
(2024) 02 NCLT CK 0020

In the National Company Law Tribunal

Case No : C.P.(CAA)/290(MB)2023 c/w C.A.(CAA)/209(MB)2023

Seshaasai E Forms Private Limited Vs

Date of Decision : 08-02-2024

Acts Referred:

Citation : (2024) 02 NCLT CK 0020

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Anindya Basarkod, Mehul Shah, Peshwan Jehangir, Amit Panwar, Ishrita Bagchi, Khaitan & Co, Tushar Wagh

Final Decision : Disposed Of

Judgement

1. Heard Learned Counsel for the Petitioner Companies and the Authorized Representative for the Regional Director. No objection has been received by the Tribunal opposing the Company Scheme Petition and nor has any party controverted any averments made in the Company Scheme Petition, except as otherwise stated.

2. The sanction of this Tribunal is sought under Sections 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 to the Composite Scheme of Arrangement Amongst Seshaasai E-Forms Private Limited (Demerged Company/Transferor Company) AND Qupod Technovations Private Limited (Resulting Company) AND Seshaasai Business Forms Private Limited (Transferee Company) and their respective shareholders and creditors.

3. The said Scheme inter alia provides for:

- i. the demerger and vesting of the Demerged Undertaking (as defined in the Scheme) from the Demerged Company into the Resulting Company on a going concern basis, the consequent issue of shares by the Resulting Company;
- ii. the amalgamation of the Transferor Company with the Transferee Company on a going concern basis, the consequent reduction and cancellation of the existing paid-up share capital of the Transferee Company held by the Transferor Company

and issue of shares by the Transferee Company; and

iii. the Scheme also provides for various other matters consequential thereto or otherwise integrally connected therewith in the manner set out in the Scheme.

4. That vide resolutions passed by the Board of Directors of the Petitioner Companies at their respective meetings held on May 11, 2023, the Scheme has been approved. The Appointed Date fixed under the Scheme is March 31, 2023.

5. The Petitioner Companies submits that the circumstances and/or reasons and/or grounds that have necessitated and/or justified the Scheme and some of the major benefits which would accrue from the Scheme are extracted from the Scheme and stated below:

Rationale for the Scheme

a) Given its diversified business, it has become imperative for the Demerged Company to reorient and reorganize itself in a manner that allows imparting greater focus on each of its businesses. With this repositioning, the Demerged Company is desirous of demerging its BPO business (as defined in the Scheme) under the aegis of the Resulting Company and amalgamate its core business engaged in secure communications, smart payments including but not limited to the manufacturing of contactless payment cards, QR based Merchant QR kits facilitating UPI payments at the merchant, encrypted QR based cheque instruments as a fraud prevention, smart traceability involving RFID based asset management and traceability, Supply chain and logistics management driven by a homogeneous technology platform and smart fulfilment involving a portal driven just in time manufacturing and delivery of stationery and allied products with the Transferee Company.

b) The proposed demerger pursuant to this Scheme is expected, inter alia, to result in following benefits:

i. Attracting of business specific investors and strategic partners and providing better flexibility in accessing capital, focused strategy and specialisation for sustained growth and thereby enable de-leveraging of the respective businesses in the longer term;

ii. segregating and unbundling of the BPO business of the Demerged Company into the Resulting Company will enable enhanced focus on these respective companies for exploring opportunities in their respective business domains; and

iii. focused management approach for pursuing the growth in the respective business' verticals and de-risk the businesses from one another.

c) As part of the restructuring exercise, it is proposed to consolidate the resources of the Transferor Company with the Transferee Company. The said amalgamation will result in the following benefits:

i. Streamlining of the corporate structure and consolidation of resources within

the Transferee Company leading to greater synergies and operational synergy;

ii. ease and increase the operational, administrative, and management efficiency; and

iii. cost savings from focused operational efforts, rationalization, standardization and simplification of business processes, productivity, and procurements.

d) The Scheme is in the best interests of the Parties and their respective stakeholders.

6. The Company Scheme Petition is filed in consonance with Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 and the Order dated October 4, 2023 passed in the CA (CAA) No. 209/MB/2023 by this Tribunal and the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules & regulations made thereunder. The said undertaking is taken on record.

7. The Regional Director has filed his Report dated 01.01.2024 making certain observations. The Petitioner Companies have submitted/undertaken that: -

i. Any fees payable by the Transferee Company on its Authorized Share Capital subsequent to the Scheme in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013 will be set-off against;

ii. The Transferee Company will pay the balance / difference amount of the fees and stamp duty on its increasing Authorised Share Capital, if any;

iii. The Scheme does not contemplate any arrangement or compromise with the creditors of any of the Petitioner Companies. The liabilities towards the creditors of any of the Petitioner Companies are neither being reduced nor being extinguished;

iv. The interest of all the Creditors will be protected and remain unaffected by the Scheme;

v. The Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and the same and there is no discrepancy, or no change is made;

vi. The sanction of the Scheme by the Tribunal will not deter any sectoral/regulatory authorities to deal with any of the issues arising after giving effect to the Scheme;

vii. The Scheme is in compliance with the requirements specified in Section 232(6) of the Companies Act, 2013 and the said MCA Circular dated August 21, 2019;

viii. The Scheme is in compliance with the conditions specified in Section 2(19AA)

of the Income Tax Act;

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

x. The Petitioner Companies shall comply with the provisions of section 90 of Companies Act, 2013 read with Companies (Significant Beneficial Owners) Amendment Rules, 2019, as applicable;

8. The representative of the Regional Director appeared through its representative and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company and are acceptable to them. Hence, the Regional Director does not have any further objection to the proposed Scheme Company Petition.

9. The Official Liquidator vide his Report dated December 13, 2023 filed with this Tribunal has submitted that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest. No objections have been raised with respect to the Scheme.

10. 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. Since all the requisite statutory compliances have been fulfilled, the said Company Scheme Petition filed by the Petitioner Companies is made absolute in terms of the prayers mentioned in the Company Scheme Petition.

11. The Scheme is hereby sanctioned, with the Appointed Date of March 31, 2023.

12. The creditors of undertaking, being demerged, shall be entitled to make claim against the resulting company as well as demerged company in relation to their debt up to the date of demerger. In case the resulting Company is made to pay the debt of such undertaking, it shall be entitled to seek reimbursement of the amount so paid from the Demerged Company.

13. 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.

14. The Petitioner Companies are directed to file the certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, within 30 days from the date of receipt of the certified copy of this Order from the Registry of this Tribunal.

15. The Petitioner Companies to lodge the certified copy of this Order along with the Scheme duly certified by the Deputy Registrar or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 days from the date of receipt of the certified Order from the Registry of this Tribunal.

16. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Registrar or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

17. Ordered accordingly. File to be consigned to records.