

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

CA (CAA)-132(ND)/2017

IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

AND

In the matter of Scheme of Amalgamation

OF

Information Mosaic Software Private Limited

(Transferor Company /Petitioner Company No. 1)

WITH

Markit India Services Private Limited

(Transferee Company/Petitioner Company No. 2)

And

Their Respective Shareholders and Creditors

Q

MEMO OF PARTIES

Information Mosaic Software Private Limited

Company Incorporated under Companies Act 1956

Having its registered office at:

17, Subhash Marg, Darya Ganj,

New Delhi-110002

..... TRANSFEROR COMPANY/ PETITIONER COMPANY NO. 1

Markit India Services Private Limited

Company Incorporated under Companies Act 1956

Having its registered office at:

46, Aradhana Chanakyapuri,

New Delhi-110066

.....TRANSFeree COMPANY/ PETITIONER COMPANY NO. 2

For the Applicants:

Mr. D.K. Malhotra, Advocate

Mr. Rajesh Kr. Malhotra, Advocate

Mr. Ashok Tyagi, PCS

ORDER

Delivered on: 02. 02 .2018

1. This is an application which is filed by the petitioner companies herein, Information Mosaic Software Private Limited (for brevity "Transferor Company"), with Markit India Services Private Limited (for brevity "Transferee Company") under sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants. The said Scheme is also annexed as "Annexure- 1" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident inter alia from the reliefs sought for in the Application, namely:

- (a) Appropriate directions may kindly be issued for dispensing with the requirement of convening, holding and conducting the meetings of equity shareholders and unsecured creditors of the Transferor Company and Transferee Company;
- (b) Appropriate order(s) dispensing with the requirement to give individual notice to the Equity Shareholder and Unsecured Creditors of the Transferor & Transferee Company;
- (c) Appropriate order(s)/ direction(s) for dispensing with the publication of the notice(s) of the meetings of the said respective Shareholders and Creditors (unsecured);
- (d) Issue notice to the Central Government, the registrar of Companies and the Official Liquidator, etc;
- (e) That this Hon'ble Tribunal may be pleased to give directions for filing the company petition for sanction of the scheme within 2 weeks of their disposal of this petition; and
- (f) Pass any other order which may deemed fit by this Hon'ble Tribunal in the present facts and circumstances of the case.

Q

2. An affidavit in support of the above application sworn for and on behalf of the Transferor Company and Transferee Company by one Mr. Ravi Shrivastava has been filed, being the Director of both the Companies. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Arrangements) Rules 2016 and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi.
3. In relation to Information Mosaic Software Private Limited being the Transferor Company, in the Scheme marked as Annexure - 1, it is represented that it is having 2 (two) Equity Shareholders and both of them have given their consents by way of affidavit. It is further represented by the counsel for Applicants that the Transferor Company has 2 (two) Unsecured Creditor and both of them have given their consent by way of affidavit. It is further represented by the counsel for Applicants that the Transferor Company has no Secured Creditor as on 24.05.2017. In relation to the shareholders and unsecured creditor of the Transferor Company, it seeks dispensation from convening and holding of the meetings in view of consent by way of affidavits having been obtained and the same has been placed on record.
4. In relation to Markit India Services Private Limited being Transferee Company in the Scheme marked as Annexure - 1, Learned Counsel represents that company is having 2 (two) Equity Shareholders and both of them have given their respective consents by way of affidavit. It is further represented by the counsel for Applicants that the Transferee Company ^{has} 20 (twenty) Unsecured creditors. Out of the total number of unsecured creditors it is represented that 16 have given their consents constituting more than 98% in value. It is further represented by the counsel for Applicants that the Transferee Company has no Secured Creditor as on 24.05.2017. In relation to the shareholders and unsecured creditors of the Transferee Company, it seeks dispensation from convening and holding of the meetings for the purpose of obtaining their

Q

approval to the proposed Scheme of Amalgamation in view of consent by way of affidavit having been obtained all of which also been placed on record.

5. In relation to the territorial jurisdiction, Ld. Counsel for the applicant companies submit that the subject matter of the joint application is within the jurisdiction of this bench.
6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that Transferor Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 1st September 2009 with Registrar of Companies, NCT of Delhi and Haryana under the name and style of "Navyug Software Private Limited". Later on the Transferor Company changed its name to "Information Mosaic Software Private Limited" on 10th February 2010 and such alternation having been recorded in the fresh Certificate of Incorporation is annexed with this application. The Corporate Identity Number of the Transferor Company is U72900DL2009PTC193751. The copy of Certificate of Registration has been placed on record.
8. The Authorized Share Capital of the Transferor Company is Rs. 1,00,000/- (Rupees One Lac Only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten) each. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company is Rs. 1,00,000/- (Rupees One Lac Only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten) each.
9. From the certificate of incorporation filed, it is evident that the Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 6th March 2009 vide CIN: U74900DL2009FTC188265 with Registrar of Companies, NCT of Delhi and Haryana under the name and style of "Markit India Services Private Limited".

Q

10. The Authorized Share Capital of the Transferee Company is Rs. 5,00,000/- (Rupees Five Lac Only) divided into 50,000 (Fifty Thousand) Equity Shares of Rs.10/- (Rupee Ten) each. The Issued, Subscribed and Paid-Up Share Capital of the Transferee Company is Rs. 5,00,000/- (Rupees Five Lac Only) divided into 50,000 (Fifty Thousand) Equity Shares of Rs.10/- (Rupee Ten) each.
11. The Board of Directors of the Applicant companies vide separate meetings held on 07.06.2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereon have been placed on record by the companies.
12. The appointed date as specified in the Scheme is 1st April, 2017 subject to the directions of this Tribunal.
13. The Applicant companies have stated in the petition that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.
14. That the Applicant Companies it is stated have complied with the proviso to Section 230 (7) and Section 232 (3) by filing the certificate of the Company's Auditor in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013.
15. However, upon a perusal of the application as well as annexures filed alongwith the application, it is seen that the applicants have not annexed the financial statements duly audited by company's auditor for the year ended 31.03.2017 and have instead strangely attached only the unaudited financial statement as at 30.06.2017. The reason as to why the accounts of the company were not prepared and subsequently audited for the year ended 31.03.2017 has not been explained in the application or affidavit. From a perusal of the audited financial statement for the year ended 31.03.2016 of the Transferor Company it is seen that BSR & Co. LLP has certified the financial statement which is annexed as Annexure-3 to the main application, whereas the certificate under section 133 of Companies Act, 2013 has been issued by



S.R.Batliboi & Associates LLP which is annexed as Annexure-28 filed by the applicants vide diary no. 5166 dated 08.12.2017. Further in relation to the Transferee Company it is seen that the financial statement for the year ended 31.03.2016 has been certified by Price Waterhouse Chartered Accountant LLP , whereas the certificate under section 133 of Companies Act, 2013 has been issued by S.R.Batliboi & Associates LLP which is annexed as Annexure-18. As per the provision to sub-section (7) of Section 230 read with main proviso to sub-section (3) of Section 232 of Companies Act, 2013 the Company's auditor is required to give the certificate and not any auditor.

16. Further it is also pertinent to note that the applicant companies in the instant case have sought for dispensation of meetings of Equity Shareholders and Unsecured Creditors. In the circumstances an onus is placed on the applicant companies to place all the documents as mandated under the provisions of Section 230 to 232 as well as those which are required to be annexed if a meeting of shareholders/creditors is convened by virtue of sub rule (3) Rule 6 of Companies (Arrangement and Amalgamations) Rules, 2016 which also includes, inter alia, the latest audited financial statements of the Company as well as the Company's auditors certificate in relation to section 133 of the Companies Act, 2013 relating to compliance with the accounting standards atleast before this Tribunal. In this connection it will be necessary to refer to section 232(2) of 2013 Act as reproduced below:

232. Merger and amalgamation of companies:

(2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

(a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(b) confirmation that a copy of the draft scheme has been filed with the Registrar;

(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders




laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) the report of the expert with regard to valuation, if any;

(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

Hence an onus is placed on companies, like the applicant companies herein, in case they seek for an order of dispensation of meeting which they were otherwise required to circulate, if a direction for convening meeting is passed by this Tribunal to circulate the necessary papers, be it shareholders or the creditors, as the case may be and the companies cannot side step from filing these documents atleast before this Tribunal under the guise of seeking dispensation and conveniently avoid filing these documents and disclosing it anywhere.

In view of the above circumstances this Tribunal is constrained to dismiss the above joint application for non-compliance with the provisions of the Companies Act, 2013 read with Companies (Arrangement and Amalgamations) Rules, 2016.


02/02/16
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta/M