

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSP No. 77 of 2018
IN
CSA No. 965 of 2017

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013;

And

In the matter of Scheme of Amalgamation and Arrangement of Green Oak Software Solutions Private Limited ('First Petitioner Company' / 'Transferor Company') with itCube Solutions Private Limited ('Second Petitioner Company' / 'Transferee Company') and their respective shareholders.

M/s. Green Oak Software Solutions Private Limited

...(First Petitioner Company / Transferor Company)

M/s. itCube Solutions Private Limited

...(Second Petitioner Company / Transferee Company)

Order dated 28.08.2018

CORAM:

Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr. Ajit Singh Tawar i/b Ajit Singh
Tawar & Co.
For Regional Director: Mr. S. Ramakantha, Joint Director
For the Official Liquidator: Mr. Santosh Dalvi, Representative OL

Per B.S.V. Prakash Kumar, Member

ORDER

1. Heard the learned Counsel for the Petitioner Companies. None appears before the Tribunal to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation and Arrangement of Green Oak Software Solutions Private Limited ('First Petitioner Company' / 'Transferor Company') with

itCube Solutions Private Limited ('Second Petitioner Company' / 'Transferee Company') and their respective shareholders.

3. The Petitioner Companies have approved the said scheme of Amalgamation and Arrangement by passing the Board Resolution, which are annexed to the Joint Company Scheme Petition.
4. The Learned Counsel for the Petitioners state that the petitions have been filed in consonance with the order passed in the Company Scheme Application No. 965 of 2017 of National Company Law Tribunal, Mumbai Bench.
5. The Learned Counsel for Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under Companies Act 2013 and the rules made thereunder. The said undertaking is accepted.
6. The Learned Counsel for the Petitioner Companies submits that the Transferor and Transferee Company both are engaged in the business of software development solutions and consultancy.
7. The Amalgamation of the Transferor Company with the Transferee Company would, inter-alia, have the following benefits:-
 - Synergies in procurement, administration and marketing operations.
 - Achieve economies of scale.
 - Avoid duplication of efforts, costs and resources.
 - Lesser regulatory / procedural compliance.
 - Integrate, rationalize and streamline the management structure of the merged business.
 - Combined capital resources would strengthen the financial position of the merged entity and result in

increasing leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes.

- Pooling of human talents in terms of manpower, management, administration and marketing which would result in saving of costs.
 - Amalgamation of companies would avoid duplication of work, administrative service and will result in cost savings.
 - Cost savings in fees / duties payable on statutory and procedural compliance.
 - Facilitate inter transfer of resources and costs and optimum utilization of assets.
 - Synchronizing of efforts to achieve uniform corporate policy.
 - Ease in decision making.
 - To reflect the consolidated net worth of these companies in one balance sheet.
8. The Regional Director has filed its report dated 10th day of June, 2018 and has stated that save and except as stated in paragraph IV (a) to (e) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said report reads as follows:

- a) *In addition to compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such Accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- b) *The petitioners under the provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by compromise or Amalgamation and arrangement. Further,*

the approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities is binding on the Petitioner Company(s).

- c) As per clause 1.2 of the scheme, "Appointed Date" means 1 April, 2017 or such other date as National Company Law Tribunal or such other authority as may be applicable, as the case may be, may direct or approve. In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*
- d) As regards para no. 8 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorised Share Capital, subsequent to Amalgamation for setting-off of the fees paid by the Transferor Company on its Authorised Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.*
- e) Petitioner companies has not submitted admitted copy of the Petition, Minutes of the order of the Hon'ble NCLT. In this regard petitioner companies has to undertake to submit the same for record of Regional Director and also to undertake that the scheme as admitted with the Hon'ble NCLT through company petition and the Scheme which served to the Regional Director through company application is one and the same, and in case of deviation, if any, shall be brought to the notice of the Regional Director.*

- 9. In so far as the observation made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies undertake that it will comply with all the applicable

Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such Accounting entries as may be necessary in connection with the Scheme to comply with other applicable Accounting Standards.

10. In so far as the observation made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that sanction of the Scheme by this Tribunal will not deter any authority to deal with any of the issues arising after giving effect to the scheme and that such issues arising out of the Scheme will be met and answered in accordance with law.
11. In so far as the observation made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies submits that appointed date has been fixed as 1stApril, 2017 as mentioned in Clause 1.2 Definitions of Part-I of the Scheme which is in compliance with section 232 (6) of the Companies Act, 2013 and the Scheme shall be effective from such appointed date but shall be operative from the effective date.
12. In so far as the observation made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply with provisions of Section 232(3)(i) of the Companies Act, 2013 about combination of Authorised Share Capital and file the amended Memorandum of Association and Articles of Association with prescribed e-forms with ROC, Mumbai, upon Scheme becoming effective.
13. In so far as the observation made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies undertake that the Scheme enclosed to the Company Scheme Application and the Scheme enclosed to the Company Scheme Petition are one and the same and there is no discrepancy or deviation and further undertake to file the final copy of the Scheme along with the Order to the office of the Regional Director.

14. The observations made by the Regional Director have been explained by the Petitioner Companies in Paragraph 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
15. The Official Liquidator has filed his report dated 2nd day of July, 2018 stating therein that, the affairs of the Transferor Company has been conducted in a proper manner and the said Scheme is not prejudicial to the interest of public and that the Transferor Company may be ordered to be dissolved without winding up by this Tribunal.
16. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of Law and is not contrary to public policy.
17. Since all the requisite statutory compliances have been fulfilled, Joint Company Scheme Petition No. 77 of 2018 filed by the Transferor and Transferee Company are made absolute in terms of prayer clause of the Company Scheme Petition to sanction the Scheme of Amalgamation and the appointed date is fixed as 1st April 2017.
18. Petitioner Companies are directed to lodge a certified / authenticated copy of this order and the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 working days from the date of the receipt of the certified copy of the Order, for the purpose of adjudication of stamp duty payable, if any on the above.
19. Petitioner Companies are directed to lodge a certified copy of this order along with the copy of Scheme of Amalgamation and Arrangement with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to the physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry, duly certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.

20. The Petitioner Companies to pay cost of Rs. 25,000/- to the Regional Director, Western Region, Mumbai, cost to be paid within four weeks from the date of this Order.
21. The First Petitioner Company to pay cost of Rs. 25,000/- to the Official Liquidator, Mumbai, cost to be paid within four weeks from the date of this Order.
22. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.

SD/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

SD/-

B.S.V. PRAKASH KUMAR
MEMBER (JUDICIAL)