

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

CSP No. 149 of 2018  
IN  
CSA No. 1085 of 2017

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013;

And

In the matter of Scheme of Arrangement by way of demerger of Adityesh Educational Institute Private Limited with Eduspark International Private Limited and their respective Shareholders ("the Scheme")

**Adityesh Educational Institute Private Limited**

**...First Petitioner/Demerged Company**

**Eduspark International Private Limited**

**...Second Petitioner/Resulting Company**

**Order dated 26.08.2018**

**CORAM:**

Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr. Hemant Sethi i/b Deloitte Haskins & Sells LLP, Counsel for the Petitioner Companies  
For Regional Director: Mr. R.S. Meena, Joint Director  
For the Official Liquidator: Mr. Santosh Dalvi, Sr. Assistant

*Per B.S.V. Prakash Kumar, Member*

**ORDER**

1. Heard the learned counsel for the Petitioner Companies.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement by way of demerger of Adityesh Educational Institute Private Limited with Eduspark International Private Limited and their respective Shareholders, both the Petitioner Companies are

collectively referred to as "the Petitioner Companies".

3. The Petitioner Companies have approved the said Scheme of Arrangement by passing their respective Board Resolutions dated 6<sup>th</sup> December 2017 and thereafter, they have approached the Tribunal for sanction of the Scheme.
4. The Petitioner Companies are engaged in the business of running pre-primary schools and providing necessary infrastructure to various educational institutions.
5. The Appointed date fixed under the Scheme is 1<sup>st</sup> April 2017.
6. The rationale of the Scheme of Arrangement is –
  - i. The demerger of the Demerged Undertaking belonging to the Demerged Company with and into the Resulting Company, which are group entities, on a going-concern basis, would allow a focused strategy in operations of Educational services business and Infrastructure business and would create enhanced value for shareholders.
  - ii. Eduspark runs pre-primary schools at various locations and also provides necessary infrastructure, immovable & movable properties to various educational institutions. Pursuant to the Scheme, "Educational services" business and "Infrastructure" business of Adityesh will be demerged into Eduspark. Such segregation will allow concentrated focus by Eduspark on the Educational services business and Infrastructure business.
  - iii. The demerger of the Demerged Undertaking will allow concentrated focus by the Demerged Company on the its residuary business i.e. "Hostel" and "Day care service" business.
  - iv. The unbundling of Educational services business and Infrastructure business and consolidation into Eduspark is expected to unlock value by enabling the business activities to be carried out with greater focus and specialization for sustained growth.

- v. The demerger is expected to enhance shareholder value for shareholders of both Demerged Company and Resulting Company.
7. The Authorised share capital of the First Petitioner Company is ₹5,00,00,000/- comprising of 50,00,000 equity shares of ₹10/- each. The Issued, Paid-up and Subscribed share capital is ₹3,08,65,000/- comprising of 30,86,500 equity shares of ₹10/- each. The Authorised share capital of the Second Petitioner Company is ₹10,60,00,000/- comprising of 85,10,000 "A" class Equity Shares of ₹10/- each and 90,000 "B" class Equity Shares of ₹10/- each and 20,00,000 1% Non-Cumulative Redeemable Preference Shares of ₹10/- each. The Issued, Paid-up and Subscribed share capital is ₹2,83,61,090/- comprising of 9,10,004 "A" class Equity Shares of ₹10/- each and 90,000 "B" class Equity Shares of ₹10/- each and 18,36,105 1% Non-Cumulative Redeemable Preference Shares of ₹10/- each.
8. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions contained in order dated 11<sup>th</sup> January 2018 passed in Company Scheme Application No. 1085 of 2017 by this Tribunal and that the Company Scheme Petition has been filed in consonance with the order passed in abovementioned Company Scheme Application and the Petitioner Companies has served notices upon all the Regulatory authorities namely (i) Regional Director, Western Region, (ii) Registrar of Companies, Mumbai, (iii) to the concerned Income Tax department and (iv) to the concerned secured and unsecured creditors. The Petitioner Companies further submitted that representation of no sectoral regulator is required in this present case, so no notice is served upon any sectoral regulator. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
9. The Regional Director has filed his report dated 26<sup>th</sup> May, 2018

stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is stated that:

- (a) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Amalgamation. Further the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
- (b) *Petitioners Companies has not submitted admitted copy of the Petition, Minutes of order of the Hon'ble NCLT. In this regard petitioner companies have to undertake to submit the same for the record of Regional Director and also to undertake that the scheme as admitted with the Hon'ble NCLT through company petition and the scheme which is served to the Regional Director through company application is one and the same, and in the case of deviation, if any, shall be brought to the notice of the Regional Director.*
- (c) *As per Clause 1.2 of the Scheme, "Appointed Date" means the 1<sup>st</sup> April, 2017 or such other date as may be fixed or approved by the Competent Authority in relation to Demerged undertaking of the Demerged Company. In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*

*(d) Petitioner in clause 5.2 of the scheme has inter alia mentioned that the Resulting Company shall, to the extent required, increase its Authorized Share Capital in order to issue Preference Shares under this Scheme. Further, the Resulting Company shall comply with the provisions of the Act to increase its Authorized Share Capital.*

*In this regards, petitioner companies have to undertake to comply with provisions of Companies Act, 2013 read with Rules & file form SH-7 and MGT-14 with Registrar of Companies.*

10. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, it is submitted that the Petitioner Companies have served notices upon all the Regulatory authorities in accordance with Section 230(5) of the Companies Act, 2013. The Petitioner Companies undertakes that any issues raised by the relevant regulatory authorities, which are arising out of the Scheme, will be met and answered in accordance with relevant laws and the decision of such Authorities shall be complied with by the Petitioner Companies in accordance with relevant laws.
11. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, it is submitted that, the Petitioners Companies have submitted admitted copy of the Petition, Minutes of order of the Hon'ble NCLT for the record of Regional Director on 7<sup>th</sup> June 2018. Further, the Petitioner Companies undertake that the scheme as admitted with the Hon'ble NCLT through company petition and the scheme which is served to the Regional Director through company application is one and the same and there is no discrepancy or deviation.
12. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies clarifies that the Appointed Date shall be 1<sup>st</sup> April, 2017 as mentioned in para 1.2 of the Scheme. Accordingly, the scheme shall be made effective from the Appointed Date.

13. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies clarifies that the Resulting Company shall comply with the provisions of the Act to increase its Authorized Share Capital and undertake to comply with provisions of Companies Act, 2013 read with Rules & file form SH-7 and MGT-14 with Registrar of Companies.
14. No objector has approached, neither to the Petitioner Companies nor before this Tribunal, to oppose this Scheme of Arrangement.
15. The observations made by the Regional Director have been explained by the Petitioners in Para 10 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted. Subsequently, this bench hereby directs the Petitioner Companies to comply with the provisions/statements which the Petitioner Companies undertakes herein.
16. From the material on record, the Scheme of Arrangement by way of demerger appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public interest.
17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition filed jointly by the Petitioner Companies are made absolute in terms of prayer clause of the Company Scheme Petition and fixed appointed date as 01.04.2017.
18. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of copy of the Order from the Registry.
19. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, 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 of copy of the Order.

20. Each Petitioner Companies to pay cost of ₹25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly certified copy of this Order.

21. All authorities concerned, to act on a copy of this Order along with the Scheme duly certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.

22. Any person interested in this Scheme, is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.

SD/-

**RAVIKUMAR DURAISAMY**  
**MEMBER (TECHNICAL)**

SD/-

**B.S.V. PRAKASH KUMAR**  
**MEMBER (JUDICIAL)**