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(2022) 09 NCLT CK 0016

In the National Company Law Tribunal

Case No : CA (CAA)/90/MB-IV/2022

Tricentis India Private Limited Vs

Date of Decision : 05-09-2022

Acts Referred:

Companies Act, 2013 — Section 230, 230(5), 230(9), 232
Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 — Rule 8

Citation : (2022) 09 NCLT CK 0016

Hon'ble Judges : Kishore Vemulapalli, Member (J);Manoj Kumar Dubey, Member (T)

Bench : Division Bench

Advocate : Shruti Kelji Pednekar

Final Decision : Dismissed

Judgement

Kishore Vemulapalli, Member (Judicial)

1. The Court convened by video-conference today.

2. The Applicant Company states that the present Scheme is pertains to Amalgamation of Neotys Software Products Private Limited with Tricentis India Private Limited and their respective shareholders.

3. The Applicant Company is engaged in the business of Developing and licensing the TOSCA TestsuiteTM and other computer software, software products and services thereto. The Applicant Company i.e. Transferee Company is located in Mumbai and the Transferor Company is located at Bangalore. A separate Company Scheme Application is also being filed with the NCLT, Bangalore Bench.

4. The consideration under the scheme has been determined to be paid as follows:

The Transferee Company, without further application, act or deed, shall issue and allot to each of the equity shareholders of Transferor Company and whose name appears in the Register of members of Transferor Company on the Record Date, shares in the proportion of 1 (One) equity share of face value of Rs. 10/- each in the Transferee Company for every 11 (Eleven) equity shares of face value of Rs. 10/- each held in by the equity shareholders of the Transferor Company pursuant to this Scheme.

The valuation Report dated 10th March, 2022 was issued by CA Harsh Chandrakant Ruparelia, Registered valuer is relied upon by the Applicant, to arrive at the said share exchange ratio.

5. The rationale for the Scheme is as under:

a) The amalgamation will enable to consolidate group entities in India carrying on the business of computer software, technology, software products and services thereto and will result in administrative and operations rationalization, organizational efficiencies, reduction in overheads, personnel costs, compliance cost and other administrative expenses.

b) The proposed amalgamation will improve organizational capability arising from the pooling of human capital that has diverse skills, talent and vast experience and integration and optimization of various support functions, resources, and assets.

c) The proposed amalgamation would be beneficial from a revenue generation and cost optimization perspective as the Transferee Company would continue to reap benefits of qualifications/certifications of the Transferor Company and its preferred vendor status with identified customer post the amalgamation.

d) The proposed amalgamation will prevent cost duplication and will result in synergies in operations. The synergies created by amalgamation would increase operational efficiency and integrate business functions which will enable easier and speedier decision making at all levels and better management and co-ordination.

e) The Scheme will be beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors and other stakeholders of Transferor Company and Transferee Company.

f) The Scheme is commercially and economically viable and feasible and is in fact fair and reasonable.

6. The Authorised Issued, Subscribed and Paid-Up Share Capital of the Applicant Company as on 31.03.2021 is as under:

Particulars

Amount in

Rs.

Authorised Share Capital

10,000 Equity Shares of Rs.10/- each

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1,00,000

Total

1,00,000

Issued, Subscribed and Paid-Up Share

Capital

10,000 of Equity Shares of Rs.10/- each

fully paid up

1,00,000

Total

1,00,000

7. The financial details / summary of the Applicant Company as on 31.03.2021 is as under:

SN.

Particulars

Nos.

Value in Rs.

1.

Equity Shares

2 Shareholders

holding 10,000 Shares

1,00,000

(100% Consents Obtained)

2.

Secured Creditors

1

30,306

(100% Consent Obtained)

3.

Unsecured Creditors

11

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1,20,60,522

(More than 90% Consent Obtained)

4.

Net Worth

N.A.

5,71,52,917

5.

Total

Revenue

N.A.

23,51,53,727

6.

Profit for

Year

N.A.

2,13,43,532

8. The Learned Advocate for the Applicant Company submits that the Board of Directors of the Applicant Company had approved the Scheme with Appointed Date 1st April, 2021 vide board resolution dated 11th March, 2022 and the copy of the resolution is annexed as Annexure 'A-4' to the Application.

9. The Learned Advocate submits that there are 2 (Two) Equity shareholders in the Applicant Company having 10,000 shares of face value of Rs.10/-each aggregating to Rs.1,00,000/-. The Learned Advocate further submits that the convening and holding meeting of the Equity Shareholders of the Applicant Company, for purpose of considering, and if thought fit, approving with or without modification(s), the proposed Scheme of Amalgamation of, be dispensed with in view of the Consent Affidavits submitted by both the Equity Shareholders of the Applicant Company which are annexed as Annexures "E-1 and E-2" to the Company Scheme Application. The prayer for dispensation of meeting of Equity Shareholders of the Applicant Company is approved in view of the Consent Affidavit submitted by both the Equity Shareholders.

10. Learned Advocate submits that the convening and holding meeting of the Sole Secured Creditor of Applicant Company having value of Rs. 30,306/- (Rupees Thirty Thousand Three Hundred and Five only) in the Applicant Company, for purpose of considering, and if thought fit, approving with or

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without modification(s), the proposed Scheme of Amalgamation, be dispensed with in view of the Consent Affidavit procured from the Sole Secured Creditor of Applicant Company. The prayer for dispensation of meeting of the Sole Secured Creditor of the Applicant Company is approved in view of the Consent Affidavit submitted by its Sole Secured Creditor. The Statutory Auditors vide their certificate have confirmed that there is Sole Secured Creditor and its value in the Applicant Company, which is annexed as Annexure "F" to the Company Scheme Application.

11. The Learned Advocate for the Applicant Company submits that the Applicant Company has 11 (Eleven) Unsecured Creditors having an outstanding balance of Rs.1,20,60,522/- (Rupees One Crore Twenty Lakhs Sixty Thousand Five Hundred and Twenty Two only) as on 31st December, 2021, wherein Consent of the said 1 (One) Unsecured Creditor having outstanding balance of Rs.1,12,44,166/- (Rupees One Crore Twelve Lakhs Forty Four Thousand and One Hundred Sixty Six only) constituting 93.23% of value of total outstanding unsecured debt of the Applicant Company, has given Consent through Affidavit for approving the Scheme. The prayer for dispensation of meeting of Unsecured Creditors of the Applicant Company is approved in view of the Consent Affidavit procured in compliance with Section 230(9) of the Companies Act, 2013. Further, the Bench hereby directs that notices be issued to the remaining Unsecured Creditors of the Applicant Company by Registered Post AD/Speed Post and by Email (whose E-mail IDs are registered with the Transferee Company).

12. The Learned Advocate for the Applicant Company submitted that there are no Corporate Guarantees, Performance Guarantees, Bank Guarantees, Letters of Credit, Margin Money in the Applicant Company.

13. The Learned Advocate for the Applicant Company further submitted that there are no Contingent Liabilities or IBC Cases pending against the Applicant Company.

14. The Applicant Company shall serve notice of Scheme in the prescribed form, on:

a) the Central Government, through the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai;

b) the Registrar of Companies, Pune;

c) the Income Tax Authorities within whose jurisdiction the Applicant Companies are assessed to tax, clearly indicating the PAN of the Company concerned i.e. for Applicant Company bearing PAN AAGCT1444E having jurisdiction at Mumbai

d) Goods and Services Tax (GST) within whose jurisdiction the Applicant Company' GSTIN No. 27AAGCT1444E1ZJ is registered, clearly indicating GSTIN of the Company concerned, as applicable.

e) Reserve Bank of India pursuant to Section 230 (5) of the Companies Act, 2013

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and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016. The notice be sent by Registered Post-AD/Speed Post/Email and by Hand Delivery. If no response is received by the Tribunal from such authorities within a period of 30 (Thirty) days from the date of receipt of such notice, it will be presumed that such authorities have no representation/ objection to the Scheme.

15. The Applicant Company to file an Affidavit of Service and Compliance Report within 10 working days after serving to notice to all the Regulatory Authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

16. Order accordingly.

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