

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2016

DELIVERED ON : 04.10.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.218 to 220 of 2016

Isolve Services India Private Limited
3B, KG Business Centre,
New # 65 (Old #34) TTK Road,
Alwarpet, Chennai - 600 018
represented by
R.Parthasarathy,
Managing Director

.. Petitioner in C.P.No.218 of 2016
/ Transferor Company - I

Isolve Technologies Private Limited
3A, KG Business Centre,
New # 65 (Old #34) TTK Road,
Alwarpet, Chennai - 600 018
represented by
R.Parthasarathy,
Managing Director

.. Petitioner in C.P.No.219 of 2016
/ Transferor Company - II

CADD Centre India Private Limited
No.5, Sir PS Sivaswamy Salai,
Mylapore, Chennai - 600 004
represented by
R.Parthasarathy,
Managing Director

.. Petitioner in C.P.No.220 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.V.K.Rajasekhar

Mr.D.Simon
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

Mr.Atchuta Ramaiah,
Official Liquidator

COMMON ORDER

1. These company petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the two transferor companies with the transferee company with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is appended as Annexure '4' to C.P.Nos.218 and 219 of 2016 and Annexure '5' to C.P.No.220 of 2016.

2. The petitioner in C.P.No.218 of 2016 is the first transferor company; the petitioner in C.P.No.219 of 2016 is the second transferor company and the petitioner in C.P.No.220 of 2016 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. It is stated that there are no secured creditors in so far as both the transferor companies are concerned. The certificates of the Chartered Accountant confirming the same are appended as Annexure '6' to C.P.Nos.218 and 219 of 2016.

3.1. It is stated that the transferee company has two secured creditors. The certificate of the Chartered Accountant confirming the same is appended as Annexure '7' to C.P.No.220 of 2016.

3.2. Furthermore, no objection to the proposed scheme has been obtained from the secured creditors of the transferee company. Accordingly, the consents given by the two secured creditors are appended as Annexure '7' to C.P.No.220 of 2016.

4. It is stated that there are no unsecured creditors as far as the transferor companies are concerned. The certificates of the Chartered Accountant confirming the same are appended as Annexure '1 and 2' to Consolidated Index to C.P.Nos.218 and 219 of 2016.

4.1. It is stated that the transferee company has four unsecured creditors and has been given unsecured loan by eight persons. A certificate of the Chartered Accountant, to that effect, showing the position, qua unsecured creditors and unsecured loan, as on 15.07.2016 has been filed at page No.12 of the consolidated index dated 16.09.2016.

4.2. The transferee company has obtained no objection certificates from all eight (8) persons, who have cumulatively given unsecured loan amounting to Rs.10,27,27,020/-. Insofar as unsecured creditors are concerned, as on 15.07.2016, the transferee company owes totally a sum of Rs.1,60,63,957.52 p. to four entities. Out of this amount, a substantial part, i.e., a sum of Rs.1,14,50,000/- is owed to transferor company No.2. In effect, in percentage terms, the amount owed by transferor company No.2, is approximately, 71%. This is less than 3/4th.

5. A copy of three (3) separate resolutions of even date 01.02.2016 passed by the Board of Directors of both the transferor companies as well as the transferee company respectively adopting

the scheme is enclosed as Annexure '3' to C.P.No.218 and 219 of 2016 and Annexure '4' to C.P.No.220 of 2016.

6. The affidavits of equity shareholders of both the transferor companies and the transferee company giving their consent to the scheme are appended as Annexure '8' to C.P.Nos.218 and 219 of 2016 and Annexure '9' to C.P.No.220 of 2016.

6.1. This Court, by order dated 21.04.2016, passed in C.A.Nos.430 to 432 of 2016, dispensed with the convening, holding and conducting of the meeting of the shareholders of both the transferor companies as well as the transferee company for the purpose of considering and if thought fit, approving with or without modification, the scheme conceived by the petitioner companies involving amalgamation.

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 inference 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 between the first transferor company, viz., Isolve Services India Private Limited and second transferor company, viz., Isolve Technologies Private Limited with the transferee company, viz., CADD Centre India Private Limited, 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
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04.10.2016

RAJIV SHAKDHER,J.

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Pre-Delivery Common Order in
C.P.Nos.218 to 220 of 2016

Dated: 04.10.2016