

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSA No. 1085 of 2017

In the matter of the Companies Act, 2013

And

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 of Adityesh Educational
Institute Private Limited ('the Demerged Company') with Eduspark
International Private Limited ('the Resulting Company') and their
respective Shareholders

Adityesh Educational Institute Private Limited, a Company

... First Applicant / Demerged Company

Eduspark International Private Limited, a Company

... Second Applicant / Resulting Company

Order delivered on 11th January 2018

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant (s): Mr Hemant Sethi , i/b Deloitte Haskins & Sells,
LLP

Per: **B.S.V. Prakash Kumar, Member (J)**

ORDER

1. The Counsel for the Applicants states that the present Scheme is an Arrangement of Adityesh Educational Institute Private Limited ('the Demerged Company') with Eduspark International Private Limited ('the Resulting Company') and their respective Shareholders

2. The Counsel for Applicants further submits that both the Demerged Company and Resulting Company are engaged in the business of running pre-primary schools and providing necessary infrastructure to various educational institutions.
3. The rationale for the Scheme is that to allow a focused strategy in operations of Educational services business and Infrastructure business and create enhanced value for shareholders, it is desirable to demerge "Educational services" business and "Infrastructure" business of Demerged Company into Resulting Company. Such segregation will allow concentrated focus by Resulting Company on the Educational services business and Infrastructure business and similarly allow concentrated focus by the Demerged Company on the its residuary business i.e. "Hostel" and "Day care service" business. Further the unbundling of Educational services business and Infrastructure business and consolidation into Resulting Company is expected to unlock value by enabling the business activities to be carried out with greater focus and specialization for sustained growth and to enhance shareholder value for shareholders of both Demerged Company and Resulting Company
4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at Motilal Nagar -1, Srirang Sabde Marg, Off Link Road, Goregaon (W), Mumbai – 400104, Maharashtra, India, on Monday 26th February, 2018 at 9.30 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement of Adityesh Educational Institute Private Limited with Eduspark International Private Limited and their respective Shareholders.

5. That the meeting of the 'A' class and 'B' class Equity Shareholders of the Second Applicant Company be convened and held at Motilal Nagar -1, Srirang Sabde Marg, Off Link Road, Goregaon (W), Mumbai - 400104, Maharashtra, India, on Monday 26th February, 2018 at 10.15 A.M. and 11.00 A.M. respectively for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement of Adityesh Educational Institute Private Limited with Eduspark International Private Limited and their respective Shareholders.
6. That the meeting of the Preference Shareholders of the Second Applicant Company be convened and held at Motilal Nagar -1, Srirang Sabde Marg, Off Link Road, Goregaon (W), Mumbai - 400104, Maharashtra, India, on Monday 26th February, 2018 at 11.45 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement of Adityesh Educational Institute Private Limited with Eduspark International Private Limited and their respective Shareholders.
7. That at least one month before the said Meeting of the Shareholders of the respective Applicant Companies to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of the meeting as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent to each of the Shareholders of the respective Applicant Companies by Courier/ Registered Post/Speed Post/ Hand

Delivery or through Email (to those shareholders whose email addresses are duly registered with their respective Applicant Companies for the purpose of receiving such notices by email), at their last known address as per the records of the respective Applicant Companies.

8. That at least one month before the meeting of the Shareholders of the respective Applicant Companies to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published stating that the copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the respective Applicant Companies, as aforesaid.
9. That the Notice of the Meeting for the Applicant Companies shall be advertised, in two local newspapers viz. 'Free Press Journal' in English language and translation thereof in 'Navshakti' in Marathi language, both circulated in Mumbai, Maharashtra not less than 30 days before the date fixed for the meeting.
10. That Mr. Rustom Pesi Kerawalla, Director of Applicant Companies, failing which Mr. Paresh Bhatelia Director of Applicant Companies, shall be the Chairman of the aforesaid meeting of the Shareholders for the respective Applicant Companies to be held at Motilal Nagar - 1, Srirang Sabde Marg, Off Link Road, Goregaon (W), Mumbai - 400104, Maharashtra, India or any adjournment or adjournments thereof.
11. That Miss Riddhi Shah, Practicing Company Secretary is hereby appointed as Scrutinizer for the meeting of Shareholders of the respective Applicant Companies to be held at Motilal Nagar -1,

Srirang Sabde Marg, Off Link Road, Goregaon (W), Mumbai – 400104, Maharashtra, India or any adjournment or adjournments thereof.

12. That the Chairman of the respective Applicant Companies appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman of the respective Applicant Companies shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
13. That the quorum of the aforesaid meeting of the Shareholders of the respective Applicant Companies shall be as prescribed under Section 103 of the Companies Act, 2013.
14. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the respective Applicant Companies at their respective Registered Offices not later than 48 hours before the aforesaid meeting.
15. That the value and number of the shares of each Shareholder shall be in accordance with the books/register of the respective Applicant Companies or depository records and where the entries in the books/register/depository records are disputed, the Chairman of the Meeting for the respective Applicant Companies shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

16. That the Chairman of the respective Applicant Companies to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and to report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
17. That the Chairman of the meeting of the respective Applicant Companies to report this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the meeting.
18. The Counsel for the Applicants submit that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders, only a meeting of the Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Applicant Companies to issue notice to all its Secured and Unsecured Creditors as required under section 230(3) of the Companies Act 2013 by Courier/Registered Post/Speed Post/Hand Delivery or through Email (to those creditors whose email addresses are duly registered with their respective Applicant Companies for the purpose of receiving such notices by email), at their last known address as per the records of the respective Applicant Companies, with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the respective Applicant Companies.
19. That the Applicant Companies are directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Companies' assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai and (iii) Registrar of Companies, Mumbai with a direction that they may submit their representations,

if any, within a period of thirty days from the date of receipt of such notice, to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

20. That the Applicant Companies to file affidavit of service in the Registry proving dispatch of notices upon shareholders, creditors, notices to regulatory authorities as stated in clause 7, 18 and 19 above and publication of notice in newspapers.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)

11.1.2018