

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 22.01.2016

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Judgement delivered on:24.02.2016

+ **CO.PET. 436/2015**

IN THE MATTER OF CORPORATE INFOSOLUTIONS
PRIVATE LIMITED

... Petitioner no. 1/ Transferor Company No.1

AND

K.A. TRADING COMPANY
PRIVATE LIMITED

...Petitioner no. 2/ Transferor Company No.2

AND

ASP MEDIATECH
PRIVATE LIMITED

.... Petitioner no. 3 / Transferor Company No.3

AND

INNOMAX AUTOTECH
PRIVATE LIMITED

...Petitioner no. 4/ Transferor Company No.4

AND

SUPERB E BUSINESS
PRIVATE LIMITED

.... Petitioner no. 5 / Transferor Company No.5

AND

WIDECOM TELECOMMUNICATION
PRIVATE LIMITED

...Petitioner no. 6/ Transferor Company No.6

WITH

RPM CORP AIDS
PRIVATE LIMITED

.... Petitioner no. 7 / Transferee Company

Through: Mr. P.K. Mittal, Advocate
Through: Ms Aparna Mudiam, Asstt. ROC.
Mr Rajiv Behl, Adv. for the OL.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by Corporate Infosolutions Private Limited (i.e. petitioner no.1/transferor company no.1), K.A. Trading Company Private Limited (i.e. petitioner no.2/transferor company no.2), ASP Mediatech Private Limited (i.e. petitioner no.3/transferor company no.3), Innomax Autotech Private Limited (i.e. petitioner no.4/transferor company no. 4), Superb E Business Private Limited (i.e. petitioner no.5/transferor company no.5), and Widecom Telecommunication Private Limited (i.e. petitioner no. 6/ transferor company no. 6) with RPM Corp Aids Private Limited (i.e. petitioner no. 7/ transferee company) under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of amalgamation (hereafter referred to as the scheme).

1.1 The transferors and transferee companies, as referred to above, will hereafter be collectively referred to as the petitioners. Furthermore, transferor company nos. 1 to 6 will hereafter be conjointly referred to as transferor companies.

1.2 The registered office of the petitioners are located within the territorial jurisdiction of this court.

1.3 The details with respect to incorporation and the petitioners' authorised issued, subscribed and paid up capital have been set out in paragraph nos. 2, 4 , 6, 8, 10, 12 and 14 of the petition.

1.4 The transferor company no. 5 was originally incorporated on 22.05.1992 under the name and style: Wide Plotter (India) Limited, in consonance with

the provisions of the Act. Thereupon, transferor company no.5 got converted into a private limited company and a fresh Certificate of Incorporation (COI) dated 24.12.2013 was issued by the Registrar of Companies, NCT of Delhi and Haryana (in short the ROC). Thus, with effect from 24.12.2013, transferor company no. 5 got converted into a private limited company and its name was changed to its present name viz., Superb E Business Private Limited.

1.5 The transferor company no. 6, on the other hand, was incorporated on 22.05.1992 under the name and style: Widecom Telecommunication Limited. Thereupon, evidently, transferor company no.6 got converted into a private limited company. Consequent to such conversion, a fresh COI dated 26.03.2014 was issued by the ROC and the name of the transferor company no. 6 was thus, changed to its present name i.e. Widecom Telecommunication Private Limited.

2. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2014 have been filed by the petitioners.

3. Copies of Board of Directors' (BOD) resolution of even date i.e 25.03.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

4. The petitioners have averred that the amalgamation of the transferor companies with the transferee company will result in pooling of their financial, commercial and other resources which will provide operational synergies from business and administrative point of view. It is further claimed that with enhanced capabilities and resources at its disposal, the transferee company will have greater flexibility and strength to meet requirements for its future business prospects.

4.1 Furthermore, the petitioners have claimed that there are no proceedings pending against them, under Sections 235 to 251 of the Act.

5. To recapitulate, the petitioners had in the earlier round filed a petition (i.e. the first motion), being: CA(M) No.94/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of shareholders and creditors. This court vide order dated 25.05.2015, having regard to the fact, that all shareholders of the petitioners had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

5.1 The court, having regard to the fact, that all the unsecured creditors of the transferor company nos. 3 to 6 and transferee company had given their consent to the scheme, dispensed with requirement of convening meetings of the said class of persons/entities , as prayed.

5.2 The court, also noted, that since, transferor company nos. 3 to 6 and transferee company did not have any secured creditors, therefore, any requirement to convene meetings with respect to that class of persons/entities does not arise.

5.3 Similarly, the court, also noted, that since transferor company nos. 1 and 2 did not have any creditors (unsecured or secured), therefore, the requirement to convene meetings with respect to those classes of persons/entities also does not arise.

6. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 13.07.2015. Notices were accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL). Furthermore, citations were ordered to be published.

7.1 Accordingly, citations were published in the Delhi Editions of Statesman (English) and Veer Arjun (Hindi), on 26.11.2015.

7.2 An affidavit dated 10.12.2015 establishing publication of citation along with the newspaper extracts, was filed by the petitioners.

7.3 Further, in the aforementioned affidavit, it is averred that subsequent to

the publication of notice in the petition, the petitioners have not received any objections/complaints from any third party qua the scheme.

8. Pursuant thereto, the RD filed its affidavit/report under Section 394 A of the Act. In the affidavit/report, the RD relied upon the general circular bearing no. 53/2011, dated 26.07.2011 and the circular bearing no. 1/2014, dated 15.01.2014. Based on the directions contained in the said circulars, the RD, sent communications to the ROC and the Income Tax Department (I.T. Department) seeking their response to the scheme. However, no comment/response of the I.T. Department has, apparently, been received in the matter.

8.1 The RD, evidently, has received information from the ROC vide communication dated 11.12.2015 which, inter alia is indicative of the fact that the said authority has not received any complaint or objection from the shareholders, creditors, or any of the other stakeholders of the petitioners.

8.2 Therefore, in so far as the RD is concerned, there are no objections taken by him to the scheme.

8.3 In so far as the OL is concerned, he has, inter alia, stated in his report, that no complaint qua the scheme has been received by him from any interested person or party. The OL has also averred in his report that on the basis of information supplied by the petitioners, it appears, the affairs of the transferor companies have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large. In other words, affairs of the transferor companies, according to the OL, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

8.4 Thus, the OL, in effect, has conveyed that he has no objections to the scheme being sanctioned.

9. To be noted, the scheme in clause 9 provides that all employees of the transferor companies in service on the effective date, shall become the employees of the transferee company on such date without any break or interruption in service, and on terms and conditions not less favorable than those subsisting in the transferor companies, as on the said date.

10. In so far as the share exchange ratio is concerned, clause 6.3 of the scheme provides that upon coming into effect of this scheme the transferee company shall issue and allot equity shares to the shareholders of the transferor companies in the following ratio:

Transferor Companies (For every 100 equity shares of Rs. 10 each)	Transferee Company (Fully paid up equity shares of Rs. 10 each)
Transferor company no. 1	02
Transferor company no. 2	03
Transferor company no. 4	06
Transferor company no. 5	11
Transferor company no. 6	12

10.1 It is further provided that the transferor company no. 3 has negative net worth, hence the value of their shares is taken as zero. Therefore, no shares will be allocated to the shareholders of transferor company no. 3.

11. Furthermore, as per clause 21.2 of the scheme, the transferor companies shall stand dissolved without being wound up.

12. In terms of clause 6 of the scheme, the transferee company shall follow pooling of interest method as prescribed under Accounting Standard 14 as notified under Companies (Accounting Standards) Rules 2006.

13. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors (i.e. unsecured) of the petitioners and, given the fact, that the RD and the OL , have not articulated any objections to the scheme, as indicated above, in my opinion, there appears to be no impediment

in the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law.

13.1 A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

14. It is further directed that the petitioners will comply with all the provisions of the scheme and, in particular, those which are referred to hereinabove.

15. In any event, notwithstanding what is stated by the petitioners, the transferee company will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the transferor companies. It is also made clear, that the concerned statutory authority will be entitled to proceed against the transferee company qua any liability which it would have fastened on to the transferor companies for the relevant period, and that, which may arise on account of the scheme being sanctioned.

15.1 Notwithstanding the above, if there is any deficiency found or, any violation committed of any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of any action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

16. In terms of the provisions of Section 391 and 394 of the Act, and in consonance with clause 6.2 of the scheme, the entire undertaking, properties, rights and powers of the transferor companies will stand transferred to and / or vest in the transferee company without any further act or deed. Similarly, in terms of clause 6.5 of the scheme, all duties, liabilities, debts and obligations of the transferor companies shall stand transferred to the transferee company without any further act or deed.

16.1 More particularly, upon the scheme coming into effect, the transferor companies shall stand dissolved without having to follow the process of winding up.

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

17. Consequently, the petition is allowed and disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 24 , 2016