HON'BLE SRI JUSTICE S.V.BHATT

COMPANY PETITION No.53 OF 2016

ORDER:

Heard learned counsel for the petitioner.

Nalgan Technologies Private Limited/petitioner-transferor Company filed this petition under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') praying for sanction of scheme of arrangement with Innova Solutions Private Limited/ transferee Company.

These corporate entities are called, for convenience, transferor company and transferee company respectively.

Learned counsel for the petitioner has placed reliance upon **MIHEER H.MAFATLAL V. MAFATLAL INDUSTRIES LIMITED**[1], **NEBULA MOTORS LIMITED**[2] and **ANDHRA BANK HOUSING FINANCE LIMITED V. M/S ANDHRA BANK**[3] to explain the jurisdiction of this Court under Sections 391 and 394 of the Act.

The gist of the case is as follows:

The transferor company was incorporated for carrying on the business of providing consultation, software development services and solutions in business intelligence etc. The transferee company has substantially same and similar business objectivities and activities. The Memorandum and Articles of Associations of the transferor company is filed as Exhibit-I. The audited balance sheets of transferor and transferee companies as on 31.03.2015 are annexed to the petition as Exhibit-V. Exhibit-II is the Memorandum and Articles of Associations of transferee company. On 09.12.2015, the Board of Directors of transferor company approved the scheme of arrangement. The Board of Directors of transferee company, having regard to the advantages perceived with the arrangement of transferor company, approved the scheme of arrangement. The effective date of arrangement is 01.04.2015. The transferor company has set out the salient features of the scheme of arrangement and with the assistance of learned counsel appearing for the petitioner, I have perused the exhibits.

The transferor company filed Company Application No.31 of 2016 under Section 391 of the Act read with Rules 9 and 67 of the Company (Court) Rules, 1959 to dispense with the requirement of convening the meeting of equity shareholders of the transferor company. On 27.01.2016, the application was allowed and the requirement of convening the meeting of equity shareholders was dispensed with. There are no secured or unsecured creditors to the transferor company.

On 18.02.2016, this Court, in the instant company petition, ordered notice to the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and the Official liquidator attached to the Company Court. The petitioner was directed to cause publication of notice of scheme of arrangement in Business Standard (English) and Andhra Prabha (Telugu) daily newspapers of Hyderabad editions. The petitioner submits that notices on the statutory authorities were served and the advertisement was published in the newspapers on 11.03.2016. On 01.07.2016, the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad filed report. On 26.04.2016, the Official Liquidator has filed the report on the scheme of arrangement under consideration.

Learned counsel for the petitioner submits that the transferor company is wholly owned subsidiary of the transferee company. The equity shareholders of the transferor company have given their consents for the proposed scheme of arrangement. The jurisdiction of this Court, while approving the scheme of arrangement, according to ***Miheer H.Mafatlal's*** (1 supra) case, is as follows:

> "(1) The sanctioning Court has to see to it that all the

requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(a) have been held.

(2) That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391(2).

(3) That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of the class.

(4) That all necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391(1).

(5) That all the requisite material contemplated by the proviso to sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

(6) That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same.

(7) That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter compromising the same class whom they purported to represent.

(8) That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom

> the scheme is meant.
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> (9) Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there could be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction."

Learned counsel appearing for the statutory authorities have reported no objection for the proposed scheme of arrangement.

I have considered the material available on record, the principles of law enunciated by the Apex Court in ***Miheer H.Mafatlal's*** case (1 supra) and the conclusions/ recommendations of the statutory authorities through their reports dated 01.07.2016 and 26.04.2016.

Having regard to the above material/reports, this Court is of the opinion that the proposed scheme of arrangement is in conformity with the provisions of the Act. The scheme does not affect the interest of stakeholders and the public or public interest and is intended to further the business interests of transferor and transferee companies for more profit and maximum utilization of available resources. Therefore, the scheme of arrangement approved in the meeting of Board of Directors of transferor company on 09.12.2015 is sanctioned with effect from the date appointed i.e., 01.04.2015. The transferor company viz., Nalgan Techologies Private Limited is ordered to be dissolved without going through the process of winding up. The transferor and the transferee companies are directed to communicate certified copy of this order to the Registrar of

Companies for the State of Telangana and the State of Andhra Pradesh, Hyderabad within
30 days from the date of receipt of a copy of this order. They are further directed to take all consequential and statutory steps required in pursuance of the approved scheme of arrangement and the Act.

Company petition is ordered accordingly.

S.V.BHATT, J

Dt.08.07.2016

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[1] 1996(87) Company Cases 792,

[2] 2003(5) ALD 327

[3] 2002(3) ALD 654