

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

CA (CAA) No.175/230/HDB/2017
U/s. 230 to 232 of the Companies Act, 2013

In the matter of:

Hyderabad Educational Institutions Private Limited
Regd Office: C/o. Indus International School,
Bulkapur, Near Kondakal Village,
Shankarpally Mandal, Ranga Reddy District,
Telangana-501203. ...Applicant/ Demerged Company

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

AND

Indus International School Private Limited
Office: Plot No.883 & 884
Road No. 45, Jubilee Hills,
Hyderabad-500034

... Resultant Company

Date of Order: 21.11.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Parties/Counsels Present:

For the Applicant : Mr. M. Prahastha, Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Company Application bearing CA (CAA) No. 175/230/HDB/2017 is filed by Hyderabad Educational Institutions Private Limited, U/s. 230 to 232 of the Companies Act, 2013, by inter-alia seeking to sanction Scheme of Arrangement in question so as to be binding on all the Equity Shareholders / Members, and employees of the Applicant / Demerged Company, etc.



2. Brief facts, leading to filing of the present Application, are as follows:

A. Hyderabad Educational Institutions Private Limited (Applicant /Demerged Company)

- a. Hyderabad Educational Institutions Private Limited ('Applicant'/Demerged Company') was incorporated under the Companies Act, 1956 on 29th day of November, 2006 under the name 'Karnali Agro-Farms Private Limited. Subsequently, the name of the company was changed to 'Hyderabad Educational Institutions Private Limited on 13th September 2007 under the provisions Companies Act, 1956. Its registered office is situated at C/o Indus International School, Bulkapur, Near Kondakal Village, ShankarpallyMandal, Ranga Reddy District, Telangana - 501203.
- b. The main objects of the Demerged Company which are set out in the Memorandum of Association are to establish, promote, subsidies, encourage, provide, maintain, organise, undertake, manage, build, construct, equip, develop, recondition, operate, conduct and to run in India or abroad national or international schools, college, boarding house, ashrams, gurukuls, teaching classes etc; to provide facilities for recreation, entertainment, outdoor or indoor games, athletic games sports tournaments like carrom, chess, cricket, snookers, billiards, gym, swimming pool, golf stadiums, libraries, hostels, boarding house free or otherwise to the promotion of the student community, women and child welfare development programme, to encourage fine arts, cultural, music, dance drama etc.



- c. The authorized, issued, subscribed and paid-up share capital of the Applicant Company as on the date of this application is as under:

| Particulars | Amount in Rs. |
|--|----------------|
| Authorised Share Capital | |
| 54, 50,000 equity shares, each having a face value of Rs. 100/-. | 54,50,00,000/- |
| Issued, Subscribed and Paid up Share Capital | |
| 54, 19,776 equity shares, each having a face value of Rs. 100/-. | 54,19,77,600/- |

(B) **Indus International School Private Limited**
('Resultant Company')



- (a) Indus International School Private Limited ('Resultant Company') was incorporated under the Companies Act, 2013 on 30th March, 2017. Its registered office is situated at Plot Nos. 883 & 884, Road No. 45, Jubilee Hills, Hyderabad - 500034.
- (b) The main objects of the Resulting Company which are set out in the Memorandum of Association are to establish, promote, subsidize, encourage, provide, maintain, organize, undertake, build, construct, equip, develop, recondition, operate, conduct and to run in India and abroad national or international schools; to provide facilities for recreation, outdoor or indoor games, athletic games, libraries, hostels, boarding houses free or otherwise to the promotion of the student community, women and child welfare development programme,

engaged in the business of providing educational services from class/grade reception to class/grade 12 as per curriculum based on IGCSE, IB programmes etc.

- (c) The authorized, issued, subscribed and paid-up share capital of the Resultant Company as on the date of this Company Application is as under:

| Particulars | Amount in Rs. |
|--|----------------|
| Authorised share capital | 40,00,00,000/- |
| 4,00,00,000 equity shares, having a face value of Rs. 10/- | |
| Issued, subscribed and paid-up Share Capital | 37,02,12,580/- |
| 3,70,21,258 equity shares, each having a face value of Rs.10/- | |

3. RATIONALE FOR THE PROPOSED SCHME OF DEMERGER:

The scheme of Arrangement will have the following benefits.

- This Scheme will enable differentiated management approach and focus in relation to the Demerged Undertaking, to tackle/ address the same efficiently/ effectively.
- More focused management and greater visibility on the performance of individual businesses;
- This arrangement will facilitate resource mobilisation and will achieve greater efficiency in cash management and unfettered access to large cash flows generated by the combined school business which can be deployed more efficiently to fund larger expansion with a stronger platform and strengthen brand visibility and greater integration/ greater financial strength and flexibility leading to stronger negotiation power in the market and strengthened leadership in the school business and greater revenue inflow would benefit all the creditors of the Demerged Company and the Resultant Company, pursuant to the Scheme.



- (iv) These benefits will help in enhancing the shareholder value of both the Demerged Company and the Resultant Company and will have beneficial results to the employees, stakeholders and all concerned parties of both the Demerged Company and the Resultant Company.
4. Since the proposed demerger is expected to be beneficial to Demerged Company and Resulting Company and their respective shareholders, creditors and all other stakeholders and enable Demerged Company and Resulting Company to achieve and fulfil their objectives more efficiently and economically, the Board of Directors of the Demerged Company / Resulting Company at its meetings held on 30.06.2017 approved the Scheme of Arrangement between both the Companies.
5. The following are brief terms of Scheme of Arrangement:
- a) **TRANSFER AND VESTING OF CAPITAL BASED BUSINESS OF THE DEMERGED COMPANY INTO THE RESULTING COMPANY**
- Upon the Scheme becoming effective, the whole of the Undertaking and properties, assets both movable and immovable, tangible and intangible, investments, rights, title and interest, licenses, permits, quotas, advance tax payments etc, pursuant to the provisions contained in the Section 230 to 232 and all other applicable provisions, if any of the Act and without any further act, deed, matter or thing, stand transferred to and vested in and / or be deemed to be transferred to and vested in the Resulting Company on a going concern basis so as to vest in the Resulting Company all rights, title and interest pertaining to such Properties.
- (b) **Legal proceedings**
- All legal proceedings of whatsoever nature by or against the Demerged Company pending and / or arising before the Effective Date and relating to the



Capital based business, shall not abate or be discontinued or be in any way prejudicially affected by reason of the Scheme or by anything continued in this Scheme but shall be continued and enforced by or against the Demerged Company.

After the Effective Date, if any proceedings are taken against the Demerged Company in respect of the matters relating to Capital based business as referred above, it shall defend the same at the cost of the Resulting Company, and the Resulting Company shall reimburse and indemnify the Demerged Company against all liabilities and obligations incurred by the Demerged Company in respect thereof.

c) **Demerged Company Staff, Workmen and Employees**

Upon the Scheme becoming effective, all employees of the Demerged Company engaged in or in relation to the Capital based business of the Demerged Company and who are in such employment as on the Effective Date shall become the employees of the Resulting Company and, subject to the provisions of this Scheme, on terms and conditions not less favourable than those on which they are engaged by the Demerged Company and without any interruption of or break in service as a result of the Capital based business and shall not have been interrupted by reason of such transfer as if such transfer is effected under Section 25FF of the Industrial Disputes Act, 1947, etc.

d) **Remaining Undertaking**

Upon the Scheme becoming effective, the demerged Company shall continue to conduct and operate the Junior School and Ancillary Business, in the manner agreed to between the Demerged Company and The Resultant Company and their respective shareholders. All legal, taxation or other proceedings whether civil or criminal by or against the Demerged Company



which do not relate exclusively to the Demerged undertaking, whether instituted prior to or after the Appointed Date, shall be continued and enforced by or against the Demerged Company after the Effective Date.

e) **Saving of concluded transactions**

The transfer of properties and liabilities above and the continuance of proceedings by or against the Resulting Company above shall not affect any transaction or proceeding already concluded in the Demerged Company before the Appointed Date and the Resulting Company accepts and adopts all acts, deeds and things done and executed by the Demerged Company, in regard and any contract or proceedings relating to the Assets and Liabilities of the Demerged Company in respect of its Junior School and Ancillary Business, and the Resultant Company shall not be liable for any acts, deeds, matters and things in respect thereof.

f) **Consideration**

Upon the Scheme becoming effective and in consideration of transfer and vesting of the undertaking of the Demerged Company into Resulting Company, the Resulting Company shall, without any further application or deed, issue and allot, at par, to the shareholders of the Demerged Company whose name appears in the Register of Members of the Demerged Company as on the Record Date or if applicable, to their successors-in-title, fully paid up Equity Shares of the Resultant Company in the following ratio:

“For every 100 equity shares, each having a face value of Rs. 100/- in the Demerged Company, 323 fully paid up equity shares, each having a face value of Rs. 10/- of the Resultant Company”.



g) **Approvals**

The Scheme although come into operation from the Appointed Date, it shall become effective only on the day the approval of the Scheme by the requisite majority of the respective shareholders of the Demerged Company and Resultant Company as may be. The Scheme shall become operative from the Effective Date however, it shall be effective from the Appointed Date.

h) **Accounting treatment**

Pursuant to the Scheme coming into effect on the effective Date with effect from the Appointed Date, the Resulting Company shall provide for the following accounting treatment in its books of accounts;

The Resulting Company shall record the assets and liabilities of the Demerged Undertakings, transferred to and vested in it, pursuant to this Scheme, at the same value appearing in the books of the demerged company at the close of business of the day immediately preceding the Appointed Date.

The difference arising between the values of the net assets (excluding the transactions between the Demerged Company and the Resultant Company, including, but not limited to, trade receivables, short term borrowings and trade payables relating or pertaining to the Demerged Undertaking) transferred pursuant to this Scheme and the aggregate of (i) paid up value of shares issued by the Resultant Company and (ii) the securities premium recognized in the books of the Resultant Company, pursuant to share issue, is a surplus, the same shall be credited to Capital Reserves and if the above is a deficit, the same shall be debited to goodwill account in the books of the Resultant Company.



i) **Modifications/amendments to the Scheme**

Subject to approval of the Tribunal, the Resulting Company and the Demerged Company may, with the approval of their respective Boards, consent from time to time, on behalf of all persons concerned, to any modifications/amendments or additions/deletions to the Scheme which may otherwise be considered necessary, desirable or appropriate by the said Boards to resolve all doubts or difficulties that may arise for carrying out this Scheme and to do and execute all acts, deeds, matters, and things necessary for bringing this Scheme into effect or agree to any terms and/ or conditions or limitations that the Tribunal or any other authorities under law may deem fit to approve of, to direct and or impose. The aforesaid powers of the Resulting Company and the Demerged Company to give effect to the modification/amendments to the Scheme may be exercised by their respective Boards or any person authorized in that behalf by the concerned Board, subject to approval of the Tribunal or any other authorities under the applicable laws.

j) **Scheme conditional on approvals / sanctions**

This Scheme is conditional on being approved by requisite majority by the members and creditors of the Demerged and Resulting Company and approval of permission of Central Government or any other statutory or regulatory authority etc.

6. There are three (03) shareholders in the Applicant Company/Demerged Company and have given their consent to the Scheme of Arrangement by way of affidavits. Further, there are 07 (Ninety Two) Secured Creditors amounting to Rs. 56,65,06,939/- (Rupees Fifty Six Crores Sixty Five Lakhs Six Thousand Nine Hundred and Thirty Nine Only), 92 (Ninety Two) Unsecured Creditors amounting to Rs. 48,60,66,164/- (Rupees Forty Eight Crores Sixty Lakhs Sixty Six Thousand One



Hundred Sixty Four Only) in the Demerged Company and all of them have given their consent to the proposed Scheme by means of affidavits.

7. Heard Mr. M. Prahastha, learned counsel for the applicant, and have carefully perused all materials on record and the provisions of the Companies Act, 2013, with relevant Rules.
8. We have considered all the pleadings along with material papers filed in their support. It is further found that all requisite conditions required for dispensation of meetings of shareholders, secured and unsecured creditors have been met. However, since the Applicant Company is having 07 (Ninety Two) Secured Creditors amounting to Rs. 56,65,06,939/- and 92 (Ninety Two) Unsecured Creditors amounting to Rs. 48,60,66,164/- it would be appropriate to order conducting of meeting of those Secured and Unsecured Creditors by issuing proper individual / paper publication, as per extant provisions of Company Act, 2013 and Rule 3 of Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.
9. We have also perused the objects of Scheme of Demerger in question and the affidavits filed by Applicants and its prayer seeking to direct that conducting meeting of various shareholders. Applicant Company submitted that the Scheme is initiated for overall benefits of its Shareholders, Creditors and all interested parties. In the interest of ease of doing business, it would be just, proper and expedient to accede the prayer of applicants. Since the issue involved here is only to see the acceptance or otherwise of the scheme of Arrangement in question, by the concerned parties, we are not going into merits of the case. And merits of case for acceptance of scheme will be looked into at a time, when a case for acceptance of Scheme is filed and comes up for admission and hearing, after initial dispensation or conducting of meeting(s) is over.



10. In the result, Company Application No.175/230/HDB/2017 is disposed of with following orders/ directions:-

- (a) Dispensed with conducting the meeting of Shareholders of the Applicant Company (Demerged Company).
- (b) Hereby appointed Shri V. Govindarajulu, Advocate #R/o H.No.11-4-322/20/28, Srinivasa Nagar, Secunderabad (Mob.9949952681) as Chairperson to convene and hold the meeting of the Secured Creditors of the Applicant Company for the purpose of considering the proposed Scheme.
- (c) Hereby appointed Shri V.Govindarajulu, Advocate #R/o H.No.11-4-322/20/28, Srinivasa Nagar, Secunderabad (Mob.9949952681) as Chairperson to convene and hold the meeting of the Un-secured Creditors of the Applicant Company for the purpose of considering the proposed Scheme.
- (d) Hereby appointed Mrs. V. Mallika Devi, Advocate #R/o H.No.1-2-343/1/B, Domalguda, Hyderabad - 29 (040-66734413) as Scrutinizer for the meeting of Secured Creditors of the Applicant Company.
- (e) Hereby appointed Mrs.T. Hemalatha, Advocate, # R/o H.No.49-77, Cherukupally, Chintal, Hyderabad-54 (Mob.9177114644) as Scrutinizer for the meeting of Unsecured Creditors of the Applicant Company.
- (f) Venue of the meeting for Secured Creditors to be conducted is at the Registered Office # C/o Indus International School, Bulkapur, Near Kondakal Village, ShankarpallyMandal, Ranga Reddy District, Telangana -501203, at 11.00 AM on 10.01.2018.
- (g) Venue of the meeting for Unsecured Creditors to be conducted is at the Registered Office # C/o Indus International School, Bulkapur, Near Kondakal Village, ShankarpallyMandal, Ranga Reddy District, Telangana -501203, at 14.00 hrs on 10.01.2018.



- (h) Directed to issue notice to the Secured and unsecured Creditors of the Applicant Company in accordance with the provision of Section 230 (3) of the Companies Act, 2013 and also cause publication of the notice in newspapers calling the meetings of Secured and Unsecured Creditors of the Applicant Company in Business Standard and Nava Telangana. And also to all statutory Authorities including Income Tax Department.
- (i) Directed the Company to ensure substantial representation during the above meetings, so as to get minimum 75% of total secured / un-secured creditors consent for the proposed scheme so as to consider it later for acceptance of Scheme by the Tribunal. Follow prescribed procedure in accordance with law and Articles of Association of the Company, for conducting meeting and mode of voting and other procedural aspects.
- (j) Fee fixed for the Chairperson for each meeting is Rs.60, 000/- (Rupees sixty thousand only), which is agreed to be paid by the Learned Counsel for the Company.
- (k) Fee fixed for each Scrutinizer is Rs. 30,000/- (Rupees thousand) which is to be paid individually, which is agreed upon by the Learned Counsel for the Company.
- (l) The Chairperson is directed to submit his report within two weeks of conducting of the meeting.



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OF THE ORIGINAL**

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

for Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *CA(CAA) No. 175/230/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *21.11.2017*
प्रति तैयार किया गया तारीख
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