(2023) 06 NCLT CK 0096

In the National Company Law Tribunal

Case No : C.P.(CAA)/241/MB/2022 connected with C.A.(CAA)/197/MB/2021

SolutionsIQ India Consulting Services Private Limited Vs

Date of Decision : 28-06-2023

Acts Referred:
Companies Act, 2013 — Section 90, 230, 232, 232(3)(i), 232(6)
Income Tax Act, 1961 — Section 68

Citation : (2023) 06 NCLT CK 0096

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

Bench : Division Bench

Advocate : Ajit Singh Tawar, Rupa Sutar

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. Heard the learned Counsel for the Petitioners and the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

2. The sanction of the Tribunal is sought under section 232 r/w section 230 of The Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Merger by Absorption amongst the Petitioner Company and their respective Shareholders.

3. The Counsel for the Petitioner Companies further submits that:

a) The Petitioner Company No.1 is engaged in business of providing business and technology consultancy and software development.

b) The Petitioner Company No.2 is engaged in the business of rendering consultancy and services in the field of information technology, computer sciences, data processing, computer systems, and software, operations research and management sciences.

c) The Petitioner Company No.3 is engaged in rendering services pertaining to information technology, software development, computer software, data processing.

d) The Petitioner Company No.4 is engaged in rendering of information technology and consultancy services.

e) The Petitioner Company No. 5 is engaged in consultancy and development of computer software and information technology.

f) The Petitioner Company No. 6 is engaged in the business of software designing, computer software and solutions.

g) The Petitioner Company No. 7 is engaged in consultancy, integration of information systems.

h) The Petitioner Company No. 8 is engaged in carrying the business of Consultancy services, Information Technology & Information Technology Enabled Services and business process outsourcing services.

4. The Scheme of Merger by Absorption has been approved by the Petitioner Companies in their respective Board Meetings held on 22.06.2021 (Petitioner No.1); 09.06.2021 (Petitioner Company Nos. 2, 3 & 8); 10.06.2021 (Petitioner Company No.4); 31.05.2021 (Petitioner Company No.5); 04.06.2021 (Petitioner Company No.6) and 08.06.2021 (Petitioner Company No.7). The Petitioner Companies submits that the Appointed Date for the Scheme is 1st Day of April, 2022.

5. The Petitions have been filed in consonance with the order dated 28th Day of July, 2022, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA) /197/MB/2021. The Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance in this Tribunal.

6. The Petitioner Companies states that, by sanction of this Scheme of Merger by Absorption the Companies involved in the Scheme will be able to achieve the following rationale:

Presently, the entire share capital of all the Transferor Companies is held by the Transferee Company i.e. all the Transferor Companies are wholly owned subsidiaries of the Transferee Company. As the Transferor Companies and the Transferee Company are a part of the same group and in consideration of the global entity reduction program adopted by the Accenture Group of companies pertaining to identification and elimination (through liquidations and mergers) of entities which do not serve a useful purpose or whose operations could be combined with those of other companies in the group towards the end of achieving operational efficiency, it is proposed, inter-alia, to amalgamate the Transferor Companies into the Transferee Company for consolidation of entities and streamlining the shareholding. The proposed merger will also result in the following benefits:

i. Combining business interests into a single entity and achieve simplified corporate structure;

ii. Reducing number of entities in the group thereby reducing managerial overlaps, which are necessarily involved in running multiple entities; and;

iii. Reduce regulatory and legal compliances / filings including accounting, reporting requirements, statutory and internal audit requirements, tax filings, etc. and consequential reduction in administrative costs;

7. The Transferor Companies are wholly owned subsidiaries of the Transferee Company and accordingly no consideration is payable pursuant to the Scheme of Merger by Absorption.

8. The Regional Director has filed his Report dated 13.03.2023 making certain observations. The Petitioner Companies have submitted/undertaken that: -

a. Petitioner Companies will pass such accounting entries as may be necessary in connection with the scheme to comply with other applicable Accounting standards such as AS-5 (IND AS-8) to the extent applicable;

b. The Petitioner Companies will comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Companies are dissolved and the fees, if any, paid by the Transferor Companies on their Authorised share capital shall be set-off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Amalgamation, the remaining fee, if any after setting-off the fees already paid by the transferor companies on their authorized capital, will be paid by the Transferee Company;

c. The Transferor Company No. 5 has complied with all declarations and compliances as per Companies Act, 2013 and Income Tax Act, 1961 by the and there exists no outstanding demand or litigation with respect to share premium issue by the Income Tax Department. Further, no assessments have been made under Section 68 of the Income Tax Act, 1961 in relation to the receipt of premium on issue of share capital;

d. There are no individual(s), holding indirectly, or together with any direct holdings, not less than ten percent, of the shares/voting rights in the shares of the Transferor Companies (or in shares/voting rights in the shares of Accenture Solutions Private Limited), and hence, filing of form BEN-2, as per the provisions of Section 90 of the Companies Act, 2013, is not applicable to the Petitioner Companies;

e. The Petitioner Companies will comply with the provisions of Section 90 of the Companies Act, 2013 read with Companies Rules, 2018 as amended from time to time and make necessary filings with the Registrar of Companies as and when the provisions of Section 90 of the Companies Act, 2013 are triggered and to the extent as applicable;

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 Interest of the Creditors will be protected.

9. Ms. Rupa Sutar, Deputy Director, Office of Regional Director (WR), 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.

10. The Official Liquidator has filed his report on 15.06.2023, inter alia stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and the Scheme is not prejudicial to the interest of public and the Shareholders of the Transferor Companies. Accordingly, the Transferor Companies may be ordered to be dissolved without winding up.

11. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

12. All the assets and liabilities including taxes and charges, if any and duties of the Transferor Companies, shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

13. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/241/2022 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.

14. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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 order, duly certified by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal.

15. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, 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 certified copy of the order.

16. The Scheme of Merger by Absorption is hereby sanctioned, and the appointed date of the Scheme is fixed as 1st Day of April, 2022, for the purposes of Section 232(6) of the Companies Act, 2013.

17. The transferor company be dissolved without winding up.

18. Ordered Accordingly.