

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA No. 781 of 2017

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Amalgamation of PVMSys Infra Solutions Private Limited ('the Transferor Company') and IASYS Technology Solutions Private Limited ('the Transferee Company') and their respective Shareholders

PVMSys Infra Solutions Private Limited.....First Applicant Company

(Transferor Company)

AND

IASYS Technology Solutions Private LimitedSecond Applicant Company

(Transferee Company)

Order delivered on 19th July, 2017

Coram:

Hon'ble **B. S. V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co. Advocates for Applicants
Per: **V. Nallasenapathy, Member (T)**

Order

1. The Counsel for the Applicants states that the present Scheme is a Scheme of Amalgamation of PVMSys Infra Solutions Private Limited ('the Transferor Company'/'First Applicant Company') and IASYS Technology Solutions Private Limited ('the Transferee Company'/'Second Applicant Company') and their respective Shareholders.
2. The Counsel for the Applicants further submits that the First Applicant Company is engaged in the business of software solutions, telecommunications and value added products, and information technology and areas connected therewith of data organization currently being undertaken by the First Applicant Company. The Second Applicant Company is engaged in the business of software solutions,

telecommunications and value added products, and information technology and areas connected therewith of data organization.

3. The rationale for the Scheme of Amalgamation is to acquire the ongoing business of the First Applicant Company as both the applicant companies were incorporated with the object of carrying out software solutions, telecommunications and value added products, and information technology and areas connected therewith of data organization as their business. Since both the applicants are engaged in the similar line of business, there will be most optimum utilization of facilities, reserves, financial, managerial, technological and marketing expertise, distribution networks, manpower and other resources which will be conducive to enhance the capability to face competition in the market more effectively, thereby strengthening further the market position and growth prospects. It would also lead to growth prospects for the personnel and organizations connected with these concerned Companies and thus it will be in the interest and for the welfare of the employees of the Companies concerned in these arrangements and will also be in the interest of the Public. The Amalgamated Company will be able to source and absorb new technology and its capacity to spend on Research and Development will be enhanced. It will also provide opportunities to introduce new products and access to the latest research based products. In order to expand the activities and to increase the product portfolio it is thought necessary and advantageous to combine the activities and operations of both the Companies. While combining the activities of the Transferor and Transferee Company in a single Company, it was felt advisable also to combine Transferor and Transferee Company which would help better working capital management and better administration of sales for the merged Company.
4. That the meeting of the Shareholders of the First Applicant Company be convened and held at 5, Tupe Residency, 11, Thube Park, Shivaji Nagar, Pune - 411005, Maharashtra, India on August 31, 2017 at 1:00 PM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of First Applicant Company with the Second Applicant Company and their respective Shareholders.
5. That the meeting of the Shareholders of the Second Applicant Company be convened and held at 5, Tupe Residency, 11, Thube Park, Shivaji Nagar, Pune - 411005, Maharashtra, India on August 31, 2017 at 3:00 PM for the purpose of

considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of the First Applicant Company with the Second Applicant Company and their respective Shareholders.

6. That at least one month before the said meetings of the Shareholders of the First and Second Applicant Companies to be held as aforesaid, a notice convening the said, meeting at the place date and time as aforesaid, together with a copy of the Scheme of Amalgamation, a copy of the statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those Shareholders whose email addresses are duly registered with the First and the Second Applicant Companies for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First and the Second Applicant Companies, at their last known addresses or email addresses as per the records of the First and Second Applicant Companies respectively.
7. That at least one month before the meetings of the Shareholders of the First and Second Applicant Companies to be held as aforesaid, a notice convening the said meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy can be obtained free of charge at the registered offices of the First and Second Applicant Companies as aforesaid and / or at the office of their Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
8. That the notice of the meetings shall be advertised in two local newspapers viz. "Indian Express" in English and "Loksatta" in Marathi, both circulated at Pune not less than 30 days before the date fixed for the meeting.
9. That Mr. Puran Champalal Parekh, Director of the First Applicant Company, and failing him, Mr. Deepak Rangarao Patil, Director of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Shareholders of the First

Applicant Company to be held at 5, Tupe Residency, 11, Thube Park, Shivaji Nagar, Pune - 411005, Maharashtra, India on August 31, 2017 at 1:00 PM or any adjournment or adjournments thereof.

10. That Mr. Puran Champalal Parekh, Director of the Second Applicant Company, and failing him, Mr. Deepak Rangarao Patil, Director of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Shareholders of the Second Applicant Company to be held at 5, Tupe Residency, 11, Thube Park, Shivaji Nagar, Pune - 411005, Maharashtra India on August 31, 2017 at 3:00 PM or any adjournment or adjournments thereof.
11. That the Chairmen appointed for the aforesaid meetings to issue the advertisement and send out the notices of the meetings referred to above shall have all powers as per the Articles of Association of the First and Second Applicant Companies respectively and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
12. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
13. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the First Applicant Company at its Registered Office at 5, Tupe Residency, 11, Thube Park, Shivaji Nagar, Pune - 411005, Maharashtra, India and Second Applicant Company at its Registered Office at 5, Tupe Residency, 11, Thube Park, Shivaji Nagar, Pune - 411005, Maharashtra, India respectively, not later than 48 hours before the aforesaid meeting, as per the provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.
14. That the value and number of the shares of each Shareholder shall be in accordance with the books / registers of the First and Second Applicant Companies or depository records and where the entries in the books / register / depository

records are disputed, the Chairmen of the meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

15. That Mr. Naveen Maheshwari, Practicing Company Secretary (Membership Number: 8897 & Certificate of Practice: 8434), is hereby appointed as Scrutinizer of the meetings of the Shareholders of the First and Second Applicant Companies proposed to be held on August 31, 2017 at 5, Tupe Residency, 11, Thube Park, Shivaji Nagar, Pune - 411005, Maharashtra, Maharashtra, India and his remuneration is fixed as Rs. 7500/- excluding taxes.
16. That the Chairmen of each of the aforesaid meetings shall file an affidavit not less than seven (7) days before the date fixed for the holding of the respective meetings and to report to this Tribunal that the directions regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. That the Chairmen of each of the aforesaid meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
18. The First Applicant Company is directed to serve notices along with copy of the Scheme of Amalgamation upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Pune, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
19. The First Applicant Company is also directed to serve notice along with copy of Scheme of Amalgamation upon Official Liquidator. M/s P.M Agarwal & Co. chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the First Applicant Company for the last 5 years. The First Applicant Company to pay fees of Rs.1,37,000/- for this purpose. Official Liquidator

may submit his representations, if any within a period of 30 days from the date of notice of receipt of such notice to the Tribunal with a copy served to the Second Applicant Company, failing which it shall be presumed that Official Liquidator has no representations/ objections to make.

20. The Second Applicant Company is directed to serve notices along with copy of Scheme of Amalgamation upon:- (i) concerned Income Tax Authority within whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Pune, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
21. The Counsel for the First Applicant Company submits that there are no Secured Creditors in the First Applicant Company therefore the question of sending notices to Secured Creditors does not arise. The Counsel for the First Applicant Company further submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the First Applicant Company to issue notice to all its Unsecured Creditors to whom the amounts are due and payable as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
22. The Counsel for the Second Applicant Company further submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Second Applicant Company to issue notice to all its Secured and Unsecured Creditors to whom the amounts are due and payable as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

23. The First and Second Applicant Companies to file affidavit of service in the registry proving dispatch of notices to the Shareholders, creditors, publication of notices in newspapers and to the regulatory authorities as stated in clauses 18 to 20 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)