

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (CAA) No.689/KB/2018

CA (CAA) No.12/KB/2018

In the matter of:

An application under Sec.230 – 232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

And

In the matter of:

ABC Consultants Pvt. Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 3, Decres Lane, Kolkata – 700 069, West Bengal.

And

In the matter of:

Quetzal Online Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at B-701, Manu Smriti Dongri Pada, Ghod Bunder Road, Thane West Mumbai - 400601 Maharashtra.

And

In the matter of:

- | | |
|-----------------------------------|------------------------|
| 1. ABC Consultants Pvt. Limited | : (Demerged Company) |
| 2. Quetzal Online Private Limited | : (Resulting Company) |

.....Applicant/Petitioners

Order Delivered on 5th September 2018

For the Applicant/Petitioners	: 1. Ms. Swapna Chowbey, Advocate
	2. Mr. Mohan Ram Goenka, PCS
	3. Ms. Sneha Khaitan, PCS

For the Regional Director, (Eastern Region) Ministry of Corporate Affairs	: Mr. K. S. Pradhan, Joint Director
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Sd

ORDER

Per Jinan K.R., Member (Judicial)

This application has been filed by the Applicant Companies, namely, ABC Consultants Pvt. Limited [hereinafter referred to as the De-merged Company] with Quetzal Online Private Limited [hereinafter referred to as the Resulting Company] under Section 230 to 232 of the Companies Act, 2013 and their respective shareholders for obtaining sanction of this Tribunal regarding Scheme of Arrangements proposed to be made between the De-merged Company and the Resulting Company and their respective shareholders. A copy of the Scheme of Arrangement has been annexed with the application as Annexure A-1, page 54 to 87.

2. The object of this application is to ultimately obtain sanction of this Tribunal to a Scheme of Arrangement proposed to be made between the applicant companies and their respective shareholders under the Scheme of Arrangement whereby and whereunder: -

- i. The 'HeadHonchos' undertakings of the Demerged Company together with all the assets and liabilities relating thereto ongoing concern are proposed to be transferred to and vested in the Resulting Company on the terms and conditions stated in the Scheme of Arrangement.
- ii. The Scheme will enable the business of providing recruitment solutions and leveraging the base of recruitment of exclusively senior professionals business to be carried on distinctively by the de-merged entities under the Resulting Company, more conveniently and advantageously with an independent management set-up and greater focus, attention and specialization.
- iii. The Scheme will facilitate business considerations and factors germane to the business of providing placement and recruitment

services and solutions and leveraging the base of recruitment of exclusively senior and top management professionals business to be addressed more effectively and adequately by the Resulting Company. The business with respective strategic, technological and/or financial alliance and/or participation of appropriate partners in such business since the de-merged entities under the Resulting Company will be engaged in focused business of providing recruitment solutions to the senior professionals and will be capable of independent evaluation.

- iv. The Scheme will enable the Resulting Company to take advantage of the opportunities foreseen in the business of providing placement and recruitment services and solutions to senior and top management professionals and assist in the exploitation and realization of the potential of the said HeadHonchos undertaking to the fullest extent and to develop further the business opportunities solutions for which the Resulting Company has the requisite financial capabilities.
3. The De-merged Company desires to continue its placement and recruitment business, as an exclusive entity, which is in operation for about 40 years and have been able to create a brand image and niche clientèle over the period.
4. It reveals from the record, the Scheme does not have any adverse effect on either the shareholders or the employees of the De-merged Company.
5. It further reveals from the record the reconstruction of the De-merged Company under the Scheme will also allow the De-merged Company to retain its focus on its placement and recruitment divisions and pursue its turnaround plans and strategies, therefore, with the restructured capital and asset base more effectively and advantageously. The Scheme will have beneficial results for both the De-merged Company and the Resulting Company, their shareholders, employees and all concerned.

6. It appears from the record, the proposed re-alignment will create enhanced value for all the stakeholders of the companies as it would facilitate focused strategy, direction and business planning to optimize operational, managerial financial, technical and marketing capabilities of each business.

7. It further appears, the Resulting Company, i.e. Quetzal Online Private Limited is having its registered office in the state of Maharashtra and hence having jurisdiction with National Company Law Tribunal, Mumbai Bench, have filed separate application for directions with the National Company Law Tribunal, Mumbai Bench and has obtained an order in CSA No. 1024 of 2017 dated 05/01/2018 from the said Hon'ble Bench.

8. Ld. Counsel for the applicant companies submitted before the Tribunal on 21/8/2018 copy of the order dated 26/7/2018 passed by the Hon'ble Mumbai Bench of NCLT in CP (CAA) No.101/230-232/NCLT/MB/MAH/2018 regarding sanction of the Scheme. Relevant part of the order dated 26/7/2018 of the Hon'ble NCLT Mumbai Bench reads as under:-

“(a) All the assets and liabilities including taxes and charges, if any, and duties of the HeadHonchos Undertaking of the De-merged Company be transferred to the Resulting Company and accordingly, the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the assets, liabilities including taxes and charges, if any, and duties of the Resulting Company.”

9. After complying with the directions of the Hon'ble Mumbai Bench, the Resulting Company had filed the petition for sanction of the Scheme of Arrangement before the National Company Law Tribunal, Mumbai Bench on 22/03/2018.

10. Ld. Counsel for the applicant companies submitted that the assets of the Petitioner Companies are sufficient to meet all their liabilities and the Scheme of

Arrangement will not adversely affect the rights of any of the creditors of any of the Petitioner Companies in any manner whatsoever.

11. Learned Counsel for the Petitioner Company submitted that there are no proceedings pending under the applicable sections of the Companies Act, 1956 or any other proceeding under the Companies Act 2013.

12. Learned Counsel for the Petitioner Company further submitted that no one will be prejudiced if the Scheme of Arrangement is sanctioned and the Scheme of Arrangement will benefit and is in the interest of the said Companies, their shareholders, employees, creditors and all stakeholders.

13. It appears from the record that the Board of Directors of the applicant companies at the meetings unanimously approved the Scheme of Arrangement of the De-merged Company with the Resulting Company and the same has been communicated to the respective equity shareholders and creditors of the companies. The shareholders of the petitioner company have duly accorded their written consent and approval to the Scheme of Arrangement.

14. The Auditors of the De-merged Company have certified that the Accounting Treatment proposed in terms of clause 8 Part II of the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The copy of the certificate issued by the Auditors with regard to Accounting Treatment is annexed with the application as Annexure A-12 page 277 to 278.

15. Ld. Counsel for the applicant companies submitted that pursuant to Order dated 16/02/2018 of this Tribunal, passed in CA (CAA) No.12/KB/2018, service of Notice under Section 230(5) of the Companies Act, 2013 along with the explanatory statement under Section 230(3) and the Scheme of Arrangement was served:

- a) The Regional Director, Eastern Region,
- b) The Registrar of Companies, West Bengal, and
- c) The Income tax Authorities, Chief Commissioner of Income Tax,
- d) The Official Liquidator attached to High Court, Calcutta on 26/02/2018.

16. Pursuant to the aforesaid Order dated 16/02/2018 of this Tribunal, an advertisement of notice convening the Court Convened Meeting of Unsecured Creditors of ABC Consultants Pvt. Ltd. under sub-section (3) of Section 230 of the Companies Act, 2013 and Rule 7 of the Companies (Compromises, Arrangements and Arrangements) Rules, 2016 had been published in Form No.CAA.2 in "Financial Express" in its issue dated 27/02/2018 in English Language and in "Aajkal" in its issue dated 27/02/2018 in Bengali Language.

17. In compliance of the aforesaid order of this Tribunal dated 16/2/2018, an affidavit of service affirmed on 12/03/2018 had been filed by the De-merged Company.

18. The petitioner further contended that in compliance of the order of this Tribunal dated 16/2/2018, the requirement of convening the meeting of the equity shareholders and secured creditors of the petitioner Company was dispensed with in view of written consent given by shareholders by way of affidavits to the said Scheme of Arrangement and NIL secured creditors. It is further contended that the meeting of the Unsecured Creditors of ABC Consultants Private Limited being the Petitioner Company, was held on 29/03/2018 as per direction given by the this Tribunal, Kolkata Bench and accordingly the Chairperson had submitted his report to the said meeting.

19. The Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata has submitted its report vide affidavit dated 29/8/2018 on behalf of the Central Government has observed that no complaint and/or representation has been received against the proposed Scheme of Arrangement and the proposed scheme is not prejudicial to the interest of the members/shareholders and/or public.

As such, the Central Government has decided that the instant petition need not be opposed. Therefore, the Central Government has no objection to the proposed Scheme of Arrangement. The Regional Director also mentioned that a copy of the scheme was forwarded to the Income Tax Department on 28/2/2018 with a request to forward their comments/observations/objections, if any, on the proposed Scheme of Arrangement, and the said authority has not forwarded their report till date. The observations of the Central Government on the scheme is as under:

"(a) That it is submitted that on examination of the report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Arrangement. The de-merged company also up-dated in filing their statutory returns. It is further submitted that on examination of the proposed scheme of arrangement, it appears that the proposed scheme is not prejudicial to the interest of members/shareholders and/or public. The Central Government has, therefore, decided that the instant petition/scheme need not be opposed.

(b) It is further submitted that the Resulting company's Registered office is located at B-701, Manu Smriti dongiri Pada, Ghod Bhunder Road, Thene, West Mumbai - 400 601 and which does not fall under the jurisdiction of this Directorate.

(c) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 28/2/2018 with a request to forward their comments/observations/objections, if any, but the said authority did not made any reply about the proposed scheme still preparing this report."

20. Pursuant to the aforesaid Order dated 16/02/2018 of this Tribunal, service of Notice under Section 230(5) of the Companies Act, 2013 along with the explanatory statement under Section 230(3) and the Scheme of Arrangement was served to the Regional Director, Eastern Region, the Registrar of Companies, West Bengal, the Income tax Authorities, Chief Commissioner of Income Tax, the Official Liquidator attached to High Court, Calcutta by the Petitioners on 26/02/2018.

21. In compliance of the aforesaid order of this Tribunal dated 16/2/2018, an affidavit of service of above notices affirmed on 12/03/2018 had been also filed by the De-merged Company.

22. The petitioner further contended that in compliance of the order of this Tribunal dated 16/2/2018, the requirement of convening the meeting the equity shareholders and secured creditors of the petitioner Company was dispensed with in view of written consents by shareholders by way of affidavits to the said Scheme of Arrangement and NIL secured creditors. It is further contended that the meeting of the Unsecured Creditors of ABC Consultants Private Limited being the Petitioner Company, was held on 29/03/2018 as per direction by this Tribunal, Kolkata Bench and accordingly the Chairperson had submitted his report to the said meeting.

23. In terms of the said order of the Tribunal, Ld. Counsel for the applicant companies submitted that notice of the petition need not be served on any person. The instant petition has been made for sanction of the Scheme of Amalgamation which will be for the benefit of the petitioner companies.

24. The Regional Director, Eastern Region, Ministry of Corporate Affairs has submitted his report vide affidavit affirmed on 29/8/2018, which is on record.

25. Heard Ld. Counsel for the applicant companies and authorized representative of Regional Director, Eastern Region, Ministry of Corporate Affairs

at Kolkata. In view of absence of any objection and since all the requisite compliance has been fulfilled, the following order is passed: -

ORDER

- (a) That the Scheme of Arrangement as annexed in Annexure A-1, hereto is sanctioned by the Tribunal so as to be binding with effect from 1st day of September 2017 on Quetzal Online Private Limited with ABC Consultants Pvt. Limited and their shareholders and all concerned;
- (b) All the properties, rights and interest of demerged undertaking, namely, 'HeadHonchos' is transferred to and vested in without any further act or deed in Quetzal Online Private Limited and accordingly the same shall be in pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Arrangement) Rules, 2016 is transferred to and vested in Quetzal Online Private Limited for all the estate and interest of 'HeadHonchos' but subject nevertheless to all charges, now affecting the same.
- (c) All the liabilities and duties of de-merged undertaking namely 'HeadHonchos' is transferred without further act or deed to Quetzal Online Private Limited and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Arrangement) Rules, 2016 is transferred to and become the liabilities and duties of Quetzal Online Private Limited.
- (d) That all the proceedings and/or suit appeals now pending by or against Demerged Company pertaining to the 'HeadHonchos' business shall be continued by or against Quetzal Online Private Limited.
- (e) The Resulting Company do issue and allot shares to the shareholders of ABC Consultants Pvt. Limited as envisaged in the said Scheme of

Arrangement and for that, if necessary, to increase the authorized share capital.

- (f) The schedule of assets in respect of Quetzal Online Private Limited be filed, if required.
 - (g) ABC Consultants Pvt. Limited shall within 30 days after the date of obtaining the Certified Copy of the order made herein, cause certified copies of this order to be delivered to Registrar of Companies, West Bengal for registration;
 - (h) Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
26. The Company Petition being CP (CAA) No.689/KB/2018 [in CA (CAA) No.12/KB/2018] is disposed of accordingly.
27. There shall be no order as to costs.
28. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Sd
Jinan K.R.
Member (J)

Signed on 5th September 2018