HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION Nos.73 and74 of 2015

Date:16.06.2015

COMPANY PETITION No.73 of 2015

Between:
M/s Sphere Global Informatics Limited,
Hyderabad, reptd by its Director-
Kuralla Pavan Kumar

……Petitioner/
Transferor Company

AND

COMPANY PETITION No.74 of 2015

Between:
M/s Softpoint Technologies Private Limited,
Hyderabad, reptd by its Director-
Mohammed Qayyum

……Petitioner/
Transferee Company

Counsel for the petitioners: Sri Chetluru Sreenivas

The Court made the following:

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION Nos.73 and 74 of 2015

COMMON ORDER:

Company Petition No.73 of 2015 is filed by M/s Sphere Global Informatics Limited (transferor Company) and Company Petition No.74 of 2015 is filed by M/s Softpoint Technologies Private Limited (Transferee Company) for sanction of the proposed scheme of amalgamation under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') between them.

In Company Petition No.73 of 2015, the petitioner averred that it was incorporated under the Act 05.08.1999; that its authorized share capital is Rs.2 crores divided into 20,00,000 equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.1,55,00,000/- divided into 15,50,000 equity shares of Rs.10/- each,; that its main objects, as set out in the Memorandum and Articles of Association, are to acquire, provide, consultancy, know how for setting up animation studio, simulation centers, entertainment parks, hitech museums, theme parks and to maintain them, etc; and that by resolution, dated 20.02.2015, its Board of Directors has approved the proposed scheme of amalgamation.

The petitioner further averred that it has seven shareholders and all of them have given their individual consent affidavits (page Nos.148 to 161) and it has sole trade creditor-transferee company itself, whose Director has also given its consent to the proposed scheme of amalgamation; and that it has no secured or unsecured creditors.

The petitioner has filed Company Application No.399 of 2015 for dispensing with the holding of meetings of its shareholders and the trade creditor for considering the proposed scheme of amalgamation. This Court by order, dated 17.03.2015, has allowed the said Company Application.

In Company Petition No.74 of 2015, the petitioner has averred that it was incorporated under the Act 16.02.2001; that its authorized share capital is Rs.5 lakhs divided into 50,000 equity shares of Rs.10/- each;

that its issued, subscribed and paid up capital is Rs.1 lakh divided into 10,000 equity shares of Rs.10/- each; that its main objects, as set out in the Memorandum and Articles of Association, are to manufacture, design, develop, market, purchase, sell or otherwise transfer, lease, import, export, use, dispose of, operate, fabricate, construct, recondition work upon or otherwise deal in all kinds of computers, computer software, computer hardware, data entry system, data processing, data processing machines, systems apparatus, appliances, peripheral products and components thereof or material or articles used in connection therewith and to act as agents, contractors and sub-contractors in connection with the above object, etc; that by resolution, dated 20.02.2015, its Board of Directors has approved the proposed scheme of amalgamation; and that the appointed date is 01.04.2015.

The petitioner further averred that it has two shareholders and both of them have given their individual consent affidavits (page Nos.149 to 152); that it has sole trade creditor, which has also given its consent (page No.155); that it has four unsecured creditors, who have given their consent to the proposed scheme of amalgamation (page Nos.153, 154, 156 & 157) ; and that it has no secured creditors.

The petitioner has filed Company Application No.400 of 2015 for dispensing with the holding of meetings of its shareholders and trade/unsecured creditors for considering the proposed scheme of amalgamation. This Court by order, dated 17.03.2015, has allowed the said Company Application.

This Court by separate orders, dated 07.04.2015, in Company Petition No.73 of 2015 ordered notices the

Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator attached to this Court and in Company Petition.No.74 of 2015, ordered notice to the Regional Director. Advertisement was also ordered to be published in two daily newspapers, *viz.*, 'Business Standard'_(English) and 'Andhra Bhoomi' (Telugu) of Telangana State editions. In Company Petition No.73 of 2015, the petitioner has filed proof of publication through memo, dated 01.06.2013, vide USR.No.2103 of 2015 and no objections are stated to have been received.

In his report, the Official Liquidator has stated that the affairs of the transferor and transferee companies involved in the proposed scheme of amalgamation are not conducted in a manner prejudicial to the interests of its members or to the public interest.

In response to the notice, the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad has filed his common report, dated 10.06.2015.

In his common report, the Regional Director has *inter alia* stated that in pursuance of General Circular No.1 of 2014, dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, comments from the Income Tax Department were invited by him, vide letter, dated 06.05.2015, and that no comments/objections from the Income Tax Department have been received in response to the said notice; and that the transferor and transferee companies are regular in filing the statutory returns and that no inspection or investigation are pending against both the companies. He has, however, pointed out that as the shareholders holding 90% of the equity share in the transferor company before amalgamation do not become the shareholders of the transferee-company subsequent to amalgamation, as required under Accounting Standard-14 for Pooling of Interest Method of Accounting, this Court may direct the transferee company to follow Accounting Standard-14 in the ‘Purchase Method’ of Accounting.

One of the Directors of the transferee company by name Mohammed Qayyum filed his sworn affidavit, dated 13.06.2015, wherein he has stated that the transferee company has no objection for following this suggestion of the Regional Director.

Having regard to the reports of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator, the sworn affidavit of one of the Directors of the transferee company and as no objections/claims have been received in pursuance of the advertisement for approving 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 including the public.

Therefore, the proposed scheme of amalgamation is sanctioned with effect from the appointed date i.e., 01.04.2015, subject to the transferee company following the Accounting Standard-14 in the ‘Purchase Method’ of Accounting. The petitioners 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 for the State of Telangana and State of Andhra Pradesh, Hyderabad and take all other consequential actions in pursuance of the approval of the scheme of amalgamation.

The Company Petitions are, accordingly, allowed.

JUSTICE C.V.NAGARJUNA REDDY

16th June, 2015
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