

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
TP No.172 of 2017

IN

C.P.NO.107/2016

DATED: WEDNESDAY THE 28th DAY OF JUNE 2017

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

IN THE MATTER OF THE COMPANIES ACT, 1956
UNDER SECTION 391 to 394 OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF COMPANIES ACT, 2013
SECTIONS 230 and 232 OF THE COMPANIES ACT, 2013
AND

IN THE MATTER OF ORCC SOLUTIONS PRIVATE LIMITED

ORCC Solutions Private Limited,
RegdOffice :Salarpuria Cambridge Mall,
#9, Cambridge Road,
Bengaluru-560008

- PETITIONER / TRANSFEROR COMPANY

COUNSEL PRESENT:

SHRI. A. MURALI,
J.SAGAR ASSOCIATES,
Advocates & Solicitors,
2nd Floor, Frontline Chandeur
14, Walton Road,
Bangalore-560 001

for Petitioner

MS. KAVITHA, H.C.
Advocate
No.89, 'Harsada', Kempapura,
Hebbal, Bangalore-560 024

for ROC & RD

Representative of Official Liquidator for OL

Heard on: 09.02.2017, 07.03.2017, 17.03.2017, 03.04.2017, 18.04.2017, 19.04.2017 and
20.04.2017, 06.06.2017, 15.06.2017, 20.06.2017 and 27.06.2017.

ORDER

Company Petition No. 107 of 2016 was originally filed on behalf of Petitioner Company before Hon'ble High Court of Karnataka at Bengaluru. Subsequently this petition was transferred to this Hon'ble Tribunal basing on the notification bearing No. GSR.1119(E) dated 7th December, 2016 issued by Ministry of Corporate Affairs, New Delhi. This petition was transferred from the file of Hon'ble High Court of Karnataka at Bengaluru to this Tribunal and it is renumbered as TP No.172 of 2017.

This Company Petition was filed under Sec. 391 to 394 of Companies Act 1956 for sanction of the Scheme of Amalgamation. The averments in the Company Petition are briefly described hereunder.

This Company Petition is filed for sanction to the Scheme of Amalgamation wherein the Petitioner Company which is proposed to be merged with its parent company ACI Worldwide Solutions Private Limited hereinafter referred to the Transferee Company under the Scheme of Amalgamation which is annexed and marked as ANNEXURE "A". The Petitioner Company was incorporated on 28.06.2011 under the name and style of "ORCC Solutions Private Limited" with Registrar of Companies Mumbai. Subsequently, the registered office of the Petitioner Company was shifted to the State of Karnataka and a fresh certificate of incorporation was issued by the Registrar of Companies Karnataka. The Petitioner Company is inter alia engaged in the business of Software development support services for the software products and solutions in the area of online banking and e commerce sectors. A copy of the Memorandum and Articles of Association of the Petitioner Company is annexed and shown as ANNEXURE "B". The registered office of the Petitioner Company is at Salarpuria Cambridge Mall, #9, Cambridge Road, Bangalore.

The main objects of Petitioner Company as set out in its Memorandum and Articles of Association

- a) To plan, design, develop, process, market, distribute, sell, license, lease, install, import, export or otherwise deal in web based account presentation, payment gateways and marketing services for financial institutions, creditors, billers and others; software systems including programming, information management retrieval, data preparation, Internet and processing and to operate, and maintain computer systems and communication system, communications or electronic data processing equipment, products and services including computers and microprocessor based systems, mini and microcomputer based products, switches, mainframe and super computers and telecommunication peripheral

equipment and terminals including intelligent terminals, speech or signal processing equipment, test equipment, office and factory automation equipment.

It is averred that the Board of Directors of the Petitioner Company have approved the Scheme of Amalgamation (hereinafter referred to as the "scheme") on September 8, 2015 by virtue of which the Petitioner Company is proposed to be merged with its parent company i.e. the Transferee Company subject to confirmation of this Tribunal within whose jurisdiction the registered office of the Petitioner Company is situated. Copy of the Board Resolution dated September 8, 2015 is produced as **ANNEXURE -D** to the Company Petition. The Board of Directors of the Transferee Company has also approved the Scheme of Amalgamation at its meeting held on September 8, 2015. Copy of the Board resolution passed by the Board of Directors of the Transferee Company is produced herewith and marked as **ANNEXURE "E"** to the Company Petition.

It is averred that as the Petitioner Company is a wholly owned subsidiary of the Transferee Company, therefore, the Transferee Company is not filing a separate petition before the Court.

It is averred that the salient features of the proposed Scheme are as follows:

- (i) With effect from the Appointed Date i.e. April 01, 2015, the Assets of the Petitioner Company shall without any further act, instrument, deed or order to be transferred to and vested in the Transferee Company as a going concern.
- (ii) On and from the Appointed Date i.e. April 01, 2015, all debts, secured and unsecured liabilities and obligations of every kind including tax liabilities of the Petitioner Company to become the debts, liabilities and obligations of the Transferee Company from that date.
- (iii) All contracts, deeds, bonds, agreements and other instruments writings and benefits of whatever nature to which the Petitioner Company is a party, subsisting or having effect immediately before amalgamation shall be in full force and effect

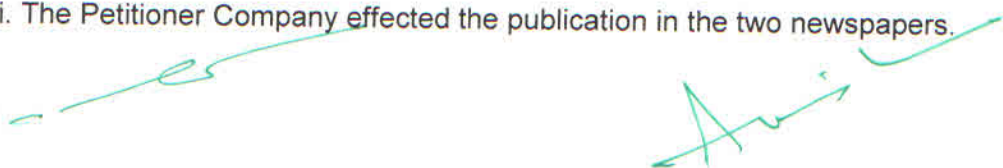
against or in favour of the Transferee Company and may be enforced as fully and effectively as if instead of the Petitioner Company, the Transferee Company had been the party thereto.

- (iv) On and from the Appointed Date i.e. April 01, 2015, the Petitioner Company shall be deemed to have carried on and carry on their business for and on behalf of the Transferee Company.
- (v) All the employees of the Petitioner Company, as on the Effective Date, shall become employees of the Transferee Company without any break or interruption in service and on terms of service not less favourable than those enjoyed by them.
- (vi) Upon the Scheme becoming effective, the Petitioner Company shall stand dissolved without going through the process of winding up.

It is averred that the proposed scheme of Amalgamation will be beneficial to both the companies and will result in better and some efficient operation of the Amalgamated Company after such Amalgamation. It is averred the scheme if sanctioned will take effect from 1st April 2015. It is averred that under the proposed scheme of Amalgamation, the entire assets and liabilities of the Petitioner Company will be taken over by the Transferee Company from 1st April 2015, the appointed date as a going concern.

The Learned Counsel for Petitioner Company would contend that the Hon'ble High Court of Karnataka passed an order in Company Application No. 130 of 2016 dated 01.04.2016 dispensing with convening of meeting of shareholders, the secured and unsecured creditors of the Petitioner Company. A copy of the order of the Hon'ble High Court in Company Application No. 130 of 2015 is marked as **ANNEXURE "H"**

The Petitioner Company then filed this petition before Hon'ble High Court which was numbered as Company Petition No. 107 of 2016 and later it was transferred to this Tribunal. In the Hon'ble High Court publication was ordered to publish in Hindu and Bangalore edition of Udayavani. The Petitioner Company effected the publication in the two newspapers.



Notice was ordered to Regional Director, Registrar of Companies, Official Liquidator and Income Tax Department. The Regional Director through Registrar of Companies Karnataka at Bangalore filed an affidavit.

On filing a report by Official Liquidator before Hon'ble High Court bearing No.74 of 2016 the Hon'ble High Court of Karnataka appointed T.Gandhi and Co Chartered Accountants to scrutinise the books of accounts and records of the Petitioner Company and submit report. The Chartered Accountants submitted his report to the Hon'ble High Court of Karnataka.

The petition was transferred from the file of Hon'ble High Court at this stage. The Learned Counsel for Petitioner Company has filed a memo along with latest audited balance sheet as at March 31st 2015 to comply the direction given by the Regional Director in his report filed through Registrar of Companies. The Petitioner Company also filed a memo along with latest audited balance sheet as at March 31st 2016.

We have heard from Learned Counsel appearing for the Petitioner Company, who filed written submission. The Learned Counsel has further relied on the decisions of various High Courts. The details of the decisions are given below

- 1) (2001) 105 Comp Cas 16 (in the Bombay High Court) Mahaaamba Investments Ltd versus IDI Ltd.
- 2) (2003) 3 ALD 654 : (2004) 118 Comp Cas 295 In the High Court of Judicature of Andhra Pradesh at Hyderabad. Andhra Bank Housing Finance Limited, Hyderabad Versus M/s.Andhra Bank.
- 3) (2009) 150 Comp Cas 728 in the High Court of Karnataka Nokia Siemens Network India Private Limited Versus Nil.

The Learned Counsel would contend that Petitioner Company is a wholly owned subsidiary of the Transferee Company. The Learned Counsel would contend ACI Worldwide Solutions Private Limited is parent company of Petitioner Company. The counsel would

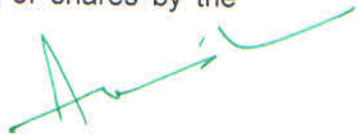




contend when a wholly owned subsidiary is proposed to be merged with its holding company then there is no need for the Transferee Company / holding company to file separate application for sanction of the scheme. The counsel would contend that the decision of Hon'ble High Court of Bombay it was held where no new shares are sought to be issued to the members of the Transferor Company by the Transferee Company. This scheme will not affect the members of the Transferee Company. Hon'ble High Court further held when the financial position of the Transferor Company and Transferee Company is in good condition in other words where the value of assets are higher than the value of liability then there is no question of the creditors of Transferee Company being affected and thus no need to file separate application by the Transferee Company.

The Learned Counsel for Petitioner Company further relied on the decisions of Hon'ble High Court of Andhra Pradesh cited supra for the same proposition. In this decision the Hon'ble High Court observed that where subsidiary company is hundred percent subsidiary of the holding company which is going to be merged under the scheme then there is no need for the holding company to file separate application for seeking sanction of the scheme.

The Learned Counsel for Petitioner Company further relied on the decision of the Hon'ble High Court of Karnataka cited supra for the same proposition. Wherein it was observed when there is no reorganisation of share capital and when hundred percent subsidiary company is seeking to Amalgamate with its holding company and the scheme is not detrimental in any manner to the interest of the members or creditors of the Transferee Company, then it is not necessary to examine the scheme by the Court with whose territorial jurisdiction the Transferee Company is situated.

The contention of Learned Counsel for Petitioner Company the scheme does not provide for any reorganisation of capital and that there is no allotment of shares by the Transferee Company.



In this connection Learned Counsel would contend that Petitioner Company is a 100 percent subsidiary of ACI Worldwide Solutions Private Limited / Transferee Company and the scheme is not detrimental in any manner to the interest of members or creditors of the Transferee Company.

The Learned Counsel for Petitioner Company has filed a memo dated 20.04.2017 showing the shareholding pattern of the petitioner company in the tables given Below:-

LIST OF SHAREHOLDERS AS ON 01.04.2015					
Sl. No.	Name & Address of Shareholders	No. of Shares	Face Value Per Share (Rs.)	Amount in (Rs.)	Share holding %
1	ORCC Management Services	200784	10	2007840	99.00
2	ORCC Solutions LLC	2029	10	20290	1.00
Total		202813	-	2028130	100

SHAREHOLDING PATTERN AS ON 06.07.2015					
Name & Address of Shareholders	No. of Shares	Face Value Per Share (Rs.)	Amount @ FV only (Rs.)	Share holding %	
ACI Worldwide Solutions Private Limited (Transferee Company)	200784	10	2007840	99%	
SI Services India Pvt.Ltd	2029	10	20290	1%	
Total	202813	-	2028130	100%	

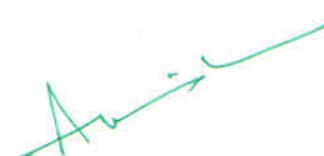

SHAREHOLDING PATTERN AS ON 07.09.2015					
Sl. No.	Name & Address of Shareholders	No. of Shares	Face Value Per Share (Rs.)	Amount @ FV only (Rs.)	Share holding %
1	ACI Worldwide Solutions Private Limited	202812	10	2028120	99.99%
2	Jyosthna Shetty (Nominee Holder of ACI Worldwide Solutions Pvt.Ltd)	1	10	10	0.01%
Total		202813	-	2028130	100%

The Learned Counsel would contend that ACI Worldwide Solutions Private Limited the Transferee Company became holding company of the Petitioner Company on 06.07.2015 and hundred percent holding company on 07.09.2015 prior to the approval of the scheme by the Board of Directors. Thus counsel would contend from 7th September 2015 the Petitioner Company became a wholly owned subsidiary of Transferee Company.

The Learned Counsel contended that the Board of Directors of the Petitioner Company have approved the Scheme of Amalgamation (hereinafter referred to as the "Scheme") on September 8, 2015 by virtue of which the Petitioner Company is proposed to be merged with its parent company i.e. the Transferee Company herein, subject to confirmation of this Hon'ble Tribunal within whose jurisdiction the registered office of the Petitioner Company is situated. Copy of the Board Resolution dated September 8, 2015 is produced as ANNEXURE – D to the Company Petition. The Board of Directors of the Transferee Company has also approved the Scheme of Amalgamation at its meeting held on September 8, 2015. Copy of the Board resolution passed by the Board of Directors of the Transferee Company is produced herewith and marked as ANNEXURE- E to the Company Petition.

Hence for all practical purposes and in view of citation from Hon'ble High Court made by the Learned Counsel, the Board has approved the Amalgamation Scheme on 8th September 2015, on its being a wholly owned subsidiary from 7th September 2015.

It is further stated in the memo that the scheme of Amalgamation does not involve any reorganisation of capital as the shares held by the Transferee Company in the Petitioner Company will be cancelled pursuant to the scheme being sanctioned by this Tribunal in terms of paragraph 9 of the scheme. Further there is no reorganisation of share capital in the Transferee Company pursuant to the scheme. It is further stated in the memo that both the



companies are the profit making companies and that no prejudice will be caused to the members as well as to the creditors of the respective companies if scheme is sanctioned.

We have heard the counsel for Petitioner Company who contend the Transferor Company it is a wholly owned subsidiary of Transferee Company. The Board of Directors of Transferee Company passed resolution approving the scheme. Hon'ble High Court of Karnataka passed an order in Company Application No. 130 of 2016 dispensing with convening of meeting of shareholders, secured and unsecured creditors. Order is marked as Annexure "H". So the members of the Petitioner Company gave consent for Amalgamation and Board also passed a Resolution.

The decisions cited by the counsel were rendered under provisions of Companies Act 1956. Now provisions of Section 230 to 232 of Companies Act 2013 having been notified. This Company Petition was filed originally before Hon'ble High Court under Sec. 391 to 394 of Companies Act 1956.

The contention of learned counsel for Petitioner Company that even though the decisions were rendered under Companies Act 1956 with the proposition of law laid down is applicable to the facts of this case. As this petition was originally filed before Hon'ble High Court of Karnataka and it was filed under the provisions of Companies Act 1956 and it was subsequently transferred to this Tribunal the counsel would contend that the practice followed by the various High Courts under the Companies Act 1956 exempting transferee company in filing separate petition for approval of the scheme where the transferor company is its 100% subsidiary counsel would contend the proposition of law laid down in the decisions rendered under Companies Act 1956 is applicable by virtue of provisions of Section 465 clause(2) Sub clause (c) of Companies Act 2013 which reads as follows:-

(2) Notwithstanding the repeal under sub-section(1) of the repealed enactments:-

(c) Any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not

be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments.

Counsel would contend even Sec 6 of General Clauses Act is also applicable to the facts of this case as the proposition of law laid down under Companies Act 1956 can be applied.

We have seen the decisions cited, where a 100 percent subsidiary company is going to be merged with its holding company by virtue of the scheme of Amalgamation and if there is no restructuring of share capital of the holding company or issuing of any fresh shares pursuant to the scheme then there is no need for the Transferee Company to file separate application for sanction of the scheme. As rightly contended by Learned Counsel that the petitioner / Transferor Company is a wholly owned subsidiary of ACI Worldwide Solutions Private Limited the Transferee Company then there is no need for the Transferee Company to file separate application for sanction of the scheme.

Relying on the proposition laid down in the three decisions cited and relying on Section (2) (c) Companies Act 2013 the scheme can be approved basing on the information supplied by the Petitioner Company even though Transferee Company has not filed any separate petition for sanction of the scheme. The Petitioner Company has filed memo along with certificate of independent auditor regarding accounting treatment we have seen the certificate that scheme is in accordance with accounting standards notified under Section 133 of Companies Act 2013. The Petitioner Company has also filed the audited account and balance sheet as on 31.03.2015 as well 31.03.2016 as was directed by the Registrar of Companies in his affidavit report.

We have seen the report of the Assistant Official Liquidator along with scrutiny report of Chartered Accountants T. Gandhi and Co. The Assistant Official Liquidator stated in his report that T. Gandhi and Co Chartered Accountants submitted report to the Hon'ble High



Court of Karnataka at Bengaluru on 11.11.2016. The Assistant Official Liquidator has reproduced the observations made by the Chartered Accountants which are as follows:-



- a) We have obtained all the information and explanation, which to the best of our knowledge and belief were necessary for the purpose of our scrutiny except as report in Annexure -1 of the Appendix.
- b) In our opinion proper books of accounts, documents, statutory registers, ,minutes and other related records as required by the law have been kept by the company so far as appears from our examination except as reported in Annexure – I of our Appendix.
- c) On scrutiny of books of accounts, papers, statutory registers and other related records of the company subject to our observations as reported in the Annexure -1 of Appendix of even date 11.11.2016, we are of the opinion that the affairs of the Company have not been conducted in a manner prejudicial to the interests of the members or public interest as per (ii) proviso to sub section (I) of the section 394 of the Companies Act, 1956.

The Assistant Official Liquidator further observed that Petitioner Company may kindly be dissolved without winding up by the Tribunal.

We have seen the report of Chartered Accountants T. Gandhi and Co submitted to the Hon'ble High Court of Karnataka.

The Chartered Accountants T.Gandhi and Co has observed that there was a change of share holding pattern subsequent to appointed date i.e. on 01.04.2015 and that the Transferee Company became 99.99% shareholder in the Transferor Company subsequent to the appointed date.

The Learned Counsel for Petitioner Company would contend the Transferee Company acquired 99.99% shareholding in the Petitioner Company which was prior to Boards approval. So it is clear that the Transferee Company acquired 99.99% shares in the



Petitioner Company and that the Petitioner Company became 100% subsidiary of Transferee Company.

We have seen the affidavit / report of the Registrar of Companies Karnataka at Bengaluru. It is specifically stated in the affidavit that a notice was issued to the Income Tax Department but comments / objections were not received from the Income Tax Department. Further Registrar of Companies observed that Transferee Company to file balance sheet, profit and loss account and annual returns for the financial year ended 31.3.2015.

The Petitioner Company has filed the balance sheet, profit and loss account and annual returns not only for the year ended 31.3.2015 but also for the year ended 31.3.2016. The Petitioner Company has complied the observations made by Registrar of Companies Karnataka at Bengaluru. However Transferee Company to file balance sheet, profit and loss account and annual returns before scheme is implemented.

The Director of Transferor Company by name Jyosthna Shetty filed affidavit stating that Petitioner Company is not governed by any other regulatory authority and no need to give notice and that notices were issued to Regional Director, Official Liquidator, Registrar of Companies and Income Tax Assessing Officer.

It is clear that the Petitioner Company is a wholly owned subsidiary of ACI Worldwide Solutions Private Limited the Transferee Company. There is no reorganisation of share capital under the scheme. Relying on the decisions cited, the scheme can be sanctioned at the instant of Petitioner Company even though no separate application is filed by the Transferee Company since the petition is a transferred petition from Hon'ble High Court.

After hearing the Counsel for the Petitioner Company and considering the material on record.



THIS TRIBUNAL DO FURTHER ORDER

While Approving the Scheme, we make clear 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, if any, and payment in accordance with law 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 Petitioner Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company for all the state and interest of the Petitioner Company therein but subject nevertheless to all the charges now affecting the same; and

All the liabilities including taxes and charges, if any, and duties of the Petitioner Company be transferred without further act or deed to the Transferee 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 Transferee Company; and

All the proceedings now pending by or against the Petitioner Company be continued by or against the Transferee Company, if any; and

Since the Transferor Company is 100 percent subsidiary of the Transferee Company, there shall be no actual issuance of shares of the Transferee Company to the Shareholders of Transferor Company.

M/s.T.Gandhi& Co., appointed by the Hon'ble High Court to scrutinize the Books and Accounts of the Petitioner Company, on verification of Books & Accounts, they have observed that there are Trade Payables in the Petitioner Company. Therefore Transferee Company shall ensure payment of the dues of Trade Creditors of the Petitioner / Transferor Company as per the agreed terms of payment between Trade Creditors and the Petitioner Company.

The Petitioner Company as well transferee 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 Registrar of Companies concerned for



registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The appointed date as per the scheme of amalgamation is from 1st April 2015.

The transferee company to file balance sheet, profit and loss account and annual returns for the financial year ended 31.03.2015 with the Registrar of Companies before the scheme is implemented.

The tax implications, if any, arising out of the scheme is subject to final decision of concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding.

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

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


(RATAKONDA MURALI)
MEMBER (JUDICIAL)


(ASHOK KUMAR MISHRA)
MEMBER (TECHNICAL)

DATED: WEDNESDAY THE 28th DAY OF JUNE 2017