IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2016

DELIVERED ON : 16.12.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.162 to 164 of 2016

M/s.Applied Development Software (India) Private Limited
Old No.4, New No.7,
II Trust Link Road, Mandaveli
Chennai - 600 028
represented by its Director
Mr.Pylore Sridhar Subramaniam

.. Petitioner in C.P.No.162 of 2016
/ 1st Transferor Company

M/s.Pureapps Consulting Services Private Limited
Old No.4, New No.7,
II Trust Link Road, Mandaveli
Chennai - 600 028
represented by its Director
Mr.Venkateswaran Ramaswamy

.. Petitioner in C.P.No.163 of 2016
/ 2nd Transferor Company

M/s.Aspire Systems (India) Private Limited
Old No.4, New No.7,
II Trust Link Road, Mandaveli
Chennai - 600 028
represented by its Director
Mr.Sankaranarayanan Rameswaram Krishnamoorthy

.. Petitioner in C.P.No.163 of 2016
/ Transferee Company

Petitions filed under Sections 391 to 394 of the Companies Act, 1956 to sanction the Scheme of Amalgamation.

For Petitioners : Mr.B.Dhanraj

Mr.D.Ramesh Kumar, CGSC
for Regional Director
Ministry of Company Affairs,Chennai

Mr.Achutha Ramaiah
Official Liquidator

COMMON ORDER

1. These company petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for seeking a sanction of the scheme of amalgamation concerning Applied Development Software (India) Private Limited (in short 1st transferor company), Purepps Consulting Services Private Limited (in short 2nd transferor company) and Aspire Systems (India) Private Limited (in short transferee company), with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is appended as Annexure 'E' to the respective petitions.

2. The petitioner in C.P.No.162 of 2016 is the 1st transferor company; the petitioner in C.P.No.163 of 2016 is the 2nd transferor company and the petitioner in C.P.No.164 of 2016 is the transferee company.

2.1. I may only note that hereafter, the transferor and transferee companies will be collectively referred to as petitioners.

3. A perusal of the record shows that the petitioners have complied with the prescribed procedure.

3.1. A copy of three (3) separate resolutions of even date, i.e., 20.01.2016, passed by the Board of Directors of the petitioners approving the scheme is enclosed as Annexure 'D' to the respective petitions.

4. It is stated that the 1st transferor company has no secured creditor. A certificate of the Chartered Accountant confirming the same is appended as Annexure 'F' to C.P.No.162 of 2016.

4.1. It is averred that the 1st transferor company has two (2) unsecured creditors, valued at Rs.1,98,44,689/-. A certificate of the Chartered Accountant confirming the same is appended as additional typed set of document to C.P.No.162 of 2016.

4.2. It is further averred that the combined networth of the merged entities would be Rs.1,68,66,45,042/- and, hence, the dues receivables by the 1st transferor company and the transferee company are good and shall be realized during the course of its business.

4.3. It is stated that the 1st transferor company has two (2) shareholders. The affidavits of equity shareholders of the 1st transferor company giving their consent to the proposed scheme are appended as Annexure 'H' to C.P.No.162 of 2016.

4.4 This Court, by order dated 31.03.2016, passed in C.A.No.342 of 2016, dispensed with the convening, holding and conducting of the meeting of the shareholders of the 1st transferor company to consider the proposed Scheme, inter alia, for the reason that its equity shareholders had given their consent to it.

5. It is stated that the 2nd transferor company has no secured creditor. A certificate of the Chartered Accountant confirming the same is appended as Annexure 'F' to C.P.No.163 of 2016.

5.1. It is averred that the 2nd transferor company has three (3) unsecured creditors, valued at Rs.4,50,670/-. A certificate of the Chartered Accountant confirming the same is appended as additional typed set of document to C.P.No.163 of 2016.

5.2. It is further averred that the combined networth of the merged entities would be Rs.1,68,66,45,042/- and, hence, the dues receivables by the 2nd transferor company and the transferee company are good and shall be realized during the course of its business.

5.3. It is stated that the 2nd transferor company has two (2) shareholders. The affidavits of equity shareholders of the 2nd transferor company giving their consent to the proposed scheme are appended as Annexure 'H' to C.P.No.163 of 2016.

5.4. This Court, by order dated 31.03.2016, passed in C.A.No.343 of 2016, dispensed with the convening, holding and conducting of the meeting of the shareholders of the 2nd transferor company to consider the proposed Scheme, inter alia, for the reason that its equity shareholders had given their consent to it.

6. It is stated that the transferee company has one (1) secured creditor. A certificate of the Chartered Accountant confirming the same is appended as Annexure 'F' to C.P.No.164 of 2016.

6.1. It is seen that the above-said secured creditor of the transferee company have given their consent to the proposed Scheme, which is appended as Annexure 'G' to C.P.No.164 of 2016.

6.2. It is averred that the transferee company has sixty seven (67) unsecured creditors, valued at Rs.33,10,78,552/-. A certificate of the Chartered Accountant confirming the same is appended as additional typed set of documents to C.P.No.164 of 2016.

6.3. It is further averred that the combined networth of the merged entities would be Rs.1,68,66,45,042/- and, hence, the dues receivables by the transferor companies and the transferee company are good and shall be realized during the course of its business.

6.4. It is stated that the transferee company has four (4) shareholders. The affidavits of equity shareholders of the transferee company giving their consent to the proposed scheme are appended as Annexure 'I' to C.P.No.164 of 2016.

6.5. This Court, by order dated 31.03.2016, passed in C.A.No.344 of 2016 dispensed with the convening, holding and conducting of the meeting of the shareholders of the transferee company to consider the proposed Scheme, inter alia, for the reason that its equity shareholders had given their consent to it.

7. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report stating that he has no objection to the scheme being sanctioned.

8. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The Chartered Accountant, in his report, states that the affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of its members or to public interest, and that, he has not come across any act of misfeasance by the Directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were

also caused to be inspected by the said Chartered Accountant. In the absence of any material that the affairs of the transferor companies were being conducted in a manner prejudicial to the interest of its members or public interest, the Official Liquidator has filed his report before this Court for appropriate orders.

9. I have perused the proposed scheme filed along with the company petitions as also the affidavits placed on record. I find that the Scheme as proposed 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. 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, there shall be an order approving the scheme of amalgamation of Applied Development Software (India) Private Limited (1st transferor company), Purepps Consulting Services Private

Limited (2nd transferor company) and Asire Systems (India) Private Limited (transferee company), with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act.

12. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, both the transferor companies shall stand dissolved, albeit, without winding up.

13. 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.

14. The learned Senior Central Government Standing Counsel will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

15. The above petitions are disposed of in the aforementioned terms.

Index: Yes / No
Internet: Yes / No 16.12.2016
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RAJIV SHAKDHER,J.

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Pre-Delivery Common Order in

C.P.Nos.162 to 164 of 2016

Dated: 16.12.2016