**(2023) 12 NCLT CK 0002**

**In the National Company Law Tribunal**

**Case No :** C.P.(CAA) 54/ND/2022

**WM India Technical & Consulting Services Pvt. Ltd Vs**

**Date of Decision :** 07-12-2023

**Acts Referred:**
Companies Act, 1956 — Section 230, 232, 232(4)

**Citation :** (2023) 12 NCLT CK 0002

**Hon'ble Judges :** Bachu Venkat Balaram Das, Member (J);Atul Chaturvedi, Member (T)

**Bench :** Division Bench

**Advocate :** Ravi Sharma , Shankari Mishra, Niharika Tanwar, Hemlata Rawat

**Final Decision :** Allowed

## Judgement

Atul Chaturvedi, Member Technical

1. This Petition is preferred jointly by the Transferor Company and Transferee Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for the purpose of the approval of the Scheme of Amalgamation (hereinafter referred to as 'Scheme' for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record. The details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

2. WM India Technical & Consulting Services Pvt. Ltd., (hereinafter referred to as "Transferor Company") having CIN: U74140DL2007FTC162542 is a private company limited by shares incorporated on 24.04.2007 under the Companies Act, 1956 having its registered office at E-20, 1st and 2nd Floor, Haus Khas, New Delhi – 110016.

3. WM Global Technology Services India Pvt. Ltd., (hereinafter referred to as "Transferee Company") having CIN: U72200KA2011PTC059719 is private company incorporated on 25.07.2011 under the Companies Act, 1956 having its registered office at Building 11, 1st Floor, SEZ – CESSNA Business Park, Varthur

Hobli, Outer Ring Road Balgalore, Karnataka – 560087.

4. The present Petition has been filed by Transferor Company and Transferee Company jointly for amalgamation. The rationale for amalgamation is stated as follows: -

i. Greater integration and financial strength for the amalgamated entity, which would result in maximising overall shareholder value, and will enhance the financial position of the amalgamated entity.

ii. Cost savings are expected to flow from more focused operational efforts, rationalisation, usage of common resource pools like human resource, administration, finance, accounting, legal, technology and other related functions, leading to elimination of duplication and rationalisation of administrative expenses.

iii. The amalgamation would lead to greater and efficient use of infrastructure facilities and optimum utilisation of the financial resources, managerial, technical and marketing expertise of the Transferor Company and the Transferee Company.

5. From the records, it is seen that the First Motion petition was filed by the Applicant Companies for seeking directions for dispensing and conveying with the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies. This Tribunal, in the First Motion Application bearing No. CA (CAA) 19 (ND) 2022, vide Order dated 22.03.2022 dispensed with the requirement of convening the meetings of the shareholders, secured creditors and unsecured creditors of the Petitioner Companies.

6. The Board of Directors of the Transferor Companies and of the Transferee Company in their respective Board Meetings dated 01.02.2022 approved and adopted the proposed Scheme of Amalgamation. A Copy of the Board Resolution dated 01.02.2022, passed by the Board of Directors of the Transferor Company and of the Transferee Company, inter alia, approving the Scheme and the filing thereof with this Tribunal is filed along with the Petition.

7. Subsequent to the meetings in relation to the Transferee Company and Transferor Companies, the Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices to the Central Government, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, Reserve Bank of India other sectorial regulators who shall be affected by the proposed Scheme and to such other Objector(s), if any, and also for publication of notice in respect of the said Scheme. The said petition was admitted and directions were issued, vide Order dated 17.05.2022 of this Tribunal, requiring the Petitioner Companies to serve notices to the Central Government, Registrar of Companies NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator and other sectoral regulators likely to be affected by the said proposed Scheme and also to

 

carry out necessary publication in English and Hindi newspapers with respect to the said Scheme.

8. It is submitted by the Petitioners that in compliance of the above stated directions, the Petitioner Companies served the Notices of the present Company Petition to all the statutory authorities.

9. The Income Tax Department submitted it's report dated 20.03.2023 wherein it is stated that they have no objection with respect to the present Scheme of Amalgamation.

10. The Regional Director along with the Registrar of Companies vide it's report dated 16.09.2022 has not objected to the proposed scheme of the amalgamation but has made certain observations about pending dues of income tax, service tax, duty of custom. The petitioner companies filed Income Tax report dated 20.03.2023 in response to the observations made by the Regional Director. The Regional Director has no objection to the present Scheme of Amalgamation.

11. The official Liquidator vide it's report dated 16.09.2022 submitted to this tribunal stating therein that they have no objection with respect to the present Scheme of Amalgamation.

12. In view of the foregoing facts and discussion and upon considering the approval accorded by the Members and Creditors of all the Companies to the proposed Scheme and also in the view of the fact that no sustainable objections have been raised by the Office of the Regional Director, Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme proposed of amalgamation.

13. Accordingly, in sequel to the above facts and circumstances, sanction is hereby granted to the Scheme of Amalgamation as proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013.

14. The sanctioned Scheme of Amalgamation shall be binding on the Transferor Companies and Transferee Company and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

15. Notwithstanding the above, if at any stage any deficiency is found or violation committed qua any enactment, statutory rule or regulation is found to be committed, the sanction granted by this Tribunal to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors and Officials of the petitioner companies.

16. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes or other statutory dues, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement, which may be specifically required under any law will be made. Further the

approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Applicant Company against tax treatment in accordance with the provisions of Income Tax Act, 1961.

17. This tribunal further directs with respect to Transferor company and Transferee company, that: -

i. Upon the sanction becoming effective from the appointed date of amalgamation i.e., 1st April, 2022, the Transferor Companies shall stand dissolved without undergoing the process of winding up.

ii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

iii. All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

iv. All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

v. All liabilities of the Transferor Companies shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

vi. All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

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

18. Further, the petitioner companies shall within thirty days of the date of the receipt of this Order, cause a Certified Copy of this Order to be delivered to the Registrar of Companies for registration and on such Certified Copy being so delivered, the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

19. The Company Petition bearing (CAA) 54 (ND)/2022 is allowed in the above terms.

 