

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2016

DELIVERED ON : 03.06.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos 543 to 546 of 2015

M/s.Integrated Enterprises (India) Ltd.,
having its registered office at
5A 5th Floor, Kences Towers
No.1 Ramakrishna Street, T.Nagar,
Chennai – 600 017.

.. Petitioner in C.P.No.543 of 2015/
Demerged Company No.1

M/s.Integrated Registry Services Ltd.,
having its registered office at
2nd Floor, Kences Towers
No.1 Ramakrishna Street, T.Nagar,
Chennai – 600 017.

.. Petitioner in C.P.No.544 of 2015/
Demerged Company No.2

M/s.IEP Insurance Broking Services Private Ltd.
having its registered office at
4F 4th Floor, Kences Towers
No.1 Ramakrishna Street, T.Nagar,
Chennai – 600 017.

.. Petitioner in C.P.No.545 of 2015/
Demerged Company No.3

M/s.Integrated Registry Management Services Private Ltd.
having its registered office at
2nd Floor, Kences Towers
No.1 Ramakrishna Street, T.Nagar,
Chennai – 600 017.

.. Petitioner in C.P.No.546 of 2015/
Resulting Company

Petitions filed under sections 391 to 394 of the Companies Act, 1956 to sanction the scheme of arrangement (demerger).

For Petitioners : M/s.Ramani

Mr.G.Venkatesan
for Regional Director
Ministry of Company Affairs
Chennai

COMMON ORDER

1. These company petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of arrangement (demerger) (in short Scheme) between the Demerged companies with the Resulting company with effect from 1st April 2016. The original Scheme is appended as Annexure '14' to the petitions and the amended Scheme is enclosed along with the affidavit dated 11.4.2016.

2. M/s.Integrated Enterprises (India) Limited, the petitioner in C.P.No.543 of 2015 is the first Demerged company, M/s.Integrated Registry Services Limited, the petitioner in C.P.No.544 of 2015 is the second Demerged Company; M/s.IEP Insurance Broking Services Private Limited, the petitioner in C.P.No.545 of 2015 is the third Demerged Company and M/s.Integrated Registry Management Services Private Limited, the petitioner in C.P.No.546 of 2015 is the Resulting Company.

3. A perusal of the records show that the respective petitioner companies have complied with the formalities as prescribed under the Companies Act and the Rules framed therein. The affidavits of the equity shareholders giving their consent to the scheme is appended as Annexure 1 to the affidavit dated 11.4.2016 filed along with C.P.Nos.543 to 546 of 2015.

3.1. By order dated 26.11.2015 passed in C.A.Nos.1145 1147 and 1148 of 2015, in respect of the respective Demerged Companies, in C.A.No.1149 of 2015 in respect of the Resulting Company - this Court dispensed with the convening, holding and conducting of the meeting of the shareholders of the Demerged Companies and Resulting Company respectively, for the purpose of considering and if thought fit approving with or without modification the scheme.

3.2. It is stated that Demerged Copmany Nos.2 and 3 have no secured creditors, a circumstance which holds good for the Resulting Company, as well. The certificate of the Chartered Accountant confirming the same is annexed as Annexure 17 to the respective petitions. However, in so far as Demerged Company No.1 is concerned, since it has four secured creditors, their affidavits of consents have been filed. These affidavits are appended as Annexure 17 in C.P.No.543 of 2015.

3.3 By order dated 26.11.2015 in C.A.No.1146 of 2015, in respect of Demerged Company No.1, this Court dispensed with the convening, holding and conducting of the meeting of its Secured Creditors, for the purpose of considering and if thought fit approving with or without modification the scheme.

4. The Board of Directors (BODs) of the Demerged Companies and the Resulting company vide two separate resolutions of even date i.e., 24th July 2015, considered and approved the scheme. The copies of the BODs are appended as Annexure '13' to these petitions.

5. The petitioners state that no investigation proceedings are pending against them under Sections 235 to 251 or any other provisions of the Companies Act, 1956.

6. Learned counsel appearing for the petitioners submits that the petitioners have amended the Scheme. In this regard, the petitioners have filed an affidavit stating that they have amended the Scheme after obtaining consent from the equity shareholders and accordingly, the amended scheme has also been filed along with the typed set of papers. In the affidavit dated 11.4.2015, it is stated as follows:

"3. I state that thereafter, the Company Petition has been pending for enquiry and hearing. I state that

in this process, the financial year 2015-16 has ended. The Appointed Date as proposed in the Scheme was 1st April 2015. This date was adopted on the basis that the financial year closest to the time of proposal of the Scheme was 31/3/2015, and it was anticipated that the Court processes relating the Scheme would be concluded by 31/3/2016. However, and since this did not transpire, and the financial year has also ended in the meanwhile, the Petitioner-Demerged Company 2 is proposing an amendment to the Appointed Date set out in the Scheme to 1/4/2016 in place of 1/4/2015.

*4. I state that amending the Appointed Date of the Scheme to 1/4/2016 would be more appropriate as it would reflect better, the position of the Company on a date closer to the time of the Scheme being considered for sanction. I state that all of the shareholders of the Petitioner-Demerged Company 2, have consented to such amendment, and their Consent Affidavits reflecting such position are enclosed herewith collectively as **Annexure 1 ('colly')**. I state that none of the creditors, the shareholders, or the companies involved in the Scheme would be adversely affected or prejudiced by such amendment i.e. Change in the Appointed Date from 1/4/2015 to 1/4/2016.*

*5. I state that a copy of the amended Scheme placed for the consideration of this Hon'ble Court, with an amended Appointed Date of 1/4/2016, as also reflecting the amendments proposed vide the Affidavit dated 25th February 2016 of the Petitioner-Demerged Company 2, is enclosed herewith as **Annexure2**, I state that this may be treated as the final Scheme placed before this Hon'ble Court for sanction, with all references to the*

Appointed Date therein being 1/4/2016.

6. It is therefore humbly prayed that this Hon'ble Court may sanction the amended Scheme as contained in Annexure 2. "

7. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report with the following observations:

"(a) The clause 12 of the scheme provides for the conversion of the Public Limited Demerged companies (1) and (2) into Private Ltd., Companies. The companies may be directed to amend the Articles of Association and file relevant e Forms with the ROC, Chennai.

(b) The change of Public Limited Demerged companies (1) and (2) to Private Ltd., companies amounts to Change of Name, hence the companies may file eForm in INC 27 with ROC, Chennai.

(c) The demerged companies 1 and 2 has mentioned restructuring the paid up capital i.e., reducing face value of the equity shares from Rs.10 per share to Re.1 per share. The companies may be directed to amend the capital clause in the Memorandum and Articles of Association and file necessary eForms with ROC, Chennai."

7.1. Therefore, in the above paragraphs a to c, the Regional Director has principally raised two objections: first – that the clause 12 of the Scheme, which provides for conversion of the Public Limited Demerged Companies 1 and 2 in toto to Private Limited companies

would require amendment to be made to the Articles of Association. In this behalf, the Regional Director further stated that relevant e-forms would have to be filed with the Registrar of Companies, Chennai.

7.2. Second – that the Scheme involves re-structuring of paid-up capital of Demerged Companies 1 and 2, whereby a reduction in the face value of equity shares would be brought about from Rs.10/- per share to Re.1/- per share. The Regional Director's concern is that relevant amendment would have to be brought about in this behalf in the Memorandum and Articles of Association and that necessary e-Forms would have to be filed with the Registrar of Companies, Chennai.

8. Insofar as the first objection is concerned, this Court in somewhat similar circumstances, by order dated 26.3.2008 passed in C.P.No.242 of 2007 has recognised the fact that amalgamation of entities or corporate entities, whereby the only change in the name of the new entity is the deletion of the word "Private" does not require the approval of the Central Government, as Chapter V of the Companies Act, 1956, dealing with the compromise, arrangement or amalgamation, is the complete code by itself. For better appreciation, I extract hereunder the relevant portion of the order:

"As regards the second objection as to the change

of name and necessity for compliance of Sections 20 to 23 of the Companies Act as well as the company going public, it may be noted that the amalgamation is principally an internal arrangement of the company for a mutual benefit in enlarging its capital base. It is no doubt true that while going public, the private company converted into public company, would undergo a change of name. Normally the procedure under Section 21 of the Companies Act has to be complied with. So too the provisions of Section 44 of the Companies Act. However, it may be noted that on conversion, a company does not cease to exist to bring into existence any new company. In the scheme of things to emerge on an amalgamation, two transferor companies are united with the transferee company. The scheme herein contemplates a change in their name as well as in status as a public company. In the face of such facts, the question is whether the petitioner is to be subjected to the procedure under Section 21 of the Companies Act. This section requires special resolution to be passed on the proposed change of name of the company and the approval of the Central Government thereupon for changing the company's name. The proviso of the said Section dispenses with the approval of the Central Government when the only change that occurs in the name is the deletion and addition of word 'private' consequent on the conversion of the company from private to public or vice versa. It may be noted that Chapter V is a complete code by itself on the subject of arrangement/ compromise and reconstruction.

8.1. Evidently, a similar view was taken by this Court in C.P.Nos.133 to 135 of 2006 by order dated 19.08.2006.

8.2. Furthermore, the petitioners have also undertaken to amend the Articles of Association and file necessary e-Forms with the concerned Registrar of Companies, Chennai.

8.3. Having regard to the aforesaid, according to me, the aforesaid concern/objection, if it may be called one of the Regional Director, is suitably taken care of.

9. As regards the second objection, insofar as the reduction in share capital of face value of equity shares of demerged companies 1 and 2 is concerned, the same need not detain me any further, as this Court for good reasons has the power to approve the same as long as it does not affect the interest of the secured creditors.

9.1. Section 391 of the Companies Act is a complete code in itself which gives power to approve reduction in share capital, if it is otherwise in order. Giving approval while exercising power under Section 391 obviates the need to file a separate application for reduction in capital.

9.2. As noted above, there are no secured creditors in Demerged Company No. 2 and 3 and in the Resulting Company. Insofar as the Demerged Company No.1 is concerned, there are four secured creditors, who have given their consent. Therefore, grant of approval to reduction in share capital as a part of the Scheme should present no difficulty.

9.3. This apart, the petitioners have once again undertaken to amend the capital clause in the Memorandum and Articles of Association and file necessary e-Forms with the concerned Registrar of Companies.

9.4. In view of the approval accorded to the scheme by the shareholders of the petitioners and creditors of the petitioners company, in my opinion, there appears to be no impediment in the grant of sanction to the scheme.

10. Having thus perused the scheme filed along with the company petitions, I find that the Scheme is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner companies. The said scheme as framed is not violative of any statutory provisions.

10.1. The scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear to be pending under the provisions of Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

11. Consequently, subject to the petitioners amending the Memorandum and Articles of Association and filing necessary e-Forms with the Registrar of Companies, there shall be an order approving to the scheme of arrangement (demerger) of the Demerged companies, viz., M/s.Integrated Enterprises (India) Limited, Petitioner in C.P.No.543 of 2015; M/s.Integrated Registry Services Limited, Petitioner in C.P.No.544 of 2015; M/s.IEP Insurance Broking Services Private Limited, Petitioner in C.P.No.545 of 2016 with the Resulting company, viz., Integrated Registry Management Services Private Limited, petitioner in C.P.No.546 of 2015 as provided in the original Scheme appended as Annexure '14' to the petitions and in the amended Scheme enclosed along with the affidavit dated 11.4.2016, with effect from 1st April, 2016, as per the procedure laid down under sections 391 and 394 of the Companies Act.

11.1. It is made clear, that this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of

law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

12. The learned Senior Central Government Standing Counsel is entitled to a fee of Rs.5,000/- from the Demerged company.

13. The above petitions are disposed of in the aforesaid terms.

03.06.2016

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RAJIV SHAKDHER,J.

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Pre-Delivery Order in
C.P.Nos.543 to 546 of 2015

Dated: 03.06.2016