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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

Premachand
16/10/17
DD/DR/AR/Court Officer
National Company Law Tribunal
New Delhi

AT NEW DELHI

Present: SMT. INA MALHOTRA, MEMBER (JUDICIAL)

& SHRI S.K. MOHAPATRA, MEMBER (TECHNICAL)

CAA- 184/ND/2017

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

TOLEXO ONLINE PRIVATE LIMITED

(TRANSFEROR COMPANY)

WITH

INDIAMART INTERMESH LIMITED

(TRANSFeree COMPANY)

FOR THE PETITIONERS: Mr. Suman Jyoti Khaitan, Advocate
Ms. Swati Sumbly, Advocate

ORDER DELIVERED ON - 11.10.2017



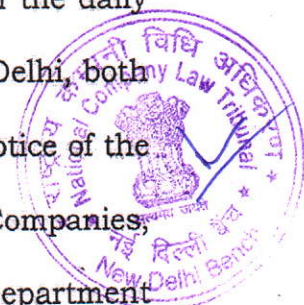
ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. This Joint application has been filed by the Applicant Companies under sections 230 and 232 read with the sections 52 and 66 of the Companies Act, 2013 and other applicable provisions for the purpose of approving the Scheme of Arrangement, as contemplated between the Transferor Company with Transferee Company.
2. Both the Transferor and the Transferee Companies have their registered offices on the 1st Floor, 29- Daryaganj, Netaji Subash Marg, New Delhi-110002, which lies within the jurisdiction of this Tribunal.
3. A perusal of the petition discloses that initially the Transferor Company and Transferee Company had jointly filed the first motion application bearing C.A. No. (CAA) 47/PB/2017. The Tribunal vide its order dated 19.05.2017 had dispensed with the meetings of the equity and preference shareholders of the Transferee Company in view of their consent affidavits being on record. In respect of its unsecured creditors, the meeting was directed to be convened on 14.07.2017. There were no secured creditors of the Transferor Company and therefore the requirement for convening meeting of

Secured Creditors did not arise. In respect of the Transferee Company, it was directed that the meeting be convened for its equity shareholders, preferential Shareholders, series A & Band its unsecured creditors at the given time and venue. There are no Secured Creditors of the Transferee Company and therefore the requirement of convening meeting of the Secured Creditors did not arise.

4. The aforesaid meetings of the unsecured creditors, Equity Shareholders, its preferential Shareholding Series A and B of the Transferee Company and the unsecured creditors of the Transferor Company were duly held on 14.07.2017 as directed by the Tribunal, wherein the proposed Scheme was approved. The Chairman's reports recording their approval of the proposed scheme without modification subsequent to the voting process is on record.
5. The applicant companies have now initiated the Second Motion. An affidavit dated 05.09.2017 discloses that the petitioners have effected publication in the English and Hindi edition of the daily newspapers "The Business Standard" having circulation in Delhi, both dated 25.08.2017. The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of Companies, Regional Director, Northern Region and the Income tax Department



in compliance with the order of the Tribunal, inviting objections if any to the proposed Scheme of Arrangement

Pursuant to the Publication in the daily newspapers, notifying the listing of the matter before this Bench, no objector has appeared before us. Additionally, the petitioners have also filed an affidavit before this tribunal that neither the petitioner companies, nor their Legal Counsels have received any objection/representation against the proposed scheme of Arrangement till the date of such affidavit. The replies of the Regional Director, NR, MCA dated 08.09.2017 have been placed before us.

6. We have heard the counsel for the petitioners and also considered the representation dated 08.09.2017 made by the Regional Director, Northern Region. In the reply filed by the Regional Director (NR), it has been confirmed that the Transferor and Transferee companies are regular in filing their statutory returns. No prosecution has been filed, no complaints are pending and no inspection or investigation has been conducted in respect of the petitioner companies. Further in their report, they have stated that they have no objection to the sanction of the proposed scheme. As per the affidavit on record, despite notice to the Income Tax Dept, no objection has been received even after the lapse of 30 days of service.



7. The scheme of Arrangement as contended by the Petitioners is sought to be justified, interalia, on grounds that it would:-

(a) Ensure provision of adequate and necessary financial support and managerial capabilities of the Transferee Company for the growth of Demerged Undertaking;

(b) Consolidate the Demerged Undertaking of the Transferor Company with the Transferee Company to achieve synergies in operations and optimal utilization of resources, thereby reducing operating costs of running the Demerged Undertaking;

(c) Reduce the inter se transactions between the Transferee Company and the Transferor Company thereby, reducing administrative costs and achieving efficiencies;

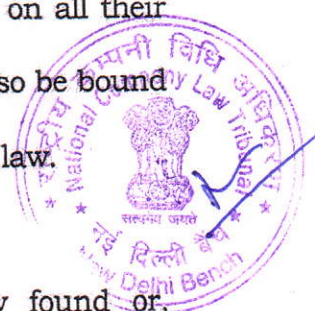
(d) Enhance the shareholders value of the Transferee Company and the Transferor Company.

8. As per averments, the Transferor Company is a wholly owned subsidiary of the Transferee Company and its entire issue, subscribed and paid up share capital is held by the Transferee Company. As the Transferee Company is the only Shareholder of the Transferor Company, the question of issuance of fresh allotment of shares does not arise. This obviates the requirement for valuation of shares of the Transferor company. Upon the scheme becoming finally effective, the share capital of the Transferor Company will be reorganized by reduction of the Share capital including the securities premium so as to ensure its balance



Sheet reflects the true and fair financial position. The corresponding adjustment shall be made in its Profit and Loss Account as appearing on the Appointed Date.

9. The Audited Financial statements for the Financial Year ending 31.03.2016 of both the applicant companies have filed while their provisional audit reports for the Financial Year ending 31.03.2017 is on record. In report dated 29.03.2017 of the Statutory Auditor, it has been certified that the accounting treatment was not in violation with the Accounting Standards as prescribed under Sec 133 of the Act read with rules there under and other recognized accounting practices prevalent in India.
10. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and no objections having been raised by the office of the Regional Director, Income Tax Department or any other interested party, there appears to be no impediment in granting sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of arrangement shall be binding on the Transferor and the Transferee Company and on all their respective shareholders and creditors. The Petitioners shall also be bound to comply with the statutory requirements in accordance with law.
11. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the



sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of both the petitioner companies.

12. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, 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.

13. THIS TRIBUNAL DO FURTHER ORDER

a.) The Appointed Date shall be 1st January 2017 as per the Scheme;

b.) That all the property, rights and powers of the transferor company, in respect of demerged undertaking, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the transferee company for all the estate and interests of the transferor company in respect of demerged undertaking therein but subject nevertheless to all charges now affecting the same; and




- c.) That all the liabilities and duties of the transferor company, in respect of demerged undertaking, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and
- d.) That the Transferor Company shall reduce the Book Value assets and liabilities from its books of account at the values appearing as on the Appointed date. The difference between the Book Value of assets and liabilities shall be debited/credited to the Capital Reserve of the Applicant Company.
- e.) That all proceedings now pending by or against the transferor company, in respect of demerged undertaking, be continued by or against the transferee company; and
- f.) That petitioner 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.
- g.) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

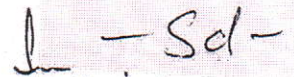


h.) The Transferor Company has consented to pay a sum of Rs.25,000/-
to the Prime Minister Relief Fund within four weeks from the date of the
order.

The petition stands disposed of in the above terms.



(S. K. Monaputra)

Member Technical


(Ina Malhotra)

Member Judicial




16/10/17

प्रेमचन्द / Prem Chand
सहायक निदेशक / Assistant Director
राष्ट्रीय कम्पनी विधि अधिकरण / National Company law Tribunal
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi