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**IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH, CHENNAI**

CP/171 & 172/CAA/2018
in
CA/61 & 62/CAA/2018

Under Section 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation

Between

M/s. Kryptos Consulting Services Private Limited
(Transferor Company)

And

M/s. Kryptos Technologies Private Limited
(Transferee Company)

And

Their respective Shareholders & Creditors

Order delivered on: 3rd September, 2018

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CH. MOHD SHARIEF TARIQ, MEMBER (J)

For the Petitioner(s): P. Sriram, PCS.

ORDER


Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration are the Company Petition Nos. 171 & 172/CAA/2018 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. As per the Scheme of Amalgamation (in ✓

Short, '**Scheme**'), M/s. Kryptos Consulting Services Private Limited (hereafter referred to as '**Transferor Company**') is proposed to be merged, amalgamated and vested with M/s. Kryptos Technologies Private Limited, (hereafter referred to as '**Transferee Company**') as a going concern.

2. The Transferor Company is a Private Limited Company, having its Registered Office at No. 29, Sarathy Nagar, Narayana Complex, 1st Floor, C Wing, Velachery, Chennai – 600042, Tamil Nadu. The Transferee Company is a Private Limited Company, having its Registered Office at No. 29, Sree Narayana Complex, Sarathy Nagar, Velachery, Chennai – 600042, Tamil Nadu. The Transferor and Transferee Company are engaged in the business of Consulting, Trading, Extending Services and related Products, to deal in all Information Technology Enabled services for all customers and to carry on the business in India and abroad of imparting training, Implementing, Maintenance and follow up of functions in sales and services, etc, the details of which are elaborately set

out in Clause III of the Memorandum of Association of the Transferor and Transferee Company. The Board of Directors of Petitioner Companies vide its Resolution dated 12.02.2018 approved the said Scheme of Amalgamation.

3. This Bench vide Order dated 21.03.2018, in CA/61 & 62/CAA/2018 dispensed with the convening and holding of the meeting of the Equity Shareholders of the Transferor Company and the Transferee Company. The Transferor and Transferee Company have no Unsecured Creditor, and furnished a certificate to this effect from the Chartered Accountant. The Transferor and Transferee Companies have one Secured Creditor each, and furnished the consent affidavit from the said Creditor and hence the meeting of the secured creditors was dispensed with. In short, the Petitioner Companies have complied with all the requirements of law.
4. The Counsel appearing for the Petitioner Companies has submitted the reason and circumstances that have 

necessitated the proposed Scheme. He further submitted that the amalgamation will be beneficial for both the companies in Integration of operations; simplification the group structures; elimination of multiple entities within the group; optimal utilization of resources, better administration and cost reduction; and Tax benefits on account of consolidation of group companies.

5. The Regional Director, Southern Region (In short, '**RD**') in the Affidavit dated 23.04.2018 submitted that Clause 12 of Part B of the Scheme provides for the protection of the interest of the employees/staff/workmen of the Transferor Company. It has further been submitted that as per the report of the RoC, Chennai, the Transferor Company and Transferee Company are regular in filing their statutory returns, and no complaints are pending and no inspection or investigation has been conducted against the Petitioner Companies.

6. The RD has observed that clause 7 of the Scheme provides that the authorised capital of the Transferor Company will be merged with that of the authorised capital of the Transferee Company. The RD has suggested that the Transferee Company may be directed to file the amended MOA and AOA with RoC, Chennai for record. The RD has also suggested that as per the clause (i) to sub Section (3) of Section 232 of the Companies Act, 2013 the Transferee Company has to pay the fees, if any, for the enhanced authorised capital subsequent to the Amalgamation after setting off the fees paid by the Transferor Company. In this regard, an authorised representative of the Transferee Company has filed an affidavit deposing therein that the Transferee Company undertakes to file the amended MOA and AOA and necessary application to Registrar of Companies for payment of balance fees as applicable and make necessary payment thereof.

7. In para 10 of its report, the RD has observed that in clause 6.4 of the scheme it is stated that the net assets

value of the transferor company taken over as per clause 6.1 and 6.2 of the scheme and after accounting for the cancellation in clause 6.3 and clause 6.4 shall be credited by the transferee company to its reserves. The RD has suggested that as per the accounting standard 14 the company should credit/adjust the surplus after the above adjustments under the Capital Reserves only and the Transferee Company may give an undertaking in this respect before this Hon'ble Tribunal. In this regard, the authorised representative of the Transferee Company has filed an Affidavit deposing therein that the Transferee Company shall comply with accounting standard 14 and shall credit/adjust the surplus after the above adjustments under the Capital Reserves only. Certificate from the statutory auditors of the company under section 133 of the Companies Act, 2013 confirming the accounting treatment was already annexed to the company petition.

8. The Official Liquidator (In short, '**OL**') in his Report dated 16.08.2018, submitted that as per Order dated 21.03.2018, he has nominated M/s. Chaturvedi & Co., Chartered Accountants (Auditor), Chennai, who is one of the empanelled Auditors by the Hon'ble High Court of Madras to look into the Scheme of Amalgamation and to scrutinize the books and accounts of the Transferor Company. The Auditor has broadly reviewed and observed that under Clause 12.1 of Part-B of the proposed Scheme, the interest of all the permanent employees in the service of the Transferor Company is safeguarded.

9. The Auditor's report has disclosed that as per Clause 5.1 of Part B of the said Scheme, upon the Scheme becoming fully effective, in consideration of the transfer and vesting of the undertaking of the Transferor Company in the Transferee Company in terms of the Scheme, each of the equity shareholders of the Transferor Company as on the Effective Date, shall be allotted one equity share of Rs. 10/- each

credited as fully paid up of the Transferee Company in respect of one equity share of Rs. 10/- each fully paid up held by them in the Transferor Company.

10. The OL has also stated that the Chartered Accountants have examined the Books of Accounts and records, other documents, annual reports and statutory records, registers and other related documents of the Transferor Company. The affairs of the Company have not been conducted in a manner prejudicial to the interest of its members, or its creditors, or to the public interest.

11. He further submitted that Transferor Company has filed all the returns with the Registrar of Companies generally in time and wherever there has been delay, additional fees has been paid as per the legal requirements and no cases are pending against Transferor Company or any of its Directors/Officers, and no prosecution has been launched under any of the Sections of the Companies Act, 1956/2013 against the Transferor Company or any of their directors.

12. OL further reported that the business of the Transferor Company has not been carried on with intent to defraud the creditors or any other person or for any fraudulent purpose attracting the provisions of Section 542 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013. Neither has any person or officer or director of the Transferor Company has misapplied or diverted or retained or become liable or accountable for any money or property of the Transferor Company nor has been found guilty of any misappropriation, breach of trust in relation to the Transferor Company under the provisions of Section 543 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013.

13. As mentioned in Part-B of Para 6 of the Scheme, it appears that the Accounting Treatment is in conformity with the Accounting Standards. The Appointed date of the said Scheme is 01.04.2017.

14. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petitions are allowed and the Scheme of Amalgamation annexed with the Petitions is hereby sanctioned which shall be binding on the Shareholders, Creditors and employees of the Companies.

15. While approving the Scheme as above, I further clarify that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if 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.

16. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
17. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of this Order.
18. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the Registrar of Companies.
19. Upon receiving the certified copy of this Order, the RoC, Chennai, is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.
20. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format

provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

21. Accordingly, the Scheme stands sanctioned and CP/171 & 172/CAA/2018 **stand disposed of.**


(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)

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