

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 46 OF 2017

KARE EDUMIN PRIVATE LIMITED ...Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 47 OF 2017

EDUSPARK INTERNATIONAL PRIVATE LIMITED

...Petitioner/Transferee Company

In the matter of Section 230 to Sections 232 and any corresponding provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation of Kare Edumin Private Limited with Eduspark International Private Limited and their respective shareholders and creditors.

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date: 27th April 2017

MINUTES OF 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 the Scheme of Amalgamation of Kare Edumin Private Limited with Eduspark International Private Limited and their respective shareholders and creditors.
- 3 The Counsel for the Petitioner Companies submit that both Kare Edumin Private Limited and Eduspark International Private Limited are engaged in the business of running pre-primary schools at various locations and providing necessary

infrastructure, immovable & movable properties to various educational institutions.

- 4 The respective Boards of Directors are of the view that the proposed Scheme of Amalgamation is beneficial to the respective shareholders, employees and all stakeholders of the Petitioner Companies. The proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:
 - a. Consolidation of businesses of the Group;
 - b. Reduction in number of companies and regulatory compliances thereof;
 - c. Streamlining the holding structure;
 - d. Ease of management; and
 - e. Reduction of operating and administrative costs.
- 5 The Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing necessary Board Resolutions which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
- 6 The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court/Tribunal and the necessary affidavits of compliance has been filed in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
- 7 The Official Liquidator has filed his report on 24th April, 2017 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

8 The Regional Director has filed his report dated 25th April, 2017 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:

1. *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
2. *The Petitioner Companies has submitted the proof of serving notice, upon the Income Tax Authorities dated 30.01.2017 & 01.02.2017 respectively for comments. This Directorate has also issued a reminder letter to the Income Tax Department 20.04.2017 being issued.*
3. *Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*
4. *Petitioner in clause 1 (Preamble) the transferor inter alia has mentioned that the transferor company is a subsidiary of Transferee Company.*

In this regard it is submitted that as per the shareholding list provided by the company and the details in balance sheet as on 31.03.2016 Mr. Rustom P Kerawalla is holding 99.99% shares. That means the transferor company is not a subsidiary of the transferee company. Hence amendment is required in the scheme which the petitioner company should undertake to do.

5. *Petitioner in clause 5 of the scheme inter alia has mentioned that transferee company shall issue and allot to the members of the transferor company 5(five) preference shares credited as fully paid up for every 10(ten) equity shares of Rs. 10/- each held in KEPL.*

KEPL shall, if and to the extent required apply for and obtain approvals from concerned regulatory authorities for the issue of the preference shares. Whereas in the capital structure of the Transferee Company mentioned in clause 3 has two class of preference shares namely a Class and B class.

In this regard petitioner to undertake to mention which class of preference shares will be allotted.

- 9 In so far as observations made in paragraph IV (1) and (2) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
- 10 In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Transferee Company through its Counsel submit that the Petitioner Companies has submitted the certificate by the Company's Auditor on 26th April 2017 with this Tribunal, stating that the accounting treatment proposed in the scheme of amalgamation is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013. Further, the Petitioner Companies undertakes to file the copy of certificate by the Company's Auditor with the Regional Director.
- 11 In so far as observations made in paragraph IV (4) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel submit that as per the list of shareholders annexed as 'Exhibit C' to the Company Scheme Application No. 927 of 2016 and the shareholding pattern as mentioned in the audited balance sheet as on 31.03.2016 annexed as 'Exhibit B1' to the Company Scheme Petition No. 47 of 2017 of the Transferor Company, the Transferee Company holds 51.29% shares of the Transferor Company. Thus, the Transferor Company is a subsidiary of the Transferee Company under section 2(87) of the

Companies Act 2013. It is further submitted that as per the details submitted, Mr. Rustom P Kerawalla holds only 32.35% shares of the Transferor Company.

12 In so far as observations made in paragraph IV (5) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Transferee Company does not have any Class of preference share in its capital structure. It is further submitted that as per clause 3 of the scheme, the Transferee Company has two classes of equity shares i.e. Class A equity shares and Class B equity shares. The Counsel for the Petitioners submit that there is no mention of any class for preference shares in the scheme. Further, the Petitioner Companies undertakes to take necessary approvals for issuance of preference shares from the regulatory authorities to the extent applicable.

13 The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

14 From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

15 Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No 46 and 47 of 2017 filed by the respective Petitioner Companies are made absolute in terms of prayer clause (a) of CSP No 46 and 47 of 2017 of the respective Petitions.

16 Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation 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 issuance of the order by the Registry.

17 The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Director, 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 the order.

- 18 The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Company to pay costs of Rs.25,000/-to the Official Liquidator, High Court, Bombay.
- 19 Costs to be paid within four weeks from the date of receipt of the order.
- 20 All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director National Company Law Tribunal, Mumbai Bench.
- 21 Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-
V. Nallasenapathy, Member
(Technical)

Sd/-
B.S.V Prakash Kumar, Member
(Judicial)