

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2016

DELIVERED ON : 29.04.2016

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.84 and 85 of 2016

Newgen Knowledge Works Private Limited
having its Registered Office at
No.60/3 Lattice Bridge Road,
Thiruvanmiyur
Chennai – 600 041 Tamil Nadu
represented by its Authorised Signatory
S.Senthil Kumar

.. Petitioner in C.P.No.84 of 2016
/ Transferor Company

E-Pagemaker Private Limited
having its Registered Office at
#4, 2nd Floor, G3 Building,
Bharathi Nagar Cross Street,
Off. L.B. Road, Near Sathya Nilayam,
Thiruvanmiyur, Chennai – 600 041,
Tamil Nadu, India
represented by its Authorized Signatory
Ms.Swetha Balakrishnan

.. Petitioner in C.P.No.85 of 2008/
Transferee Company

Petition filed under sections 391 to 394 of the Companies Act,
1956 to sanction the scheme of amalgamation.

For Petitioners : Mr.P.H.Arvind Pandian
Senior Counsel
For Mr.Harishankar Mani

Mr.G.Venkatesan
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs,Chennai

Mr.Achutha Ramaiah
Official Liquidator

COMMON ORDER

These company petitions are preferred under sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the transferor company with the transferee company with effect from 1st April 2015. The scheme of amalgamation (in short scheme) is appended as Annexure 5 to these petitions.

2. The petitioner in C.P.No.84 of 2016 is the transferor company and the petitioner in C.P.No.85 of 2016 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. Consent affidavits from the secured creditors of the transferor company are appended as Annexure 7 to C.P.No.84 of 2016. It is stated that there are no secured creditors

as far as the Transferee company is concerned and the certificate of the Chartered Accountant confirming the same is annexed as Annexure 7 to C.P.No.117 of 2016. The copy of two separate resolutions of even date, i.e., 24.12.2015 passed by the Board of Directors of both the transferor company as well as the transferee company adopting the scheme is enclosed as Annexure '4' to these petitions.

4. The affidavits of equity shareholders giving their consent to the scheme is appended as Annexure '9' to these petitions. This Court, in its order dated 17.2.2016 passed in C.A.Nos.119 and 120 of 2016 dispensed with the convening, holding and conducting of the meeting of the shareholders of both the Transferor and 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.

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

8) It is submitted that clause 9.4 of the scheme provides for the change/inserting of object clauses from 9 to 12 under the Main objects and also proposes to insert

clauses 36 to 55 under the Ancillary Clauses of the Memorandum of Association of the transferee company. The transferee company may be directed to file necessary eform with ROC, Chennai so that the same will be reflected in the e documents maintained by the Ministry.

9) It is submitted that clause 9.8 of the scheme provides that the name of the transferee company will be changed to that of the transferor company. The company has also stated in the said clause that it will comply with specific requirements, if necessary or directed by the Court for completing the name change process like filing of necessary documents etc., with the Registrar of Companies. The transferee company may be directed to comply with the procedures laid down under the Companies Act, 2013 by filing necessary eforms with ROC, Chennai or with the Central Registry as the case may be.

10) It is respectfully submitted that violations, if any, noticed from the documents filed by the transferor companies will be dealt with in accordance with the provisions of Companies Act, 1956/2013 as the case may be.

11) I respectfully submit that the petitioner transferor company viz., M/s.Newgen Knowledge Works Private Ltd., seeks dissolution without winding up.

12) The scheme of amalgamation filled with the petitions have been examined and it has been decided not to make any objection to the scheme except for the observations made in para 8 and 9 above and it is

therefore prayed that this Hon'ble Court may dispose of the petitions on merits."

6. Learned counsel appearing for the petitioners submits that the petitioners undertake to comply with the requirements, which has been categorically stated under clause 9.9 of the Scheme of Amalgamation.

7. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. Chartered Accountant, in his report, states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to public interest and that he did 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.

8. I have 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.

8.1. 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.

9. Consequently, subject to the petitioners complying with the requirements, viz., amending the Memorandum and Articles of Association and filing necessary e -Forms with the Registrar of Companies, as undertaken by them, there shall be an order approving the scheme of amalgamation between the transferor company, viz., Newgen Knowledge Works Private Limited with the transferee company, viz., E-Pagemaker Private Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 393 of the Companies Act.

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

11. 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 transferee company.

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

Index: Yes / No
Internet: Yes / No

29.04.2016

sl

RAJIV SHAKDHER,J.

SI

Pre-Delivery Order in
C.P.Nos.84 and 85 of 2016

29.04.2016