 16.12.2021 the meeting of unsecured creditors held on 11.02.2022 instead of 15.01.2022. The Chairperson's report filed on 19.02.2022 the meeting of Unsecured Creditors and the scheme of Amalgamation was unanimously approved by Unsecured Creditors of Transferee Company. The same is on record.

8. The Petitioner Companies were directed to carry out publication in the newspapers. It is seen from the record that the petitioners have filed an Affidavit dated 10.05.2022 affirming compliance and disclosing that the applicants have effected publication in "Business Standard" (English) New Delhi edition as well as "Jansatta" Hindi edition, both dated on

12th April 2022. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

9. Pursuant to the notice issued to the Regional Director and Official Liquidator and Income Tax Department, they have filed their response/reply in the matter.

10. The Regional Director (RD) in its report dated 24.06.2022 has made certain observations with regard to the proposed scheme of Arrangement among the Petitioner Companies. The Petitioner Companies had filed reply dated 26.09.2022 in response to the observations made by the Regional Director, under wherein the Petitioner Companies gave clarifications and undertaking to address the observations made by the Regional Director. The details of which are summarised below:

Observation

Observations of the Regional Director vide report dated 24.06.2022

Reply of the Petitioner Companies vide affidavit dated 26.09.2022

1.

As per the auditors reports of Transferee Company for the year ended 31.03.2021, the dues of income tax on account of any disputes, are as follows: -

Name of Statue

Name of dues

Amount (INR)

Forum where the dispute is pending

Period to which the amount relates

Income Tax Act, 1961

Income Tax

Rs. 11,20,215

Income Tax Appellate Tribunal

2005- 06

Income Tax Act

Income Tax

Rs. 2,84,55,128

Income Tax Appellate Tribunal

2006- 07

Income Tax Act

Income Tax

Rs. 2,10,93,183

Income Tax Appellate Tribuna

2007- 08

Income Tax Act

Income Tax

Rs. 60,70,030

Income Tax Appellate Tribunal

2008- 09

Income Tax Act

Income Tax

Rs. 6,52,86,155

CIT (Appeals)

2013- 14

Income Tax Act

Income Tax

Rs. 7,49,341

CIT (Appeals)

2015- 16

The dues of income tax as regards the Transferee Company set out at S.No.1 of the Letter are pending adjudication before the relevant authority as set out in the table therein. It is submitted that subject to exercise of available appellate remedies, the Transferee Company which is the continuing entity post amalgamation, shall be bound by the final order that may be passed in the said proceedings.

2.

In the Annexure 2 to the Independent auditor's report for year ended 31.03.2021 of the Transferee company, auditor has made qualified opinion that- According to the information and explanations given to us and based on our audit, the following material weakness has been identified as at March 31, 2021: The company's internal control system with respect to year end financial statement closes process pertaining to procedure used to record recurring and non-recurring adjustments to the annual financial statements was not operating effectively and needs to strengthened. This could potentially result in material misstatement of related balance the company's standalone financial statements. This matter was qualified in the previous year also".

It is submitted that with respect to the observations of the Independent auditor's at ANNEXURE "2" of the Report for the year ended 31.03.2021 of the Transferee company, as set out at S.No. 2 of the letter, there are no proceedings pending against the Transferee company nor have any material mis-statement of balances been made or observed or pointed out with respect to the Transferee Company's stand alone financial statement.

3.

It is mentioned in the Independent Auditor's Report for the year ended on 31.03.2021 in respect of Transferor Company (Next Events Private Limited) that:

"Undisputed statutory dues including income tax, service tax, goods and service tax, cess and other statutory dues have generally been regularly deposited with the appropriate authorities, except slight delays in case of Income Tax".

As regards the observations in the auditor's report for the year ended 31.03.2021 with respect to the Transferor Company No. 1 as set out at S.No. 3 of the Letter, it is submitted that no proceedings or other matters have been raised or are pending as regards Transferor Company No.1 in this regard. As is further evident from Annexure No. 1 of the Independent Auditor's Report, it is clear that there are no dues of income tax, service tax, goods and service tax and CESS which have not been deposited on account of any dispute. Further, no disputed or undisputed amounts with respect to the above were outstanding at the year ended 31 March 2021.

4.

In the Independent Auditor's Report for the year ended 31.03.2021 in respect of Transferee Company the auditor has made emphasis of matter as under:

a) We draw attention to Note 37(a) and 37(b) to the Standalone Financial Statement relating to foreign currency payables and receivable outstanding as at the year end which is in contravention of Foreign Exchange Management Act, 1999 (FEMA). The company is in the process of discussing with the authorized dealer bank for the settlement of the same and is of the view that adjustments, if any, arising out of the settlement will not be material and thereby no adjustments have been made in the Standalone Financial Statements.

b) We draw attention to Note 42 of the accompanying Standalone Financial Statements, which describes the uncertainties and the impact of COVID 19 on operations and carrying value of inventories intangible assets, unbilled revenue and trade receivables as assessed by the management. The actual results may differ from such estimates depending on future developments.

a) As regards Note 37(a) and 37(b) to the stand- alone financial statement of the Transferee Company as at 31 March 2021 and relating to foreign currency transaction as set out at para 4 of the Letter, it is submitted that the dues are pertaining to group companies and its under discussion with AD bank to process the payments after securing the approvals. The company is abided to take the steps according to the approval.

It is further submitted that no proceedings are pending against the Transferee Company on account of these transactions. In any event of the matter, it is submitted that the Transferee Company is the continuing Company after the effectiveness of the Scheme of Amalgamation and the sanction of the Scheme shall not in any manner, effect the rights of any government or statutory authority to initiate proceedings against the Transferee Company in the event of there being any alleged violation of any law, including the FEMA Act, 1999.

b) At Note 42 to the stand-alone financial statement of the Transferee Company for the year ended 31 March 2021, matters with respect to the business uncertainty in view of COVID-19 Pandemic have been set out as matters of fact without any qualification or other observations.

5.

It is mentioned in the Independent Auditor's Report for the year ended on 31.03.2021 in respect of Transferor company (Next Events Private Limited) that:
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“According to the information and explanations given by the management, there are no immovable properties included in property, plant and equipment of the company and accordingly, the requirement under paragraph 3(i)(c) of the Order are not applicable to the company.”

Whereas, in the Balance Sheet for the year ended 31.03.2021 company has shown Property, Plant and Equipment of Rs. 172941.

It is submitted that with respect to S. No.5 of the Letter, the Independent Auditor’s Report states that “there are no immovable properties included in property, plant and equipment of the Company”. Hence, the property, plant and equipment of the Company which is set out at the balance sheet as at 31 March 2021 does not include immovable property.

6.

The Transferee company, may kindly be directed to comply with the provision of section 232(2)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital.

In this regard, the Petitioner/Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the 2013 Act with regard to the fee payable on its revised authorized share capital.

11. Thus, though initially, the Regional Director (RD) in its report dated 24.06.2022 had made certain observations with regard to the proposed scheme of amalgamation among the petitioner companies. However, after the reply of the Petitioner Companies in response to the observations made by the Regional Director appears to be satisfactory and the matter may be decided on its merits.

12. The Income Tax Department ward 18(3) vide its report dated 20.07.2022 filed on 27.08.2022 has no objection in the scheme of amalgamation with respect to Transferor Company No. 1. However, it is stated that the proposal of scheme of arrangement may be accepted only after protecting the rights of the revenue to examine the tax implication of all the companies with regard to scheme of merger, at the time of their respective assessment/Re-assessment proceedings.

13. The Income Tax Department ward 19(1) vide its report dated 08.07.2022 filed on 27.08.2022 has no objection in the scheme of amalgamation with respect to Transferor Company No. 1. However, it states that the proposal of scheme of arrangement may be accepted only after protecting the rights of the revenue to examine the tax implication of all the companies with regard to scheme of merger, at the time of their respective assessment/Re-assessment proceedings.

14. The Official Liquidator has filed its report dated 09.05.2022, wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the affairs of the transferor companies do not appear

to have been conducted in a manner prejudicial to the interest of its members or to public interest. However, on the basis of information/documents submitted by the Petitioner/Transferor Company No. 1 together with the e-forms filed on MCA21 Portal, the following facts have emerged: -

• The Transferor Company No. 1 is a subsidiary of foreign entity viz. RELX Overseas BV, Netherlands, which is holding 10,999 shares aggregating to 99.9% of the total paid up share capital of the company w.e.f. 30.04.2019. The remaining 01 share is held by RELX Overseas Holding Ltd., UK. The above 11,000 equity shares were earlier held by certain individuals.

• During the year ended on 31.03.2021, the Transferor Company No. 1 has incurred a loss of Rs. 151.40 lacs as compared to the profit of Rs. 215.97 lacs earned during the previous year ended on 31.03.2020.

15. Considering the reply of the Petitioner Companies and further, the undertaking of the Petitioner Companies with respect to the observations and clarifications, we find no impediment in approving the present scheme of amalgamation.

16. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

17. Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.

18. The shareholders of the petitioner companies are the best judges of their interest, being fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies as approved by shareholders and creditors.

19. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present

Scheme.

20. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -

(i) The Petitioners shall always remain bound to comply with the statutory requirements in accordance with law.

(ii) Notwithstanding the sanction, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.

(iii) While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

21. This tribunal further directs with respect to all the Transferor companies and the Transferee company, that:

(i) The Appointed Date of the Scheme shall be 01.04.2023.

(ii) Upon the sanction becoming effective from the appointed date as provided under the scheme, the Transferor Companies shall stand dissolved without undergoing the process of winding up.

(iii) All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;

(iv) All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

(v) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

(vi) All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

(vii) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

22. Further, the Petitioner Companies 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 on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

23. In compliance with the requirement of Section 232(7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

24. The petition stands disposed of in the above terms. Let copy of the order be served to the parties.

