HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION No.22 of 2015

Date:13.04.2015

M/s Wordworks Apex ITES (India) Private Limited

..... Petitioner

Counsel for the petitioner: Sri Santhosh Jadhav

The Court made the following:
ORDER:

This Company Petition is filed by M/s Wordworks Apex ITES (India) Private Limited ("Transferee Company") for approval of the proposed scheme of amalgamation under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act').

The petitioner averred that it was incorporated under the Act on 19.01.2007; that its main objects *inter alia* are to provide, render within and outside India, computer software and information Technology enabled Services in the field of e-Publishing, Publishing, Data and Knowledge Processing, Computerized Financial Services, Call Center Services, Geographical Information Services (GIS), Computer Aided Designs (CAD), Computer Aided Manufacturing (CAM), conversion of all types of Engineering/Drawings to Electronic Media, Telecommunication and other allied areas, etc; that its authorized share capital as on

31.03.2014 is Rs.2,26,50,000/- divided into 22,65,000 equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.2,23,97,500/- divided into 22,39,750 equity shares of Rs.10/- each; that through the Board Resolution, dated 08.12.2014, (filed as Annexure-E), its Board of Directors has approved the proposed scheme of amalgamation of M/s Apex Knowledge Technology Private Limited (Transferor Company) with the petitioner; and that the appointed date is 01.04.2014.

The petitioner has further averred that it has two shareholders and five unsecured creditors and all of them have given their consent to the proposed scheme of amalgamation; and that it has no secured creditors.

The petitioner has filed Company Application No.1587 of 2014 for dispensing with the holding of meetings of its shareholders and unsecured creditors for considering the proposed scheme of amalgamation. This Court by order, dated 31.12.2014, has allowed the said Company Application. The petitioner has filed the present Company Petition for approving the proposed scheme of amalgamation.

This Court by order, dated 09.02.2015, ordered notice to the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad. Advertisement was also ordered to be published in two daily newspapers, *viz.*, Indian Express (English) and Andhra Jyothi (Telugu) having circulation in the State of Telangana. The petitioner has filed proof of publication through memo, dated 01.04.2015, vide USR.No.1441 of 2015 and no objections are stated to have been received.

In response to the notice, the Regional Director has filed his report. The Regional Director in his report, dated 06.04.2015, stated that the petitioner involved in the proposed scheme of amalgamation is regular in filing the returns and that no complaints, no inspection and no investigations are pending. He has, however, referred to the observations of the Deputy Commissioner of Income Tax, (H.Qrs.) (Tech), Office of the Principal Chief Commissioner of Income Tax, Andhra Pradesh & Telangana, Hyderabad, wherein it is mentioned that the transferor Company is assessed with his office and huge tax demand is pending for payment and that before amalgamation, the assessee should clear off the arrears due to the Department and that a sum of Rs.99,27,110/- is shown to have been due from the transferor company.

Sri Santhosh Jadhav, learned counsel for the petitioner, submitted that against the above-mentioned assessment, the transferor company has filed an appeal, vide Appeal No.0072/13-14 before the Commissioner of Income Tax (Appeals) and the same is pending. He has also invited this Court's attention to Clause-3.1.b of the scheme of amalgamation which reads as under:

> "All liabilities of the transferor company as on the appointed date shall also stand transferred to and vested in or be deemed to have been transferred to and vested in the transferee company on a going concern basis, without any further act or deed so as to become the liabilities, debts, duties and obligations, dues, loans and responsibilities of the transferee company on the same terms and conditions as was applicable to the transferor company. It shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, loans, liabilities, duties and obligations have arisen in order to give effect to the provisions of this scheme."

In the light of the fact that the assessment made against the transferor company is the subject matter of an appeal and the further fact that the petitioner (transferee company) has undertaken the liability of the transferor company, the objection raised by the Income Tax Department for approval of the proposed scheme of amalgamation has no merit. It is, however, made clear that the approval of the proposed scheme of amalgamation is subject to the liability of the petitioner (transferee company) and in the event, the transferor company suffers the liability at the end of the legal litigation, it shall be the responsibility of the petitioner (transferee company) to pay the income tax dues.

Having regard to the report of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the submissions of the learned counsel for the petitioner and as no objections are stated to 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., 01.04.2014. The petitioner 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.

The Company Petition is, accordingly, allowed.

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JUSTICE C.V.NAGARJUNA REDDY

13th April, 2015

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