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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 247/2011

IN THE MATTER OF NEWRIVER SOFTWARE
SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Atul Chitale, Senior Advocate with
Ms. Nishtha Kumar, Advocate for
Petitioner Company.

Mr. Avneesh Garg, Advocate for
applicant in C.A. No. 2155/2011.

Mr. Raisuddin, Deputy Official
Liquidator for Official Liquidator.
Mr. K.S. Pradhan, Deputy Registrar of
Companies for Regional Director,
Northern Region.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

31.10.2011

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Co. Appl.2155/2011

Today in Court, Mr. Avnieesh Garg, learned counsel for the applicant
has been handed over a Banker's Cheque for a sum of ₹ 1,67,000/- by Mr.
Atul Chitale, learned senior counsel for the petitioner-company. A

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Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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photocopy of the said cheque is taken on record. However, Mr. Chitale clarifies that the said payment has been made without prejudice to the rights and contentions of the petitioner-company and same should not be construed as a precedent.

In view of the handing over of aforesaid cheque, Mr. Garg does not wish to press this application.

Accordingly, the application stands disposed of.

Co. Pet. 247/2011

1. This second motion petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 (in short 'Act') seeking sanction and approval of the Scheme of Amalgamation (in short 'Scheme') between NEWRIVER SOFTWARE SERVICES PRIVATE LIMITED (hereinafter referred to as 'Transferor Company') and BROADRIDGE FINANCIAL SOLUTIONS (INDIA) PRIVATE LIMITED (hereinafter referred to as 'Transferee Company').

2. The Registered office of the Transferor Company is situated at New Delhi, within the jurisdiction of this Court. The Registered Office of the Transferee Company is situated at Hyderabad, within the jurisdiction of the Andhra Pradesh High Court.

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3. Details with regard to the date of incorporation of the Transferor and Transferee Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2010 of the Transferor and Transferee Companies have also been enclosed with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme have also been placed on record.

6. It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Transferor and Transferee Companies.

7. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Company shall issue shares in the following manner:

- 5,00,000 (Five lacs) Equity Shares of Rs. 10/- each, credited as fully paid-up of the Transferee Company for the entire Equity Share Capital held in the Transferor Company.

8. The Transferor Company had earlier filed Company Application (M) No.94 of 2011 seeking directions of this Court for dispensation of meetings. Vide order dated 20th May, 2011, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders of the Transferor Company. The Transferor Company did not have any Secured and Un-Secured Creditors.

9. The Transferor Company has thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 01st June, 2011, notice in the Petition was directed to be issued to the Regional Director (Northern Region). Citations were also directed to be published in 'The Indian Express' (English Edition) and 'Jansatta' (Hindi Edition). Affidavit of Service and Publication has been filed by the Transferor Company showing compliance regarding service of the Petition on the Regional Director (Northern Region) and the Official Liquidator and also regarding publications of citations in the aforesaid newspapers on 28th September,

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2011. Copies of the newspapers' cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

10. Pursuant to the notice issued, the Official Liquidator sought information from the Petitioner Company. Based on the information received, the Official Liquidator has filed his report dated 19th September, 2011, wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

11. In response to the notice issued in the Petition, Mr. B. K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 12th September, 2011. Relying on Clause 9.1 of the Scheme, he has stated that all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court.

12. No objection has been received to the Scheme from any other party. Today in Court, Ms. Nishtha Kumar, learned counsel for Transferor Company has filed an affidavit dated 31st October, 2011, confirming that neither the Petitioner Company nor she has received any objection pursuant to citations published in the newspapers. The said affidavit is taken on record.

13. Even today, during the course of hearing, Mr. Raisuddin, Deputy Official Liquidator and Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region state that they have no objection to the present Scheme being sanctioned.

14. In view of the approval accorded by the Shareholders of the Petitioner Company; affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner Company will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty days from the

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date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, all the properties, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

15. Since the jurisdiction of the Transferee Company is before the High Court of Andhra Pradesh, the Transferee Company has already obtained approval of the High Court of Andhra Pradesh in Company Petition No. 116 of 2011 for sanctioning of the Scheme on behalf of the Transferee Company. A copy of the said order is also taken on record

16. Mr. Atul Chitale, learned senior counsel states that the Petitioner Company would voluntarily deposit a sum of ₹ 1,00,000/- with the Common

Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.

17. The Petition is disposed of in above terms.

Order dasti.


MANMOHAN, J

OCTOBER 31, 2011

rn/js

- Fresh on 22/3/11 For modification

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 247/2011

IN THE MATTER OF

M/S. NEWRIVER SOFTWARE SERVICES P. LTD. Petitioner

Through Mr. Mr. Atul Y. Chitale, Senior
Advocate with Mr. Ms. Sanyukta
Mukherjee, Advocate for applicant/
petitioner.

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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14.11.2011**CO. APPL. 2232/2011**

Present application has been filed for modification of the order dated 31st October, 2011.

Today in Court, certain corrections in the application have been carried out by the learned counsel for the applicant after initialing the same. The corrected copy of the application is taken on record.

Keeping in view the averments in the application, the present application is allowed and the order dated 31st October, 2011 shall now read as under:-

"Co. Appl.2155/2011

Today in Court, Mr. Avnieesh Garg, learned counsel for the applicant has been handed over a Banker's Cheque for a

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sum of ₹ 1,60,000/- by Mr. Atul Chitale, learned senior counsel for the petitioner-company. A photocopy of the said cheque is taken on record. However, Mr. Chitale clarifies that the said payment has been made without prejudice to the rights and contentions of the petitioner-company and same should not be construed as a precedent.

In view of the handing over of aforesaid cheque, Mr. Garg does not wish to press this application.

Accordingly, the application stands disposed of.

Co. Pet. 247/2011

- 1. This second motion petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 (in short 'Act') seeking sanction and approval of the Scheme of Amalgamation (in short 'Scheme') between NEWRIVER SOFTWARE SERVICES PRIVATE LIMITED (hereinafter referred to as 'Transferor Company') and BROADRIDGE FINANCIAL SOLUTIONS (INDIA) PRIVATE LIMITED (hereinafter referred to as 'Transferee Company').*
- 2. The Registered office of the Transferor Company is situated at New Delhi, within the jurisdiction of this Court. The Registered Office of the Transferee Company is situated at Hyderabad, within the jurisdiction of the Andhra Pradesh High Court.*
- 3. Details with regard to the date of incorporation of the Transferor and Transferee Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.*

4. *Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2010 of the Transferor and Transferee Companies have also been enclosed with the Petition.*

5. *Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme have also been placed on record.*

6. *It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Transferor and Transferee Companies.*

7. *The Transferor Company is a wholly owned subsidiary of the Transferee Company and the Transferee Company along with its nominee shareholders holds the entire issued and paid up equity share capital of the Transferor Company. The Scheme provides that on amalgamation of the Transferor Company with the Transferee Company, all the equity shares of the Transferor Company held by the Transferee Company along with its nominee shareholders shall stand cancelled on the Effective Date without any further act, application or deed.*

8. *The Transferor Company had earlier filed Company Application (M) No.94 of 2011 seeking directions of this Court for dispensation of meetings. Vide order dated 20th May, 2011, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders of the*

Transferor Company. The Transferor Company did not have any Secured and Un-Secured Creditors.

9. *The Transferor Company has thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 01st June, 2011, notice in the Petition was directed to the issued to the Regional Director (Northern Region). Citations were also directed to be published in 'The Indian Express' (English Edition) and 'Jansatta' (Hindi Edition). Affidavit of Service and Publication has been filed by the Transferor Company showing compliance regarding service of the Petition on the Regional Director (Northern Region) and the Official Liquidator and also regarding publications of citations in the aforesaid newspapers on 28th September, 2011. Copies of the newspapers' cuttings, in original, containing the publications have been filed along with the Affidavit of Service.*

10. *Pursuant to the notice issued, the Official Liquidator sought information from the Petitioner Company. Based on the information received, the Official Liquidator has filed his report dated 19th September, 2011, wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.*

11. *In response to the notice issued in the Petition, Mr. B. K. Bansal, Regional Director, Northern Region, Ministry of*

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Corporate Affairs has filed his Affidavit dated 12th September, 2011. Relying on Clause 9.1 of the Scheme, he has stated that all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court.

12. No objection has been received to the Scheme from any other party. Today in Court, Ms. Nishtha Kumar, learned counsel for Transferor Company has filed an affidavit dated 31st October, 2011, confirming that neither the Petitioner Company nor she has received any objection pursuant to citations published in the newspapers. The said affidavit is taken on record.

13. Even today, during the course of hearing, Mr. Raisuddin, Deputy Official Liquidator and Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region state that they have no objection to the present Scheme being sanctioned.

14. In view of the approval accorded by the Shareholders of the Petitioner Company; affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner Company will

comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act, all the properties, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

15. Since the jurisdiction of the Transferee Company is before the High Court of Andhra Pradesh, the Transferee Company has already obtained approval of the High Court of Andhra Pradesh in Company Petition No. 116 of 2011 for sanctioning of the Scheme on behalf of the Transferee Company. A copy of the said order is also taken on record

16. Mr. Atul Chitale, learned senior counsel states that the Petitioner Company would voluntarily deposit a sum of ₹ 1,00,000/- with the Common Pool fund of the Official

Liquidator within three weeks from today. The said statement is accepted.

17. *The Petition is disposed of in above terms.*

Order dasti."

With the aforesaid observations, the present application stands allowed.

Order dasti.


MANMOHAN, J

NOVEMBER 14, 2011

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