

THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

C.P. (CAA) No. 651/KB/2017

Connected with

C.A (CAA) No. 282 of 2017

In the matter of:

The Companies Act, 2013;

And

In the matter of:

Petition under Section 230 and 232 of the  
said Act, read with applicable provisions of  
the Companies (Companies Arrangements  
and Amalgamation) Rules, 2016 ;

And

In the matter of:

ABC CONSULTANS PRIVATE LIMITED, a  
company incorporated under the  
Companies Act, 1956 and having its  
registered office at 3, Dacres Lane, 1<sup>st</sup> Floor,  
Kolkata - 700 069 within the aforesaid  
jurisdiction ;

.....Demerged/Transferor Company

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And

In the matter of :

ACCORD TELEMENTSEARCH PRIVATE LIMITED  
a company incorporated under  
the Companies Act, 1956 and having its  
registered office at 301, Suhvam  
Building, 1, Sarojini Naidu Sarani, Kolkata -  
700 017 within the aforesaid jurisdiction ;

...Resultant/Transferee Company

CORAM : Shri V.P. Singh, Member(Judicial)  
Shri Jinan K. R., Member(Judicial)

For the Petitioners :

Ms. Sara Sancheti, Advocate

Mr. S Tiwari, Advocate

Date of pronouncing the order: 18.12.17

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## ORDER

Per Shri V.P. Singh, Member(Judicial) :

The object of this petition is to obtain sanction of this Tribunal to an arrangement embodied in the Scheme of Arrangement of ABC CONSULTANTS PRIVATE LIMITED (Demerged Company) and ACCORD TELEMENTSEARCH PRIVATE LIMITED (Resultant Company) and their respective shareholders where under the entire investment in subsidiary undertakings of the demerged company together with all the assets and liabilities relating thereto is proposed to be transferred to and be vested in the Resultant Company on the terms and conditions and in the manner as stated in the Scheme of Arrangement, with effect from the Appointed Date in terms of the Scheme without any further act or deed pursuant to the provisions of Section 230 to 232 of the Companies Act, 2013.

It is stated in the Petition that 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 demerged entities under the Transferee Company, more conveniently and advantageously with an independent management set-up and greater focus, attention and specialisation.

It is further submitted in the Petition that the Scheme of Arrangement will facilitate business considerations and factors germane to the business of

providing placement and recruitment services and solutions and leveraging the base of recruitment, exclusively of senior and top management professionals to be addressed more effectively by the respective subsidiaries under the aegis of the Resultant Company.

The Scheme will enable the Resultant 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 realisation of the potential of the said Demerged undertaking to the fullest extent and to develop further the business opportunities solutions for which the Transferee Company has the requisite financial capabilities.

It is further submitted in the Petition that the Transferor 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 clientele over the period.

It is submitted in the Petition that the Scheme does not, in any way, violate, override or circumscribe any provisions of the Companies Act, 2013 and the Rules, Regulations and guidelines made under the Companies Act, 2013.

It is further submitted in the Petition 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.

The Petitioner Companies submitted that there are no proceedings pending under Section 235 to 251 of the Companies Act, 1956 against any of the

Petitioner Companies. No investigation proceedings against the Petitioner Companies under Section 210 to 229 of the Companies Act, 2013 or like, are pending.

The Petitioner Companies 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.

The Petitioner Companies further submitted that there are no winding up petition(s) pending in any Court(s) of Law in India and the Petitioners declared in the Petition that it had not previously filed any petition, writ petition or suit regarding the matter in respect of which this Petition has been made, before any Court of Law or any other authority or any other Bench of this Tribunal and no such Petition, writ Petition or suits is pending before any of the Courts.

A copy of the Audited Statement of Accounts as on 31-03-2016 is annexed with the Petition and marked as "A-2" and the certified provisional statement of accounts for the period dated 31-01-2017 of the Petitioner No. 1, is annexed with the Petition and marked "A-3".

It is stated in the petition that both the Petitioner Companies have not issued nor agreed to issue any debenture.

It is further stated in the Petition that both the Petitioner Companies have no secured creditors and apart from the current liabilities which are incurred in the normal course of business, the Petitioner Companies have no unsecured creditors.

Two separate affidavits, in this regard, have been filed by the respective Petitioner Companies on 05-09-2017.

The Board resolutions dated 15-03-2017 and 19-04-2017, passed by the respective Board of Directors of the Petitioner Companies, approving the Scheme of Arrangement, are annexed to the Petition and marked as "A-4" and "B-3", respectively.

The List of Shareholders of the Petitioner Companies, as on 31-01-2017 are annexed with the Petition and marked as "A-5" and "B-4", respectively, and the Petitioner Companies declared that there is no change in the Shareholdings of the respective Company.

The List of Directors of the Petitioner Companies, as on 31-01-2017, are annexed to the Petition and marked as "A-6" and "B-5", respectively.

It is stated in the Petition that no audited statement of accounts has been prepared so far, for the Petitioner No.2.

A copy of the provisional statement of Accounts for the period ended 31-01-2017 of the Petitioner No.2 is annexed with the Petition and marked "B-2".

It is further stated in the Petition that as on date, there is no material change in the financial position of the Petitioner -2.

Vide Order dated 11-09-2017 of this Tribunal, since consent of the Shareholders are there, the dispensation of the convening and holding of the meetings of the Equity Shareholders of the Petitioner Companies had been allowed subject

to the compliance of the conditions enumerated in the said Order dated 11-09-2017.

The Petitioner Companies submitted that in compliance with the Order of this Tribunal dated 11-09-2017, a copy of the Application had been served by them to the (i) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, (ii) the Registrar of Companies, West Bengal and (iii) the Income Tax Officer, DCIT Circle 3(1), Kolkata and the Income Tax Officer, Company Ward 7(3), Kolkata, for the respective Petitioner Companies, pursuant to Section 230(5) of the Companies Act, 2013, as per Rule 8 of the Companies)Compromises, Arrangements and Amalgamations) Rules, 2016 in Form CAA. 3 along with a copy of the Scheme of Arrangement and all its annexures on 26-09-2017, by hand delivery and the copies of all the acknowledgments thereof, are annexed with the Petition and marked "G", "H" and "I", respectively .

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA)/651/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation.

Heard the arguments of the Ld. Counsel for the petitioner.

Let notice be served as per requirements of sub-section(5) of section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Amalgamation and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal and the concerned Assessing Officer along with the Chief Commissioner of Income-Tax with PAN numbers of the Applicant Companies, through E-mail and by Speed post, both, as also the Official Liquidator having jurisdiction of the transferor

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and the transferee companies and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by registered post or speed post within seven days from the date of this order for filing their representation, if any, on the petition within 30 days from the date of notice.

The petitioners are to file an affidavit, along with the copy of the notice within seven days regarding service of the notice.

The petitioners are further directed to send notice through e-mail also and filed copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the petitioners and their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation. Such notices shall be sent under Section 230(5) of the Companies Act, 2013 in Form No. CAA-3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published one in the English daily newspaper and another in the Bengali daily newspaper, stating the PAN numbers of all the Petitioner Companies, 10 days before the date fixed for hearing under Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The petition is fixed for hearing on 20-02-2018.

Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

Sd

(K.R. Jinan)  
Member(Judicial)

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(V.P. Singh)  
Member(Judicial)

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