(2023) 02 NCLT CK 0005

In the National Company Law Tribunal

Case No : C.P.(CAA)/191/MB Of 2021

Plancess Edusolutions Private Vs

Date of Decision : 03-02-2023

Acts Referred:

Companies Act, 2013 — Section 73, 133, 230, 230(1)(a), 230(1)(b), 230(5), 232, 232(3)(i)

Citation : (2023) 02 NCLT CK 0005

Hon'ble Judges : P. N. Deshmukh (Retd.), Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Sanjay Udeshi, Darshan Ashar

Final Decision : Disposed Of

Judgement

Justice P.N. Deshmukh (Retd.), Member Judicial

1. The Court is convened by video conferencing.

2. Heard learned counsel for the Petitioner Company. No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

3. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement between Plancess Edusolutions Private Limited ("Demerged Company") and Career Point Edutech Limited ("Resulting Company") and their respective shareholders ("Scheme of Arrangement"/ "Scheme")

4. The Petitioner Demerged Company had approved the said Scheme of Arrangement by passing the Board Resolution dated 22ndOctober2019 which is annexed to the Company Scheme Petition.

5. The Hon'ble Tribunal had vide its order dated 03rd June 2020 in respect of hearing held on 17th January 2020 in CA (CAA) No. 3528 / MB of 2019 ordered meeting of equity shareholders of the Petitioner Demerged Company to be

conducted. Pursuant thereto, the meeting of equity shareholders of the Petitioner Demerged Company was held on Saturday, 7thMarch, 2020 at 11.00 a.m. for the purpose of considering and if thought fit, approving with or without modifications(s) the proposed Scheme of Arrangement between Plancess Edusolutions Private Limited ("Demerged Company") and Career Point Edutech Limited ("Resulting Company") and their respective shareholders ("Scheme of Arrangement"/ "Scheme"). In the said meeting, the Scheme was approved by the requisite majority of the Equity Shareholders of the Petitioner Demerged Company without any modifications. The Chairperson appointed for the said meeting has filed its report as to the result of the meeting with the Tribunal on August 13, 2020 which is annexed as "Exhibit E" to the Company Scheme Petition.

6. There are no secured creditors in the Petitioner Demerged Company.

7. Notices to all the unsecured creditors of the Petitioner Demerged Company, as directed by this Tribunal, were ordered, sent and delivered.

8. The Petitioner Demerged Company is primarily engaged in the business of education and related services including providing online learning resources for secondary and higher secondary school students in India and developing, aggregating and monetizing various educational content in the form of digital records and physical study materials. The Demerged Company has broadly two divisions namely i) Competitive Course division which are targeted at helping junior college students prepare for the competitive exams like IIT JEE and NEET exams; and ii) Foundation Course division which are targeted at school students in grades 9 and 10 to provide basic orientation towards desired career interests.

9. The Learned Advocates for the Petitioner Demerged Company submits that the Specified Undertaking of the Demerged Company has demonstrated good and positive growth and it also possesses the potential of growing constantly and sustainably provided it is nurtured with an ideal mix of sufficient capital and efficient management. Thus, in order to achieve and sustain the long term growth, profitability, market share, customer service, and effectively address the competitive regulatory environment, risks and policies etc. it is proposed to demerge the Specified Undertaking into the Resulting Company thereby enhancing the required focused management attention, varied skill sets and additional fungible resources. The Resulting Company, being a part of the leading corporate group specialized in the education and related services, would be in a much better position to explore, capitalize, monetise and furtherance the business of the Specified Undertaking of the Petitioner Demerged Company in the interests of all stakeholders. Further, the strong, experienced and dedicated management of the Resulting Company, ably supported by its listed holding company, in these businesses will facilitate further expansion, growth and increased opportunities for the business of the Specified Undertaking.

10. The authorised share capital of the Petitioner Demerged Company is Rs.

1,00,00,000/- comprising of 10,00,000 equity shares of Rs. 10/- each. The issued, subscribed and fully paid-up share capital of the Petitioner Demerged Company is Rs. 11,00,000/- comprising of 1,10,000 equity shares of Rs. 10/- each.

11. The authorised share capital of the Resulting Company is Rs. 5,00,00,000/- comprising of 50,00,000 equity shares of Rs. 10/- each. The issued, subscribed and fully paid-up share capital of the Resulting Company is Rs. 57,89,470/- comprising of 5,78,947 equity shares of Rs. 10/- each.

12. Upon the Scheme becoming finally effective, in consideration of the transfer of and vesting of the Specified Undertaking of the Petitioner Demerged Company in the Resulting Company in terms of the Scheme, the Resulting Company shall, subject to the provisions of the Scheme and without any further application, act or deed, issue and allot 17 (Seventeen) Equity Shares of Rs. 10/- (Rupees Ten Only) each credited as fully paid up in the Resulting Company for every 55 (Fifty Five) Equity Shares of Rs. 10/- (Rupees Ten Only) each held in the Petitioner Demerged Company, credited as fully paid up in the share capital of the Resulting Company, to the members of the Demerged Company, other than the Resulting Company if applicable, whose names appear in the Register of members of Demerged Company on the Record Date or to their heirs, executors, administrators or legal representatives, as the case may be.

13. The Regional Director, Western Region, Ministry of Corporate Affairs has filed his Report dated 15th September 2021in the matter of Scheme of Arrangement between Plancess Edusolutions Private Limited, being the Demerged Company and Career Point Edutech Limited, being the Resulting Company and their respective Shareholders. In Paragraph IV (a) to (h) of the said Report, the Regional Director has stated that:

(a) In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

(b) The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Arrangement. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s)

(c) The Hon’ble Tribunal may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.

(d) As per Definition of the Scheme, "Appointed Date" shall mean the April 1, 2019 or such other date as may be fixed or approved by the Hon’ble NCLT subject to acceptance of such other date by the Board of Directors of the Demerged Company and the Resulting Company "Effective Date" shall mean last of the dates on which all conditions, matters and filings referred to in Clause 14.3 hereof have been fulfilled and necessary orders, approvals and consents referred to therein have been obtained. References in the Scheme to the date of "coming into effect of the Scheme" or "effectiveness of the Scheme" or "upon the Scheme becoming effective" shall mean the Effective Date. Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

(e) Petitioner Company have to undertake to comply with section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee Company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.

(f) As per Clause 12 of the Scheme,

"Notwithstanding anything to the contrary herein, upon this Scheme becoming effective, Demerged Company shall give effect to the accounting treatment in its books of account in accordance with the accounting standards specified under section 133 of the Act read with the Companies (Accounting Standards) Rules, 2006 or any other relevant or related requirement under the Act, as applicable on the Effective Date.

Notwithstanding anything to the contrary herein, upon this Scheme becoming effective, the Resulting Company shall account for the Scheme in its books of accounts in accordance with applicable Indian Accounting Standards (Ind-AS) notified under Section 133 of the Act read with the Companies (Indian Accounting Standards) Rules, 2015, as amended from time to time including in accordance with the Indian Accounting Standards (Ind-AS) 103 (Business Combination).

All costs and expenses incurred as per Clause 14.5 below as well as other costs incidental with the finalization of this Scheme and to put it into operation and any other expenses or charges attributable to the implementation of the Scheme, shall be charged to Profit and Loss Account of the Resulting Company.

The Resulting Company shall record in its books of account, all transactions of the Specified Undertaking of the Demerged Company in respect of assets, liabilities, income and expenses, from Appointed Date to the Effective Date.

To the extent that there are inter-company loans, advances, deposits, balances unpaid dividend or other obligations as amongst the Demerged Company and the Resulting Company, the obligation in respect thereof will come to an end and corresponding effect shall be given in the books of account and records of the Demerged Company as well as Resulting Company for the reduction of any assets or liabilities as the case may be and there would be no accrual of interest or any other charges in respect of such inter-company loans, deposits or balances, with effect from the Appointed Date.”

Petitioner Companies have to undertake that the surplus shall be credited to Capital Reserve Account and deficit shall be debited to Goodwill Account.

Further Petitioner Companies have to undertake that such Capital Reserves shall not be available for distribution of dividend.

(g) ROC, Mumbai Report dated 17.03.202l has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies.

Further mentioned that:-

1. As per the financial statement as at 31.03.2019 attached with the scheme, the transferor company’s borrowing of Rs 27.66 crores which also includes debenture application money. As at the said date, the company has shown negative reserve of Rs. 15.67 crores.

2. Interest of the Creditors should be protected.

In the regard Petitioner Company be directed to place on record as to how there is compliance of section 73 of the Companies Act, 2013 about acceptance of debenture application money.

Hon'ble Tribunal may consider the observations pointed out by ROC, Mumbai in their report and decide the matter on merits.

(h) Resulting company is situated at Jaipur, hence fall under jurisdiction of Hon'ble NCLT, Jaipur Bench. In this regards, Petitioner Company shall undertake to comply the directions of Hon’ble NCLT, Jaipur Bench.

14. In response to the above observations made by the Regional Director in its Report, the point wise response of the Petitioner Demerged Company is as under:

a) As far as the observation made in Paragraph IV (a) of the Report of the Regional Director is concerned, it is hereby submitted that in addition to the compliance of AS-14 (IND AS-103), the Petitioner Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc, as may be applicable.

b) As far as the observations made in paragraph IV (b) of the Report of the Regional Director is concerned, it is hereby submitted that the Petitioner Company has already served notices to the concerned authorities pursuant to provisions of Section 230(5) of the Companies Act, 2013 and none of the concerned authorities have raised any material or significant objections to the Scheme.

c) As far as the observation made in paragraph IV (c) of the Report of the Regional Director is concerned, it is hereby submitted that the Petitioner Company hereby confirms that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and same and there is no discrepancy or deviation.

d) As far as the observations made in paragraph IV (d) of the Report of the Regional Director is concerned, it is hereby submitted that the Appointed Date specified under the said Scheme is April 1, 2019. Further, I hereby submit that the arrangement as embodied in the Scheme shall take effect from the Appointed Date and shall be operative from the Effective Date as mentioned in the Scheme. It is further submitted that in compliance with the guidelines as stated in the circular no. F.No. 7/12/2019/CL-I dated 21.08.2019, issued by the Ministry of Corporate Affairs, the Appointed Date is a specific calendar date i.e. April 1, 2019 from which the Scheme shall be effective. Also, the Appointed Date is not ante-dated beyond a year from the date on which the said Scheme was approved by the Board of Directors of the Petitioner Company i.e. October 22, 2019.

e) As far as the observation made in paragraph IV (e) in the Report of the Regional Director is concerned, it is hereby submitted that the given Scheme of Arrangement involves a demerger and thus, no Company shall be dissolved. Hence, there is no requirement to set-off the fees on the authorized share capital paid by the Demerged Company in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.

f) As far as the observation made in paragraph IV (f) of the Report of the Regional Director is concerned, it is hereby submitted that the Petitioner Company hereby undertakes that it shall duly comply with the accounting treatment as provided under Clause 12 of the Scheme as also the treatment of the surplus or deficit as aforesaid, as the case may be, as per provisions of the applicable accounting standards.

g) As far as the observation made in paragraph IV (g) of the Report of the Regional Director is concerned, it is hereby submitted that the debenture application money has been received from directors and relatives of the directors out of their own funds. Thus, the provisions of section 73 of the Companies Act, 2013 are not attracted. Further, the present Scheme of Arrangement between Plancess Edusolutions

Private Limited ("Demerged Company") and Career Point Edutech Limited ("Resulting Company") and their respective shareholders is an arrangement between the Companies and its shareholders as contemplated under section 230(1)(b) and not in accordance with the provisions of section 230(1)(a) of the Companies Act, 2013 as there is no compromise and/or any arrangement with the creditors as no sacrifice is called for. Thus, interest of the creditors is not affected.

h) As far as the observation made in paragraph IV (h) of the Report of the

Regional Director is concerned, it is hereby submitted that the Petitioner Company hereby undertakes that the Resulting Company shall comply with the directions of Hon’ble NCLT, Jaipur Bench.

15. Learned counsel for the Petitioner Demerged Company submits that the Petitioner Demerged Company has complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance before this Tribunal. Moreover, the Petitioner Demerged Company undertakes to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder, as may be applicable. The undertaking is accepted.

16. From the material on record, the Scheme of Arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

17. Since all the requisite statutory compliance have been fulfilled, Company Scheme Petition No. 191 of 2021 is made absolute in terms of prayers mentioned therein.

18. The Scheme is sanctioned with the Appointed Date fixed as 1st April 2019.

19. The Petitioner Demerged Company is directed to lodge a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28, within 30 days from the date of issue of certified order by the Registry, duly certified by the Deputy/ Assistant Registrar of this Tribunal.

20. The Petitioner Demerged Company is directed to lodge a copy of this Order and the Scheme duly authenticated by the Deputy / Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified Order by the Registry, duly certified by the Deputy/ Assistant Registrar of this Tribunal.

21. All concerned regulatory authorities to act on a copy of this order duly certified by the Deputy / Assistant Registrar of this Tribunal along with a copy of the Scheme.

22. Any interested person shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.