(2023) 10 NCLT CK 0009

In the National Company Law Tribunal

Case No : C.P. (CAA)/ 133(MB)/2023 c/w C.A. (CAA)/ 49(MB)/2022

Youtility Technologies Private Limited Vs

Date of Decision : 04-10-2023

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

Citation : (2023) 10 NCLT CK 0009

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

Bench : Division Bench

Advocate : Hemant Sethi, Devanshi Sethi, Bhagwati Prasad

Final Decision : Disposed Of

Judgement

V.G. Bisht, Member (Judicial)

1. Heard the Ld. 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 nor has any party controverted any averments made in the Petition.

2. The sanction of the Tribunal is sought under sections 232 r/w Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Scheme of Amalgamation between Youtility Technologies Private Limited (Transferor Company) and Security Personnel Services Private Limited (Transferee Company) and their respective Shareholders. ('Scheme').

3. The swap ratio as per clause 10 of the Scheme is as follows:

Upon the Scheme becoming effective, in consideration of the transfer to and vesting of the Transferor Company in terms of the Scheme, the Transferee Company shall, without any application being made by the shareholders of the Transferor Company, issue and allot, 5 (Five) Equity Shares of Rs. 100/- (Rupees Hundred Only) each fully paid up in the capital of the Transferee Company ('New Equity Shares') for 1,32,000 Equity Shares of Rs. 10/- (Rupees Ten Only) each fully paid up and held in the capital of the Transferor Company, to the equity shareholders of the Transferor Company whose names are shown in the Register of Members on such date ("Record Date") as the Board of Directors of the Transferee Company may decide.

4. The Petitioner Company No.1 is a service provider of intelliwiz mobile app services, site audit works & guard tour mobile app service and the Petitioner Company No.2 is engaged in the core business of providing security services. Both the companies are wholly owned subsidiaries of Sukhi Traders Private Limited ('STPL').

5. The Board of Directors of the Petitioner Companies vide resolution dated 24 September 2021 approved the Scheme of Amalgamation. The Appointed Date was fixed as 1 April 2021.

6. The rationale for the Scheme is as follows:

a. Transferor Company is providing various IT platforms to complement the business of Transferee Company ; viz. biometric attendance, Youtility app for control on security guards, Youtility app for site supervisors, Youtility app as desired by client's specific request (like night guards), ERP for payroll / billing. Therefore, this scheme would help us to remain competitive and fulfill the sensitive requirements of clients in the future.

b. Cost savings are expected to flow from more focused management efforts, rationalization of operating costs, standardization and simplification of business process and elimination of duplication.

c. The Amalgamation would result in an optimum utilization of the financial, managerial, technological and other resources.

d. By the proposed Scheme of Amalgamation, the financial resources of both the Transferor Company and Transferee Company will be conveniently merged and pooled together to drive growth oriented business plans of the Transferee Company;

e. Upon the Scheme becoming effective, the Transferor Company would stand dissolved and this will enable the rationalization of the holding structure, a decrease in compliances, reduction in overall administrative and operational cost, increase in organizational efficiencies and rationalization in economies of scale and more optimal utilization of various resources.

7. The Regional Director has filed his report dated 20.07.2023 making certain observations. The Petitioner Companies have submitted/undertaken that:

a. The Transferee Company shall comply /compound/ pay penalty for any legal action against the Transferor company and officer in default or any other person of the case may be;

b. The provisions set out in Section 232(3)(i) of the Companies Act, 2013 and where the Transferor Company is dissolved, the stamp duty, if any, paid by the Transferor Company on its authorized share capital shall be set off against any stamp duty payable by the Transferee Company on their authorized share capital subsequent to the amalgamation;

c. The interest of the creditors shall be duly protected under the Scheme.

d. The Transferee Company shall pass such accounting entries which are necessary to comply with all other applicable Indian Accounting Standards such as AS-5 (IND AS-8), to the extent applicable;

e. The Form Ben -2 has been filed with MCA on 8th March, 2023 via SRN No F59474643 for the Transferor Company and SRN F59476382 for the Transferee Company. The Petitioner Companies shall comply with the provision of Section 90 of Companies Act, 2013 from time to time;

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

8. Mr. Bhagwati Prasad, Assistant Director from the Office of Regional Director of Western Region, 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.

9. The Official Liquidator has filed his report dated 21.06.2023 making certain observations in Para 5 & 6. The observation of the OL have been explained by the Petitioner Companies submitting that the development of the software's and platform pertaining to Security services takes five to six years to complete the product and due to this reason of initial long period of completion of the product development, the company has incurred losses for past few years. The company has already completed some parts of the software's and platforms and have started marketing the same and have started generating revenue from them. Keeping in view of the above facts the Management is of firm opinion that Petitioner Company is a going concern. It has also been submitted that there is no specific restrictions under Section 232 r/w Section 230 of the Companies Act, 2013 on the merger of the loss making companies. We have considered the observation of the OL and the explanation of the Petitioner Company, and find that nature of the business of the Petitioner Company explains the reasons of losses in the initial years. The OL has submitted that barring observations the affairs of the Transferor Company have been conducted in a proper manner.

10. 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. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P. (C.A.A.)/133/MB/2023 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.

11. 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.

12. 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, within 30 (thirty) days from the date of receipt of order, duly certified by the Assistant/Deputy Registrar of this Tribunal.

13. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Designated Registrar 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 (sixty) days from the date of receipt of certified copy of the order.

14. The Transferor Company would be dissolved without winding up.

15. All concerned regulatory authorities to act on a copy of this Order duly certified by the Designated Registry of this Tribunal, along with a copy of the Scheme.

16. The Scheme of Amalgamation is hereby sanctioned, and the Appointed Date of the Scheme is fixed as 1st Day of April 2021, for the purposes of Section 232(6) of the Companies Act, 2013.

17. Ordered accordingly.