(2023) 06 NCLT CK 0059

In the National Company Law Tribunal

Case No : C.P.(CAA)/237/MB-IV/2022 Connected with C.A.(CAA)/34/MB-IV/2022

Nyaasa Services Private Limited Vs

Date of Decision : 23-06-2023

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

Citation : (2023) 06 NCLT CK 0059

Hon'ble Judges : Kishore Vemulappali, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Ahmed Chunawala, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. Heard the Learned Counsel for the Petitioner Companies and the Authorized Representative for the Regional Director. 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.

2. The sanction of the Tribunal is sought under Section 232 r/w Section 230 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 Nyaasa Services Private Limited, the Transferor Company with TMF Services India Private Limited, the Transferee Company.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 11th December, 2021. The Petition has been filed in consonance with the Order passed in the CA (CAA)34/MB/2022 by this Hon'ble Tribunal and Petitioner Companies have complied with all requirements as per directions contained in order dated 11.12.2021 and have filed necessary affidavits of compliance before the Tribunal.

4. The Petitioner Company No. 1 is presently carrying on business of knowledge process outsourcing, accounting, back-office processing, business process

outsourcing and that the Petitioner Company No. 2 is presently carrying on the business providing various outsourced management, accounting and administrative services such as book-keeping, accounting and reporting services.

5. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interest of the stakeholders of these companies and shall result in the following benefits:

a) The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.

b) It would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.

c) This Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform.

d) The Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies. The merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme.

e) The Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each others core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

f) The Transferor Company is a wholly owned subsidiary of the Transferee Company. The shareholders would consolidate their holdings and leverage the share value consequent to higher profitability.

6. The Regional Director has filed his report dated 12.04.2022 making certain observations. The Petitioner Companies have submitted/undertaken that:

a. The setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013;

b. The interest of creditors will be protected.;

c. The Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy / any change / changes are made.;

d. The scheme passed by this Hon'ble Tribunal may not deter any authorities to deal with any of the issues arising after giving effect to the scheme and that the decision of authorities is binding on the Petitioner Company (s).;

e. 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;

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

g. The filing of the Form BEN 2 is not applicable as on individual shareholders are holding shares more than 10%.

7. 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.

8. The Official Liquidator has filed his report on 28th April, 2023 in C.P. (CAA) 237/MB/2022, 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 Companies and that the Transferor Company may be ordered to be dissolved by this Tribunal.

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

10. From the material on record, the Scheme appears to be fair, reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy. The undertakings given by the Petitioner Companies are hereby accepted. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA) 237/ MB/2022 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition.

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

12. 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.

13. 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.

14. All authorities concerned to act on a copy of this Order along with Scheme

duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

15. The Appointed Date is 1st April, 2021.

16. Ordered Accordingly.

