

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

Argument heard on 31.05.2017
Order passed on 02.06.2017

TP (HC)/24&25/CAA/2017

[Connected with CP Nos. 253 & 253 of 2016 and CA No. 345 & 346 of 2016]

Under Sections 391 to 394 of the Companies Act, 1956 and the Corresponding
Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation of
M/s. KKK Management and Edu Services Pvt. Ltd.
(Transferor Company)

With

M/s. K3 Management and Edu Services Pvt. Ltd.
(Transferee Company)

Represented by: Counsel R. Vidhya Shankar and R. Ashokkumar

CORAM

ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ

MEMBERS (JUDICIAL)

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL): ORAL

1. Under consideration are two Company Petitions which have been transferred from the Hon'ble High Court of Madras to this Tribunal and renumbered as TP(HC)/CAA/24&25/2017. By these Company Petitions, M/s. KKK Management and Edu Services Pvt. Ltd. (hereinafter referred to as '**Transferor Company**') and M/s. K3 Management and Edu Services Pvt. Ltd. (for brevity, '**Transferee Company**') seek the sanction to the scheme of amalgamation (in short, '**Scheme**') as annexed with the petitions by virtue of which the Transferor Company having registered office at Old No. 33, New No. 81, Car Street, Anthiyur, Bhavani- 638501 is proposed to be amalgamated with M/s. K3 Management and Edu Services Pvt. Ltd. (for brevity, '**Transferee Company**') as a going concern. We take both the company petitions together for disposal.

2. The Authorized and issued, subscribed & paid up share capital of the Transferor Company and the Transferee Company are as under:

Types of Share Capital	Company	No. of Share Capital	Value in Rupees
Authorized Capital	Transferor Company	10,00,000 equity shares of Rs. 10/- each	1,00,00,000/-
	Transferee Company	10,000 Equity Shares of Rs. 10/- each	1,00,000/-
Issued, Subscribed and Paid up share capital	Transferor Company	4,00,650 equity shares of Rs. 10/- each	40,06,500/-
	Transferee Company	10,000 Equity Shares of Rs. 10/- each	1,00,000/-

3. At the outset, it is necessary to know the details of the scheme which needs determination. Both the Transferor Company and the Transferee Company are Private Unlisted Companies. The Hon'ble Madras High Court vide its order dated 30.03.2016 in CA Nos. 345 and 346 of 2016 dispensed with the meeting of the equity shareholders of both the companies.
4. Learned Counsel for the Petitioner Companies submitted that the Transferor Company is a subsidiary of the Transferee Company and main objects of both the companies are common which are to establish, manage, control, takeover and run in any part of India or abroad all types of educational institutions to impart all types of education in academic, cultural, musical, artistic, literary, scientific, technical, vocational and commercial subjects and craft of any description. The rational of the said Scheme is that the amalgamation will facilitate consolidation of the businesses of both the companies, be beneficial due to the administrative and operational costs that will considerably be reduced; also it will strengthen, consolidate and stabilize the business of these companies and will achieve rationalization of management structures and economies of scale for further and stable growth, expansion and

diversification and for better and more profitable utilization of the combined resources. The learned counsel further submits that no investigation proceedings are pending against the Petitioner Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

5. Learned Counsel for the Petitioner Companies further submitted that the Transferor Company has no secured creditor whereas the Transferee Company has only secured creditor, who has given NOC. Also, the petitioner companies have filed the consent letters obtained from the unsecured creditors of both the Companies alongwith the Statutory Auditors' Certificates for verification ^{and} record.
6. To dispose of these petitions as per the provisions of the Companies Act, 2013, the notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objection^s to the scheme under reference.
7. The Regional Director, Southern Region (In short, 'RD') in its report affidavit dated 04.11.2016 submitted that the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company, therefore, RD decided not to make any objection to the Scheme and submitted that the petitions may be disposed of on merits.
8. The Official Liquidator (In short, 'OL') in its report dated 21st April, 2017 submitted that M/s. TR. Visvanathan & Associates, Chartered Accountants (in short, 'Auditor') appointed by the Hon'ble Madras High Court scrutinized the books and accounts of the Transferor Company. The Auditor observed that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principle, has obtained NOC from one secured

Creditor and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest and submitted that the petitions may be decided appropriately. Also, as per Clause 13.1 of Part- III of the said Scheme, the Transferee Company shall, without any further act or deed, issue and allot to the equity shareholders in the Transferor Company whose names are recorded in the Register of members on the Record Date to be fixed by the Board of Directors of the Transferee Company, equity shares ranking *pari passu* in all respects with the existing Equity shareholders of the Transferee Company in the ratio of 1:1. However, no shares shall be issued as aforesaid to the Transferee Company in respect of its shareholding in the Transferor Company since the Transferee Company cannot issue share to itself.

9. The OL further submits that M/s. K.S.G Subramanyam & Co., the valuers appointed by the management of both the companies to carry out the relative valuation of equity shares has recommended the exchange ratio of 1:1 on the basis of the assets at book value in the event of merger. Further, the Auditor has not made any observations as regard to the share exchange ratio. Therefore, the OL submits that the petitions be decided on its merit.
10. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of amalgamation will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st January, 2016.

11. We do not feel that any modification is required in the said Scheme of amalgamation as the same appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances seems to have been made. Taking into consideration all the above, the Company Petitions are allowed and the scheme of amalgamation annexed with the petitions is hereby sanctioned which shall be binding on the Transferor Company, the Transferee Company and all creditors.
12. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
13. The Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
14. The Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
15. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14th December, 2016.
16. Accordingly, the Company Petitions stands disposed of.

**(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)**

**(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)**