

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

**CP (CAA) No. 86/Chd/Hry/2022
(Second Motion)**

**Under Sections 230 to 232 of the
Companies Act, 2013**

**read with Companies (Compromises,
Arrangements and Amalgamations) Rules,
2016**

IN THE MATTER OF SCHEME OF ARRANGEMENT OF:

NIIT Limited

with its registered office at
Plot No. 85, Sector 32,
Institutional Area,
Gurugram-122001
PAN: AAACN0085D
CIN: L74899HR1981PLC107123

...Petitioner Company No. 1/Transferor Company

And.

NIIT Learning Systems Limited

with its registered office at
Plot No. 85, Sector 32,
Institutional Area,
Gurugram-122001
PAN: AACCM9500C
CIN: U72200HR2001PLC099478

...Petitioner Company No. 2/Transferee Company

Order delivered on: 19.05.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Petitioner Company: Mr. Atul V Sood, Advocate

For Income Tax Department : 1. Mr. Yogesh Putney, Senior Standing Counsel
2. Mr. Yatin Chadha, Advocate

PER: SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

JUDGEMENT

1. This is a joint second motion company petition filed by the Petitioner Companies *namely; NIIT Limited* (Amalgamated Company / Petitioner Company No. 1), **NIIT Learning Systems Limited** (Amalgamating Company No. 1 / Petitioner Company No. 2), Under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 (for brevity, the '**Act**') read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity '**Rules**') in relation to the Scheme of Arrangement amongst the Petitioner Companies.
2. The Petitioner Companies have prayed for sanctioning of the Scheme of Arrangement amongst the respective companies. The said Scheme of Arrangement is attached as Annexure– A1 of the petition.
3. The First Motion Application seeking directions for dispensing with the requirement for convening the meetings of Equity Shareholders of Applicant Company No. 2/Transferee Company and further prayed to convene the meeting of Equity Shareholders, Secured Creditors of the Applicant Company No. 1 and Unsecured Creditors of Applicant Company No. 1 and 2 was filed before the Tribunal vide Company Application No. CA (CAA) No. 37/Chd/Hry/2022 and based on such application necessary directions were issued on 29.08.2022. In the order dated 29.08.2022, the meetings of Equity Shareholders of Applicant Company No. 2/Transferee Company were dispensed with for the reasons mentioned in the aforesaid order. It was further directed to convene the meeting of Equity Shareholders, Secured Creditors of the Applicant Company No. 1 and Unsecured Creditors of both the Applicant Companies.

4. In compliance of the directions issued by this Tribunal, the Chairperson, Alternate Chairperson and Scrutinizer were also appointed and they have filed their reports which are as under:-

Sr. No	Meeting of	Chairpersons /Alternate Chairperson/ Scrutinizer	Chairperson's Report		Date of meeting	Date of Scrutinizer's report
			Diary No. of Report	Date of Report		
1.	Equity Shareholder of Applicant Company No. 1	Mr. Anand Chibbar, Senior Advocate Chairperson Mr. Vaibhav Sharma, Advocate Alternate Chairperson Mr. Pawan Kumar Goyal, Practising Company Secretary, Scrutinizer	Diary No.01394/5 Dated 17.11..2022	17.11.2022	15.11.2022	16.11.2022
2.	Secured Creditor of Applicant Company No. 1		Diary No.01394/4 Dated 17.11.2022	17.11.2022	15.11.2022	16.11.2022
3.	Unsecured Creditors of Applicant Company No. 1		Diary No.01394/7 dated 17.11.2022	17.11.2022	15.11.2022	16.11.2022
4.	Unsecured Creditors of Applicant Company No. 2		Diary No. 01394/6 dated 17.11.2022	17.11.2022	15.11.2022	16.11.2022

As per Chairperson's Reports, the Scheme of Arrangement was approved unanimously by the Equity Shareholders, Secured Creditors of the Applicant Company No. 1 and Unsecured Creditors of Applicant Company No. 1 and 2 present and voting.

5. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme of Arrangement had been discussed in detail in the order dated 29.08.2022.

6. In the second motion proceedings, certain directions were issued by this Tribunal by order dated 15.12.2022 and the same were complied with by the Petitioner Companies. The Petitioner Company has filed affidavits of service by Diary No. 02984/1

and 02984/2 both dated 27.01.2023. The notice of hearing was published in newspapers *namely*, “Financial Express” (English, All India Edition) and “Jansatta” (Hindi, All India Edition) on 10.01.2023. The original copies of the newspapers are attached as Annexure- A to the aforesaid respective affidavits. It is also stated in the aforesaid affidavits that copies of notices were served upon the (1) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs; New Delhi (2) Concerned Registrar of Companies (3) Jurisdictional Income Tax Authorities through the Nodal officer-Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh (d) Bombay Stock Exchange (e) National Stock Exchange (f) Reserve Bank of India (g) Securities and Exchange Board of India (SEBI) by all Petitioner Companies by way of speed post. Original speed post receipts along with tracking report are attached as Annexure – B and C respective of the aforesaid affidavits.

7. It is deposed by authorized signatories of the Petitioner Companies that as on date, the petitioner companies have not received any objection from the public pursuant to the publication of notice of hearing in the newspapers. The aforesaid affidavits have been filed vide Diary No. 02984/1 and 02984/2 both dated 27.01.2023.

8. In response to the abovementioned notices, the statutory authorities have furnished their replies.

8.1 Registrar of Companies (RoC)/Regional Director (RD)

8.1.1. The Registrar of Companies (RoC) has filed its report along with the report of the Regional Director (RD), by Diary No. 02984/4 dated 23.02.2023. Para 10 of the Regional Director’s report sets out observations of the Regional of Companies (ROC) dated 16.02.2023 which reads as :-

“a. The shares of the Transferor Company are listed on NSE and BSE. Hence, the company may be asked to provide a copy of prior approval from SEBI for the said scheme.

b. As per the audited financial statement for F. Y. ending 31.03.2022 of the Transferor company and Transferee Company, it is seen from the auditors report that the company has not paid certain statutory dues on account of disputes.

c. As per the audited Financial Statement for F.Y. ending 31.03.2022 of the Transferor Company and Transferee company, it is seen that the companies have made diminution provisions against its assets (mentioned at page no.388 and 389 of the Petition) and (mentioned at page no. 645 and 646 of the Petition) respectively which is not clear. Clarification may be sought from the company.

d. Since the Transferor is a listed company and the Transferee is an unlisted company, the compliance of section 232(3)(h) of the Companies Act has to be ensured.”

8.1.2. In Para 7 of the Regional Director’s Report, it is pointed out that Share Entitlement Ratio dated 21.09.2022 provided by Independent Registered Valuer Ms. Drushti R. Desai, Bansi S Mehta & Co, Registered Valuer provided that upon the implementation of the scheme, all shareholders of NIIT Ltd, a listed company would become shareholder of NIIT Learning Systems Ltd resulting in mirror image shareholding of NIIT and NLSL. There is no change in the shareholding and hence the valuation has not been carried out in accordance with the Generally Accepted Principles of Valuation.

8.1.3. In response to the report of the Registrar of Companies, the Petitioner Companies have filed its reply dated 20.02.2023 stating that the observation letters have been issued by NSE and BSE with regard to the present Scheme of Arrangement which are attached at Page no 19-24 of RD’s report. It is further clarified that the auditors have disclosed certain disputed statutory dues and after the approval of the Scheme, both the companies shall continue to function and the said liabilities shall have no effect on the proposed Scheme of Arrangement. It is also clarified that the Petitioner Companies have disclosed the accounting policy in the notes to

account the Exceptional Item for the “ Provision for diminution in the value of non-current investments” as per the requirements of the Accounting Standards read with Section 129 and 133 of the Companies Act, 2013. It is further undertaken by the petitioner companies to make due compliance of the requirement of Section 232(3)(h) of the Companies Act, 2013 as applicable.

8.1.4. The matter was initially reserved on 02.03.2023 and it was relisted on 18.05.2023 to seek clarification on account of the observation made by RD in Para 7 of its report. The petitioner companies have filed clarification Notes by Dairy No. 02984/6 dated 18.05.2023 stating that post-merger, the shareholding of Petitioner Company No. 2 shall be a mirror image of the shareholding of Petitioner Company No. 1. As per Para 4 (d) of SEBI Master Circular SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 dated 23.11.2021, no valuation exercise is required in the present case and there is no question of applying any valuation standards. We further note the fact that the Transferee Company is a wholly-owned subsidiary of the Transferor Company.

8.1.5. In view of the above discussion and clarification, no adverse conclusion is drawn on the basis of the report of the Regional Director.

8.2 Income Tax Department

8.2.1 The Income Tax Department filed its report by Dairy No. 02984/1 dated 13.02.2023 in respect of the Petitioner Companies stating that an assessment proceeding under Section 147 of the Income Tax Act for the Assessment Year 2018-19 in respect of the Petitioner Company No. 1 is pending, it is further stated that Income Tax Department has no objections with regard to the Scheme of Arrangement.

8.2.2 The Petitioner Company No. 1 has filed a reply by Diary No. 02984/5 dated 27.02.2023 stating that subject to the exercise of available Appellate remedies, the Transferor Company shall make payment of liabilities that may arise upon completion of pending assessment proceedings under Section 147 of the Income Tax, 1961 for the Assessment Year 2018-19, the Transferor Company undertakes to pay all the liabilities.

8.2.3 Thus, the Income Tax Department in its report has made no adverse observations against the proposed Scheme of Arrangement.

9. The petitioner companies have also served notices to Bombay Stock Exchange Limited (B.S.E.), National Stock Exchange of India Limited (NSE), Securities and Exchange Board of India (SEBI) & Reserve Bank of India (RBI) and Copies of notices issued are attached as Annexure- A-2 of Diary No. 02984/1 and 02984/2 both dated 27.01.2023. However, there is no reply from the concerned authorities till now. Considering the lapse of time in the matter, it is presumed that there is no objection to the proposed Scheme of Arrangement. It is also noted that the Petitioner Companies have attached an observations letter dated 30.05.2022 issued by the BSE and a letter dated 31.05.2022 issued by the NSE wherein no adverse remarks have been given by BSE and NSE.

10. The certificate of the statutory auditors with respect to the Scheme of Arrangement amongst the Petitioner Companies to the effect that the accounting treatment proposed in the Scheme of Arrangement is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles are filed as Annexures A19 and A-20 of the petition.

11. We have heard the learned counsel for Petitioner Companies and perused the record carefully.

12. In the context of the above discussion, the Scheme of Arrangement contemplated amongst the Petitioner Companies appears to be prima facie in compliance with all the requirements stipulated under the relevant sections of the Companies Act, 2013. As the observations from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the Scheme of Arrangement appended as **Annexure “A-1”** with the petition.

13. Notwithstanding the submission that no investigation is pending against the Petitioner Companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

14. While approving the Scheme of Arrangement as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

i. That all the property, rights and powers of the CLG Business Undertaking of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the CLG Business Undertaking of the Transferor Company but subject nevertheless to all charges now affecting the same;

ii. That all the liabilities and duties of the CLG Business Undertaking of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;

iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the CLG Business Undertaking of the Transferor Company are entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

iv. All contracts of the CLG Business Undertaking of the Transferor Company which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of CLG Business Undertaking, the Transferee Company had been a party or beneficiary or obliged thereto;

v. Upon the Scheme becoming effective, all the employees of the CLG Business Undertaking of the Transferor Company, in service on the Effective Date, shall be transferred to and shall become the employees of the Transferee Company as provided in the Scheme of Arrangement;

- vi. Upon the Scheme becoming effective, all proceedings now pending by or against the CLG Business Undertaking of the Transferor Company be continued by or against the Transferee Company;
 - vii. That the Transferee Company shall, without further application, allot to the existing members of the Transferor Company, shares of the Transferee Company to which they are entitled under the said Scheme;
 - viii. The Appointed Date for the shall be 01.04.2022, as provided in the Scheme;
 - ix. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961;
 - x. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration;
 - xi. That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary; and
15. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties by the petitioners within three weeks from the date of receiving a certified copy of this order.
16. All the concerned Regulatory Authorities are to act on a copy of this order annexed with the Scheme of Arrangement duly authenticated by the Registrar of this Bench.

17. The Company Petition CP (CAA) No. 86/Chd/Hry/2022 is allowed and disposed of accordingly.

SD/-
(Subrata Kumar Dash)
Member (Technical)

May, 19 2023
SA/PKA

SD/-
(Harnam Singh Thakur)
Member (Judicial)