THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION Nos.253 and 254 of 2014

16.06.2015

C.P.No.253 of 2014:

M/s.Cordys Software India Private Limited

…Petitioner /Transferor Company

C.P.No.254 of 2014:

M/s.Open Text Corporation India Private Limited

…Petitioner /Transferee Company

Counsel for the Petitioners: Sri V.S.Raju

The Court made the following:

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COMMON ORDER:

C.P.No.253 of 2014 is filed by M/s.Cordys Software India Private Limited, Hyderabad (for short 'the transferor company') and C.P.No.254 of 2014 is filed by M/s.Open Text Corporation India Private Limited, Hyderabad (for short 'the transferee company') under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') for sanction of the proposed scheme of amalgamation of the transferor company with the transferee company.

The transferor company pleaded that it was incorporated on 03.07.1997; that its registered office is situated at plot No.17, Software Units Layout, Madhapur, Hyderabad - 500 081; that its authorized share capital as on 31.03.2013 is Rs.11,00,00,000/- divided into 11,00,000 equity shares of Rs.100/- each; that its issued, subscribed and paid up share capital is Rs.10,65,36,200/- divided into 10,65,362 equity shares of Rs.100/- each and that its objects are to undertake the designing and development of software for computer systems and data communication systems, testing and maintenance; network management systems, and testing and maintenance, embedded systems and testing maintenance and application software either for its own use or for sale in India or for export outside India and to design and develop such systems and application software, firm ware and programmes or services for and on behalf of manufacturer etc.,

The transferee company pleaded that it was incorporated on 30.03.2012; that its registered office is situated at Level 2, Oval Building, I Lab Centre, Mdhapur, Hyderabad - 500 081; that its authorized share capital as on 31.03.2014 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.3,07,360/- divided into 30,736 equity shares of Rs.10/- each and that its objects are to manufacture, assemble, erect, install, purchase, import, export, equip, sell, trade, fabricate, design, distribute, repair, maintain, exchange, alter, lease or hire, sell on hire, purchase on installment system or to construct, develop, enter into arrangement for setting up the same either in whole or in part of any other way of deal in microprocessor based mini and micro computers, software of all kinds etc.,

It is pleaded by both the petitioners that under the proposed scheme of amalgamation, the transferor company will be amalgamated into the transferee company. It is stated that both the transferor and transferee companies are engaged in the business of providing software development services and marketing and distribution of software products and providing related services. That the proposed scheme of amalgamation will enable the consolidation of activities of both the transferor and transferee companies with pooling and more efficient utilization of their resources, greater economies of scale, reduction in overheads and other expenses and improvement in various operating parameters and that the proposed scheme of amalgamation will result in reduction of multiplicity of regulatory compliances required to be carried out by these companies.

It is further pleaded by both the petitioners that the respective Boards of Directors of the transferor and transferee companies in their meetings held on 26.05.2014 have approved the proposed scheme of amalgamation with effect from 01.04.2014 subject to the approval of the shareholders and confirmation by the Court. That the transferor and transferee companies have two shareholders each and they have given their consent by way of notarized affidavits for the proposed scheme of amalgamation, vide Annexure 6 filed in each company petition.

That by separate orders, dated 24.10.2014 in Comp.A.Nos.1262 and 1263 of 2014, this Court dispensed with the meetings of shareholders of the transferor company and transferee company respectively, that in pursuance of order, dated 02.12.2014 in these company petitions, the petitioners caused publication in the Business Standards (English daily) and Andhra Bhoomi (Telugu daily) and notices on the Official Liquidator and the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, were served and that in response to the notices, the Official Liquidator and the Regional Director have filed their respective reports.

The learned counsel for the petitioners submitted that in pursuance of the advertisement published in newspapers, no claims/objections have been received from any quarter.

In his report, the Official Liquidator has, *inter alia,* stated that basing on the information made available by the transferor company, he is of the opinion that the affairs of the transferor company appear to have not been conducted in any manner prejudicial to the interests of its members or to public interest.

In his report, the Regional Director has, *inter alia*, stated that in pursuance of the general circular, dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, requiring comments from the Income Tax department, letter, dated 19.12.2014, was issued to the Deputy Commissioner, Income Tax, Circle 1(2), Aayakar Bhavan, Basher Bagh, Hyderabad for submitting their comments/objections, if any, within fifteen days and that no comments/objections from the Income Tax department were received till date. He has further submitted that the Registrar of Companies, Hyderabad has reported that the transferor company and the transferee company involved in the proposed scheme of amalgamation are regular in filing the statutory returns and no complaints, no investigations and no inspections are pending against the transferee company. He has also stated that the transferor company has not submitted the copy of the order of this Court dispensing with the meeting of the creditors.

In response to the report of the Regional Director, the authorized signatory of the transferee company has filed an affidavit, wherein he has, *inter alia,* stated that he is the authorized signatory of both the transferee company and the transferor company. He has further stated that the transferee company and transferor company have not availed any secured and unsecured loans. Thus, as per this affidavit, the transferor and transferee companies have no secured and unsecured creditors.

In the light of the above facts and having regard to the reports of the Official Liquidator and the Regional Director, the affidavit of the authorized signatory of the transferor and transferee companies and the submission of the learned counsel for the petitioners that no specific objections/claims have been raised from any quarter to the proposed scheme of amalgamation, this Court is of the opinion that the proposed scheme of amalgamation is in conformity with the provisions of the Act and the same does not in any manner affect the interests of any of the stake holders and that of the public.

Therefore, the proposed scheme of amalgamation is sanctioned with effect from the appointed date i.e., 01.04.2014. The transferor company is ordered to be dissolved without going through the process of winding up. The transferor company shall, within 30 days from the date of receipt of a copy of this order, cause a certified copy of the same to be delivered to the Registrar of Companies, Telangana and Andhra Pradesh, Hyderabad and take all other consequential actions in pursuance of the approval of the scheme of amalgamation.

These Company Petitions are accordingly allowed.

(C.V.NAGARJUNA REDDY, J)

16th June, 2015

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