(2022) 03 NCLT CK 0029

In the National Company Law Tribunal

Case No : C.P.(CAA) No. 982/MB/2020 Connected with C.A.(CAA) No. 953/MB/2020

Quartile Exim Limited. APPELLANT

Vs

Netizen Engineering Private Limited RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Companies Act, 2013, — Section 230, 230(1), 230(3), 230(5), 230(6), 232, 232(3)(i), 323(6)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2022) 03 NCLT CK 0029

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

Bench : Division Bench

Advocate : Ahmed Chunawala, Rupa Suttar,

Final Decision : Disposed Of

Judgement

P.N. Deshmukh, Member (Judicial)

1. The Bench is conveyed through videoconference.

2. Heard the Learned Counsel for the Petitioner Companies. 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.

3. The sanction of the Tribunal is sought under Sections 230 to 232 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 QUARTILE EXIM LIMITED, the First Transferor Company and QUARTILE COMMERCE AND MARKETING LIMITED, the Second Transferor Company with SARANSH TRADE AND COMMERCE PRIVATE LIMITED, the Transferee Company.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 23rd December, 2019 and 1st February, 2021 which are annexed to the respective Company Scheme Petitions.

5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 953 of 2020 of the Hon'ble Tribunal.

6. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

7. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company presently carrying on business of buying and selling of goods and that the Second Petitioner Company presently is carrying on business of buying and selling of goods and that the Third Petitioner Company presently is carrying on business of buying and selling of goods..

8. The rationale for the Scheme of Amalgamation of the Petitioner Companies is in the interests 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 all the 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 in the nature of Merger as per the paragraphs 36 to 39 of the Accounting Standard 14 on Accounting for Amalgamations issued by the Institute of Chartered Accountants of India and thus on 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 Companies 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 all 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 all the companies as they are capitalizing on each other's core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

9. The Regional Director has filed his Report dated 10th day of November, 2021 inter-alia making the following observations in Paragraphs IV (a) to (h) which are reproduced hereunder:

Para

Observation by the Regional Director

Undertaking of the Petitioner Company/ Rejoinder

IV(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 AS8) etc.

So far as the observation in paragraph IV (a) of the Report of the Regional

Director is concerned, the Petitioner Companies submits that in addition to Compliance of AS-14, 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 etc.

IV(b)

As per Definition of the Scheme.

"The Appointed Date" means the 1st April, 2019 or such other date as the National Company Law Tribunal (Tribunal) or other competent authority may otherwise direct/fix and "Record Date" means the date to be fixed by the Board of Directors of SARANSH TRADE AND COMMERCE PRIVATE

LIMITED for the purpose of issue and allotment of shares of SARANSH TRADE AND COMMERCE PRIVATE

LIMITED as may be applicable and relevant in accordance with the Scheme of Amalgamation.

In this regard it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the

appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

So far as the observation in paragraph IV (b) of the Report of the Regional

Director is concerned, the Petitioner Companies submits that the Appointed Date is 1st April 2020. In CA 55 of 2021 the Petitioner Company has moved an application to change the Appointed Date from 1st April, 2019 to 1st April, 2020. The Hon'ble NCLT was pleased to change the Appointed date vide Order dated 5th August, 2021.

The Petitioner Companies further submits that the Appointed Date is 1st April 2020 from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the

appointed date.

IV (c)

Petitioner Company have to undertake to comply with section 232(3)(i) of 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.

So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies submits that 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.

IV (d)

The scheme proposes to combine the Authorised Capital of both the Transferor Companies in the Transferee Company. However, the Transferor Company-1 and Transferor Company-2 has equity share capital of face value of Re. 1 and the Transferee Company has equity share capital of Rs. 10 each. The equity share capital being the same class of share cannot have different nominal value of the same each shares as Re.1 and Rs. 10/- each. Therefore, the Petitioner Company may be directed to submit full facts regarding the same.

So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Transferee Company undertakes to that they will consolidate the authorize capital of the Transferor companies from Re. 1/- each to

Rs.10/- each and file necessary forms for the same with the Registrar of companies, Mumbai after the Scheme is sanctioned by the NCLT, Mumbai Bench.

IV (e)

As per clause 15 of the Scheme, the applicant company wants to change its object clause, in this regard petitioner companies may be directed to file necessary forms with the ROC.

So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Petitioner Companies undertakes to file e-form INC-28 with ROC, Mumbai which will give effect to the Scheme and it will also alter the main object clause

of the MOA.

IV (f)

The Hon’ble Tribunal may kindly seek undertaking that this scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in the meeting duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the minutes thereof are duly placed before the Tribunal.

So far as the observation in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Companies submits that this Scheme is approved by the requisite majority of members and creditors as per the consent affidavit submitted to the NCLT.

IV (g)

Clause 13.3 of the Accounting Treatment of the Scheme of the Scheme, stated that if there is a surplus arising as a result of difference, if any in value of the

assets over the value of the liabilities of the Transferor Companies, in accordance with this Scheme, the same shall be credited to the Capital reserve Account of the Transferee Company and in the event of deficit, if any the same shall be debited to the Goodwill Account

of the Transferee Company.

In this regard it is submitted that as per Accounting Standard 14, such surplus if any arising out of the scheme should be credited to the Capital Reserve Account arising out of amalgamation and deficit shall be debited to Goodwill Account of the Transferee Company. Such Capital Reserve arising out of the amalgamation shall not be considered as free reserve and not available for distribution of dividend.

So far as the observation in paragraph IV (g) of the Report of Regional Director is concerned, the Petitioner Companies submits that the surplus shall be credited to Capital Reserve

Account arising out of amalgamation and deficit shall be debited to Goodwill Account.

Petitioners Companies further submits that the reserves shall not be available for distribution of dividend.

IV(h)

The Petitioner Company states that the Transferee Company shall be in compliance with the provisions of Section 2(1B) of the Income Tax Act, 1961. In this regards, the petitioner company shall ensure compliance of all the provisions of the Income Tax Act and Rules thereunder.

So far as the observation in paragraph IV (h) of the Report of the Regional Director is concerned, The Petitioner Company states that the Petitioner Companies submits that the scheme is in compliance of Section 2(1B) and shall comply with other provisions of the Income Tax Act and Rules thereunder.

IV(i)

The Hon'ble Tribunal may kindly consider the report of ROC as narrated in Para III (12) above and pass appropriate order.

So far as the observation in paragraph IV (i) of the Report of the Regional Director is concerned, the Petitioner Company states the interest of creditors will be protected.

10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The Representative of the RD has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no objection to the Scheme.

11. The Official Liquidator has filed his report on 16th August, 2021 in the Consolidated Company Scheme Petition No. 982 of 2020, 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 Companies may be ordered to be dissolved by this Tribunal.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 982 of 2020 is made absolute in terms of clauses (a) to (c).

14. 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.

15. 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.

16. 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.

17. The Appointed Date is 1st April, 2020.

18. The Scheme is Sanctioned. Ordered Accordingly. Pronounced in open court today.

