(2020) 07 NCLT CK 0077

In the National Company Law Appellate Tribunal

Case No : Company Petition No. 02 (Nd) 2020, Company Application No. Ca (CAA) No. 169 (Nd) 2019

Niteo Technologies Private Limited APPELLANT

Vs

Nec Technologies India Private Limited RESPONDENT

Date of Decision : 08-07-2020

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2020) 07 NCLT CK 0077

Hon'ble Judges : P.S.N. Prasad, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Rajeev Kumar

Final Decision : Disposed Of

Judgement

Sumita Purkayastha, Member (T)

1) This Joint petition has been filed by the Petitioner Companies under Sections 230 to 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 approval of the Scheme of Amalgamation outlining the Amalgamation of Transferor Company with and into Transferee Company. The copy of the Scheme has been placed on record as 'Annexure P-1 '.

2) The "Transferor Company", was initially incorporated as a Private Limited company in the name of "Root Enterprise Solutions private Limited" on 23.06.1998, subsequently on 13.09.2004 the name of the Company was changed to its present name "Niteo Technologies Private Limited", having its registered office at Unit No. 101 to 116, First Floor, Splendor Forum 3, District Centre Jasola, New Delhi-110025.

3) The "Transferee Company", NEC Technologies India Private Limited is a company incorporated on August 01, 2006 under the Companies Act, 1956,

having its registered office at Unit No. 101 to 116, First Floor, Splendor Forum 3, District Centre Jasola, New Delhi-110025.

4) A perusal of the Petition discloses that First Motion Application seeking direction for dispensation with the requirement of convening meeting of equity shareholders, secured creditors and unsecured creditors of the Petitioner Companies was filed before the NCLT, Delhi Bench vide Company Application No. CA(CAA) No. 169 (ND) 2019 and based on such joint application moved under Section 230-232 of the Companies Act, 2013, the meetings of shareholders and creditors of the Petitioner Companies were dispensed with vide order dated December 18, 2019 by NCLT, Delhi Bench. The Petitioner Companies were also directed vide order dated December 18, 2019 to serve notice of Company Application No. CA (CAA) No. 169 (NDJ/2019 upon the Regional Director, Registrar of Companies, Official Liquidator and Income-Tax authorities. It is seen from the records that the Petitioner Companies has affirmed the compliance of the order passed by NCLT, Delhi Bench in the Second Motion Petition.

5) The Petitioner Companies were directed vide second motion admission order dated January 15, 2020, to carry out publication in the newspaper one in "Business Standard" (English, Delhi Edition) and other in "Business Standard" (Hindi, Delhi Edition). In addition to the public notice, notices were directed to be served on to the Regional Director, Registrar of Companies, Official Liquidator and Income-Tax authorities.

6) It is seen from the records that the Petitioners have filed an affidavit on March 09, 2020, affirming compliance of the order passed by the Tribunal dated January 15, 2020. A perusal of the affidavit discloses that the Petitioners have affected the newspaper publication as directed in one in "Business Standard" (English, Delhi Edition) and other in "Business Standard" (Hindi, Delhi Edition) in relation to the date of hearing of the petition. Further, the copies of petition have been duly served to the Regional Director, Registrar of Companies Official Liquidator and Income-Tax authorities in compliance of the order and in proof of service has also been placed on record.

7) That the report of the Official Liquidator has been placed on record which states that the Official Liquidator has not received any complaint against the proposed scheme of Amalgamation from any person /party interested in the scheme. Hence, no objections has been made in the report submitted by the Official Liquidator.

8) The Regional Director (Northern Region) filed its representation dated March 02, 2020 in which no objection against the Scheme has been raised by the Regional Director/ Registrar of Companies. It is stated in the report that all the Petitioner Companies have filed their updated annual returns and balance sheet up to the year ending March 31, 2019 and there is no prosecution or technical scrutiny initiated/pending against the Petitioner Companies.

The Regional Director further submitted the observations of the Registrar of

Companies as under:

"Refer to Clause 5 of the Scheme, the Transferee Company may kindly be directed to comply with the provision of Section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital. "

In this regard, the Transferee Company has filed an Affidavit on March 19, 2020 with NCLT, Delhi Bench undertaking that it shall comply with the provisions of section 232(3) (i) of the Companies Act, 2013 and shall pay applicable fee, if any, post the consolidation of the authorized share capital of the Transferor Company with the authorized share capital of the Transferee Company. In view of the abovesaid, the objections raised by the Regional Director thus stands satisfied.

9) The Department of Income Tax has submitted its report on 09.06.2020 with regard to the Transferor Company wherein it has stated that there is a demand of Rs. 4, 40, 892 pending for the AY 2017-18. With regard to the Transferee Company the Income Tax Department has stared that there is a demand pending of Rs. 13,321 for the AY 2009-10, Rs. 60,32,230 for the AY 2013-14 and Rs. 2,09,96,256 for the AY 2014-15.

10) In this regard, the Transferee Company has filed an Affidavit on June 11, 2020 with NCLT, Delhi Bench wherein it has given the details of the demands pending against the Transferee company, which are as follow:

AY

Demand payable as per ACIT Report (Rs.)

Actual Demand (Refund) (Rs.)

Forum (CIT (A)/ ITAT/ HC/SC)

Submission

2009-10

13,321

NIL

N.A.

Demand of Rs. 13,321 already adjusted while passing intimation order U/s 143(1) for the AY 2011-12 (Information order ref. No. CPC/1112/16/11128809 15)

2013 -14

60,32,230

NIL

ITAT

Demand of Rs. 60,32,300 already paid on 25/07/2018. Challan No. 80442 (Payment challan enclosed).

2014 -15

2,09,96,256

2,09,96,256

ITAT

Total outstanding demand

of Rs. 26,245,321 out of which 20 % amounting to Rs. 52,49,064 already deposited on 03.12.2018. For balance 80 % stay granted by the JCIT. (Payment challan enclosed).

In the same affidavit the Transferee Company has given an undertaking that it shall discharge the final tax liability, if any of the Transferor Company and Transferee Company, crystallizing upon final order of the relevant adjudicating authority.

11) Certificates of respective Statutory auditors of the Petitioner Companies have 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.

12) It has been also affirmed by the Petitioner Companies that the Scheme is in interest of the Petitioner Companies, their shareholders, creditors, employees and all concerned stakeholders.

13) In view of the foregoing, upon considering the consent accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and Official Liquidator there appears to be no impediment in sanctioning the present Scheme.

14) It has further submitted by the Ld. Counsel of the Petitioner Companies that pursuant to newspaper publications as aforesaid, neither the Petitioner Companies nor the advocates have received any objection to the said Scheme.

15) Consequently, sanction is hereby accorded to the Scheme under Section 230 to 232 of the Companies Act, 2013.

16) The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

17) Notwithstanding the above, 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, albeit, in accordance with law, against the concerned persons, directors and officials of the Petitioners.

18) 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.

19) THIS TRIBUNAL DO FURTHER ORDER

? That the Transferor Company shall stand dissolved without following the process of winding- up;

? That all the property, rights, interests and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section230- 232 of the Companies Act 2013 be transferred to and vest in the Transferee Company.

? That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall be in pursuant to Section 230-232 of the Companies Act 2013 and become the liabilities and duties of the Transferee Company; and

? That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.

? That all the employees of Transferor Company in service, on the date immediately preceding the date on which the Scheme takes effect, i.e. the Effective Date shall become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the Transferor Company on the said date.

? That 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 Company for registration and on such certified copy being so delivered the Registrar of Companies shall place all documents of Transferor Company registered on the file kept by him in relation to the Transferee Company; and the files relating to both the Petitioner Companies shall be consolidated accordingly.

? That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary

The petition stands disposed of in the above terms.

Let copy of the order be served to the Parties.

