

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

T.P.NO. 194/2017

IN

CoP.NO. 192/2016

DATED: THURSDAY THE 1<sup>st</sup> DAY OF JUNE 2017

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956 AND OTHER  
RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONG WITH THE  
COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTION 230 TO 232 OF THE COMPANIES ACT, 2013 AND  
OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONGWITH  
THE COMPANIES ACT, 1956

AND IN THE MATTER OF

SCHEME OF ARRANGEMENT

THOMSON REUTERS SOUTH ASIA PRIVATE LIMITED

AND

TRCPL PROJECTS PRIVATE LIMITED

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

T.P.NO. 194/2017 IN CoP.NO. 192/2016

1. Thomson Reuters South Asia Private Limited,  
Divyashree Technopolis,  
36/2 & 124, Yamalur Village Varthur, Hobli,  
Off, HAL Airport Road, Bengaluru  
Karnataka-560037 -

PETITIONER/DEMERGED COMPANY

- PARTIES PRESENT:
1. Mr. Saji P. John, Advocate  
SPJ Legal, Unit No.1002, 10<sup>th</sup> Floor,  
#30, Prestige Meridian II M G Road  
Bengaluru 560001  
Advocates for the Petitioner Company
  2. Ms.Sinchana M R, Standing Counsel for Central Government  
Advocate for the Regional Director
  3. Mr. Vasant Kumar, Assistant  
Representative for Official Liquidator

Heard on: 12.04.2017, 13.03.2017 & 10.02.2017

**O R D E R**

Originally this Petition was filed before the Hon'ble High Court of Karnataka and it was numbered as Co.P. No.192/2016. Subsequently as per Notification No. GSR.1119 (E) dated 7<sup>th</sup> December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said case is transferred to this Tribunal and renumbered as T.P No. 194/2017.

This Company Petition is filed on behalf of the Petitioner Company under Section 391-394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying to order for sanctioning the Scheme of Arrangement for demerger of Intellectual Property and Science Division of Thomson Reuters South Asia Private Limited (Petitioner/Demerged Company) into TRCPL Projects Private Limited (Resulting Company) and shall be binding upon all the Shareholders and Creditors and all other persons of the Petitioner Company.

The averments made in the Company Application are briefly described hereunder:-

The Petitioner Company seeks an order for sanctioning the Scheme of Arrangement for demerger of Intellectual Property and Science Division of **THOMSON REUTERS SOUTH ASIA PRIVATE LIMITED** (Petitioner/Demerged Company) into **TRCPL PROJECTS PRIVATE LIMITED** (Resulting Company). The Scheme of Arrangement is shown as **Annexure A**.

The Petitioner Company was incorporated on 20<sup>th</sup> March, 2007 as the Private Limited Company under the name, THOMSON INFORMATION SOUTH ASIA PRIVATE LIMITED. Subsequently, the Company changed its name to **THOMSON REUTERS SOUTH ASIA PRIVATE LIMITED** on 5<sup>th</sup> November, 2011 and obtained Fresh Certificate of Incorporation vide bearing CINNo.U72200KA2007PTC042184.

The Registered office of the Petitioner Company is situated at Divyashree Technopolis, 36/2 &124, Yamalur Village Varthur, Hobli, Off HAL Airport Road, BengaluruKarnataka-560037.

The Main objects of the Petitioner Company as set out in the Memorandum of Association are inter alia, includes:



- i) to carry on in India or abroad the business of rendering services relating to collection, processing and maintenance of data, records information and communication of all types and to prepare, develop and establish computer programming libraries and manuals of operations and maintenance of such information, to carry on the business of dealing in books, magazines and periodicals of all types and to conduct academic, professional qualification and technical tests of all types.
- ii) to provide technical support services including support for PC's, software applications, mobile phones, ISP's, broadband internet support and other Technology enabled consumer products as well as help-desk support services and customer support services including billing inquiries, pre-sales marketing, outbound telemarketing, product ordering and fulfilment, credit card services and other related customer service applications and to provide other customer management solutions and services to external and internal customers of the companies primarily carrying on business in the field of technology, communications and financial services through various communication channels including telephone, fax, e-mail, web, chat etc.

The copy of Certificate of Incorporation and Memorandum & Articles of Association of the Petitioner Company is shown as **Annexure B**.

The Latest Audited Balance Sheet of the Petitioner/Demerged Company as on 31<sup>st</sup> March, 2015, the assets and liabilities are as follows:

Liabilities	Amount	Asset	Amount
Share Capital	16,500,480	Non-Current Assets	94,674,864
Reserve and Surplus	(384,913,927)	Current Assets	446,066,435
Non-Current Liabilities	365,129,788		
Current Liabilities	544,024,958		
<b>Total</b>	<b>540,741,299</b>	<b>Total</b>	<b>540,741,299</b>

The Copy of Audited Balance Sheet as on 31<sup>st</sup> March, 2015 and copy of Unaudited Balance Sheet as on 31<sup>st</sup> March, 2016 are shown as **Annexure C & D**.

The Resulting Company was incorporated on 19<sup>th</sup> July, 2016 as the Private Limited Company under the name and style **TRCPL PROJECTS PRIVATE LIMITED** in the State of Maharashtra and obtained fresh certificate of Incorporation vide bearing CIN No.U74999MH2016FTC283853.

The registered office of the Resulting Company is situated at 4<sup>th</sup> Floor, B Wing, Piramal Towers, Peninsula Corporate Park, G.K. Marg, Lower Parel (W), Mumbai- 400013

The Main objects of the Petitioner Company as set out in the Memorandum of Association are inter alia :

- i) to carry on with or without foreign collaboration/arrangements all or any of the business of designing, developing, using, making, having made, promoting, producing, marketing, purchasing, selling, importing, exporting, processing, maintaining, installing, implementing, hiring, letting on hire, repairing, or otherwise dealing with all types of Computer Software and Hardware Products, Computer Programmes etc.
- ii) to set up, run, operate and supervise directly or through franchises or contracts or otherwise, electronic data processing centres and to carry on the business of all kinds of IT

The copy of Certificate of Incorporation and Memorandum & Articles of Association of the Petitioner Company is shown as **Annexure E**.

The latest authorized share capital of the Resulting Company is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs 10/- each. The issued, subscribed and paid up share capital is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each fully paid up. Since the Company was newly incorporated, and yet to commence its business there are no commercial transactions, as such the Balance Sheets are prepared at the time of filing of the present Company Petition.

The Board of Directors of the Petitioner/Demerged Company at the Board Meeting held on 25<sup>th</sup> July, 2016 has passed a resolution approving and adopting the scheme of Arrangement. Copy of Board Resolution is shown as **Annexure F**.

The Petitioner Company has filed C.A.No.564/16 before the Hon'ble High Court of Karnataka to dispense with the convening of meeting of Shareholders and Creditors of the Petitioner Company. The Hon'ble High Court of Karnataka vide order dated 11<sup>th</sup> August, 2016 allowed the Application and dispensed with convening of meeting(s) the Shareholders and Creditors. Copy of the Order of Hon'ble High Court in C.A.No564/16 is produced along with Memo dated 25<sup>th</sup> August, 2016.

It is averred in the Company Petition that there are no investigation proceedings against the Petitioner Company under Section 235-251 of the Companies Act, 1956 and the relevant provisions of the Companies Act, 2013.

The Petitioner Company filed the petition bearing Company Petition No. 192/2016 before the Hon'ble High Court for approving the Scheme of Arrangement on 17<sup>th</sup> August, 2016.

The Hon'ble High Court of Karnataka vide order dated 25<sup>th</sup> August, 2016 issued notice to Regional Director and also directed to have an advertisement published in the Bangalore edition of "THE HINDU" and "THE UDAYAVANI" newspapers on or before 5<sup>th</sup> September, 2016, stating the next date of hearing of the present petition on 23<sup>rd</sup> September, 2016. A Memo dated 2<sup>nd</sup> September, 2016 has been filed regarding furnishing the same.

The Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad represented by Registrar of Companies has filed **Affidavit dated 30<sup>th</sup> March, 2017** making some observations in Paragraph (4), (5), (6) & (7) and in furnishing response to the same, the Counsel for the Petitioner Company has filed the **Reply Affidavit dated 7<sup>th</sup> April, 2017** of the Authorised Signatory. The objections raised by the Regional Director through Registrar of Companies and the Explanation given by the Petitioner Company are stated hereunder:

- i) The Notice dated 8<sup>th</sup> September, 2016 was issued to the Income Tax Department giving 15 days' time to offer comments/ objections, if any. But no comments/objections have been received from the Income Tax Department till 9<sup>th</sup> March, 2017.

The Authorised Signatory of the Petitioner Company in his Reply Affidavit submits that the Petitioner, has served the copy of the Petition to Deputy Commissioner IT, Circle 7 (1) (1) on 2<sup>nd</sup> September, 2016, however no comments received.

- ii) a). Clause 8.1 of part 2 of the Scheme provides that the Resulting Company shall issue and allot shares to the shareholders of the Demerged Company in the following proportion:

"1 Equity share of Rs.10/- each in Resulting company, credited as fully paid up for every 6.3396 Equity share of Rs.10/- each held in the Demerged Company".

b). However, Para No.6 of the Valuation Report of M/s. Sarc & Associates, Chartered Accountants dated 25<sup>th</sup> July, 2016 submitted by the Petitioner Company provides as under:

“1 Equity share of Rs.10/- each fully paid up of TPPL for every 63.836 Equity Shares of Rs.10/- each fully paid up of TRISPL to equity shareholders of TRISPL in consideration for the demerger of TRISPL IP & S Division”.

“1 Equity share of Rs.10/- each fully paid up of TPPL for every 6.3396 Equity Shares of Rs.10/- each fully paid up of TRSAPL to equity shareholders of TRISPL in consideration for the demerger of TRASPL IP & S Division”.

In the Valuation Report, the valuer has shown Two Share Exchange Ratio as stated above. The Petitioner Company may submit necessary clarification before the Hon'ble Tribunal with reference to the Share Exchange Ratio delaminated by the valuer.

In response to the same, the Petitioner Company has stated in his Reply Affidavit that, M/s SARC & Associates, Chartered Accountants had conducted a joint valuation and the purpose of joint valuation was to fix the consideration for demerger of Intellectual Property and Science Division in respect of the Companies namely Thomson Reuters International Services Private Limited ('TRISPL'), Thomson Reuters South Asia Private Limited ('TRSAPL'), Pangea3 Legal Database Systems Private Limited ('Pangea') into TRCPL Projects Private Limited ('TPPL') vide two separate schemes:

- a) Composite scheme of Arrangement between Thomson Reuters International Services Private Limited and Pangea3 Legal Database Systems Private Limited and TRCPL Projects Private Limited.
- b) Scheme of Arrangement between Thomson Reuters South Asia Private Limited and TRCPL Projects Private Limited.

Amongst the above scheme, the first scheme was filed before the Hon'ble high Court of Bombay as the registered offices of TRISPL, Pangea and TPPL were situated in the State of Maharashtra. Later the same was transferred before the National Company Law Tribunal, Mumbai bench and was finally approved on 16<sup>th</sup> March, 2017.

- iii) The Registered office of the Resulting Company is situated in the State of Maharashtra and is within the Jurisdiction of the Hon'ble National Company Law Tribunal , Mumbai Bench. Therefore the approval of the Scheme by the Hon'ble NCLT, Bengaluru Bench may be subject to the orders of the Hon'ble NCLT, Mumbai Bench.

In response to the averments set out in para mentioned above, the Petitioner Company submits that the Resulting Company has obtained an approval for the said scheme from the National Company Law Tribunal, Mumbai Bench vide order dated 16<sup>th</sup> March, 2017.

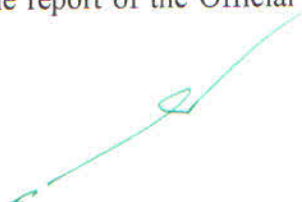
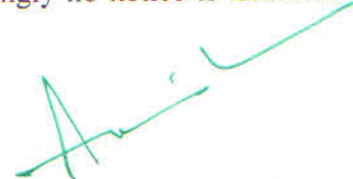
- iv) There is no clause in Memorandum of Association of the Transferor/ Demerged Company for Amalgamation and Arrangement.

The Counsel submits that, even in the absence of the objects clause enabling amalgamation contained in Memorandum of Association of the Transferee Company, the Transferor and the Petitioner/Transferee Companies may be amalgamated pursuant to the scheme under section 391-394 of the Companies Act, 1956. The learned Counsel further submits that, the Tribunal has power by virtue of provisions of Section 391-394 of the Companies Act, 1956 corresponding to Section 230-232 of the Companies Act, 2013 to order for amalgamation of the Transferor Company with Transferee Company. In the decision of the Hon'ble High Court of Karnataka reported in ILR 2005 KAR page 4523 Re: Hindhivac Private Limited and Anr. Vs Nil, it was observed in Para 20 of the judgement as follows:

20. Section 17 of the Act, is an aid to the companies seeking amalgamation in terms of the scheme. Section 391 to 394 in Chapter V of the Act are of very wide amplitude so as to take into its fold compromise or arrangement including un-construction. The legislature in its wisdom provided for such wide range of power to be exercised by this Court, since in matters of amalgamation conducive to the interest of shareholders, there should be no fetters. In short, the power of the companies to amalgamate may flow either from the objects in their memorandum or may be acquired by resort to Section 391 to 394 of the Act.

After this Petition was transferred from the Hon'ble High Court of Karnataka then the Tribunal directed the Counsel for the Petitioner Company to inform, whether Notice(s) to be issued to the authorities other than those to whom Notice(s) were already issued in pursuant to section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

The Counsel for the Petitioner Company has filed the **Affidavit dated 23<sup>rd</sup> March, 2017** of the Authorised Signatory of the Petitioner Company stating that Notices were issued to the Regional Director Ministry of Corporate Affairs, South Eastern Region, Registrar of Companies, Karnataka and notice was also issued to the Income Tax Department by the Regional Director and also by the Company. Since this is a scheme of Arrangement and not dissolution, there is no requirement for the report of the Official Liquidator and accordingly no notice is issued to the

Official Liquidator. That the Petitioner Company is not required to issue notice to the SEBI and Stock Exchange, since it is an Unlisted Company. Further, there is no need for issuance of notice to the Reserve Bank of India as the Company is not governed by the RBI, further no notice is required to be issued to the Competition Commission of India as the total assets and turnover does not exceed the prescribed limit for obtaining approval from CCI,. It is further submitted that, the Company is not governed by any other Sectoral or other regulatory authorities.

The Counsel for the Petitioner Company has filed **Memo dated 12<sup>th</sup> April, 2017** furnishing the Certificate of the Chartered Accountant stating that the Accounting Treatment contained in the Scheme is in compliance with applicable Accounting Standards specified under Section 133 of the Companies Act, 2013, read with Rule 7 of the Companies (Accounts) Rules, 2014 and other generally accounting principles.

After hearing the Counsel for the Petitioner Companies and also considering the material on records,

**THIS TRIBUNAL DO FURTHER ORDER:**

While Approving the Scheme as above, it is further clarified that, this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, or any exemption under provisions of Income Tax Act or other applicable regulations or in respect to any permission/compliance with any other requirement which may be specially required under any law.

The Whole of the property, rights and powers of the Intellectual Property and Science Division of Thomson Reuters South Asia Private Limited (Petitioner/Demerged Company) be transferred without further act or deed into TRCPL Projects Private Limited (Resulting Company) and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the Resulting company for all the state and interest of the Demerged Division of the Petitioner Company therein but subject nevertheless to all the charges now affecting the same; and





All the liabilities including taxes and duties of the Petitioner Company be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company; and

The tax implications, if any, of the Demerged Division of the Petitioner Company arising out of the scheme is subject to final decision of concerned Assessing Authorities and the decision of these Authorities shall be binding on the Resulting Company.


All the proceedings now pending by or against in respect to Demerged Division of the Petitioner Company be continued by or against the Resulting Company, if any; and


The Petitioner Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the concerned Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e. 1<sup>st</sup> August, 2016.

The Petitioner Company or its authorised signatory is directed that after the completion of the process of Arrangement to handover the possession of the books of accounts and other relevant documents of the Petitioner Company to the Resulting Company for the purpose of compliance of Section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 1<sup>st</sup> DAY OF JUNE, 2017