

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

Argument heard on 06.06.2017

Order passed on 19.06.2017

TP (HC)/37&38/CAA/2017

[Connected with CP No. 407 of 2016 and CA Nos. 905 & 906 of 2016]

**In the matter of Sections 391 to 394 of the Companies Act, 1956 and the
Corresponding Sections 230 to 232 of the Companies Act, 2013**

And

In the matter of Scheme of Amalgamation of

ADP Solutions Private Limited

(Transferor Company)

With

ADP India Private Limited

(Transferee Company)

And

Their Respective Shareholders

Represented by: Shri P.H. Arvinth Pandian, Senior Counsel

CORAM

ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ

MEMBERS (JUDICIAL)

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL): ORAL

1. Under consideration are the Company Petitions which have been transferred from the Hon'ble High Court of Madras to this Tribunal and renumbered as TP (HC)/37&38/CAA/2017. The purpose of the Company Petitions is to obtain sanction of the Scheme of Amalgamation (in short, 'Scheme') between ADP Solutions Private Limited (hereinafter referred to as 'Transferor Company') and M/s. ADP India Private Limited (hereinafter referred to as 'Transferee Company') and their creditors and shareholders on the other hand in terms of the said scheme of amalgamation.

2. The Share Capital of the Transferor Company as on 31st March, 2015 is as under:

Types of Share Capital	No. of Share Capital	Value in Rupees
Authorized Capital	5,00,000 equity shares of Rs. 10/- each	50,00,000
Total		50,00,000
Issued, Subscribed and Paid up share capital	5,00,000 equity shares of Rs. 10/- each	50,00,000
Total		50,00,000

3. At the outset, it is necessary to know the details of the scheme which needs determination. The Transferor Company is a Private Limited Company having its registered office at Tamarai Tech Park, S.P.Plot No. 16 to 20 & 20A, Thiru Vi Ka Industrial Estate, Inner Ring Road, Guindy, Chennai- 600032 and the Board of Directors vide its resolution dated 11th May, 2016 approved the said scheme of Amalgamation. The Transferor Company is engaged in the business of rendering IT enabled services to overseas companies within its group by providing manpower support and development of payroll software and Human capital Management solutions. The Hon'ble Madras High Court vide its order dated 06.10.2016 in CA Nos. 905 and 906 of 2016 dispensed with the convening and holding of the meeting of the equity shareholders of the Transferor Company. Both the Transferor and Transferee companies do not have any secured creditors and furnished a certificate from a chartered accountants individually to this effect.
4. Shri Arvinth Pandian, learned Senior Counsel appearing for the Companies submitted that the rational, reasons and circumstances that have necessitated the proposed scheme are that the amalgamation will enable consolidation of the business of the two entities into one entity which will facilitate in focused growth, operational efficiency, resulting in more productive utilization of said resources and cost & operational efficiency which would be beneficial to all stakeholders. Further, it would help in the creation of a

platform for future business activities and enable smoother implementation of policy changes at higher level from a management perspective including reducing administrative costs and garner greater visibility in the market. The learned counsel further submits that no investigation proceedings are pending against the Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

5. Learned Counsel for the Companies further submitted that the equity shares of the companies are not listed with any stock exchange, thus the Companies do not require compliance with the requirements of the Listing Agreement or any SEBI Rules/regulations. Also, the companies have filed the Statutory Auditors Certificate dated 31st May, 2017 reflecting the number and amount of Credit.
6. To dispose of this petition as per the provisions of the Companies Act, 2013, the notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objection to the scheme under reference.
7. The Regional Director, Southern Region (In short, '**RD**') in its Report Affidavit (for brevity, '**Report**') dated 03.03.2017 submitted that as per records of ROC, Chennai, the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company, therefore, RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits. However, in Para 9 of the Report of RD, it has been submitted that as per clause 9.4 of the scheme, the Transferee Company will amend its main and ancillary object clauses by inserting clauses 7 to 9 under the main objects and clauses 38 to 53 under the ancillary objects. Therefore the Transferee Company may be directed to file the requisite e-form with ROC, Chennai to enable him to record the change of objects in his records and issue

the Certificate of change of objects as required under the provisions of the Companies Act, 2013 and rules framed thereunder.

8. With regard to the observation made by the RD in his Report in relation to change of objects, the learned counsel submitted that that the company undertakes to comply with the provisions of the Act, 2013 and rules framed thereunder.
9. The Official Liquidator (In short, 'OL') in its report dated 5th May, 2017 submitted that M/s. V.R. Vasanthhanarayanan, Chartered Accountants appointed by the Hon'ble High Court, have scrutinized the books and accounts of the Transferor Companies. The Auditor observed that the Transferor Company have maintained and written up all the statutory books in accordance with normally accepted accounting principle and policies in accordance with the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.
10. As per the 'Index to typed set of documents' filed with the Petition on 6th September, 2016, there are 45 Unsecured Creditors of the Transferor Company whereas as per the OL Report, the Transferor Company has 43 Unsecured Creditors and has obtained and submitted the NOC from the said creditors except 4 unsecured creditors. Therefore we rely on the OL Report. This is the latest filed by the government department.
11. The OL further submits that under Clause 6.1 of Part-II of the proposed scheme, the interest of all the workmen and employees in the service of the Transferor Company is safeguarded. As per Clause 10.1 of Part-II of the said Scheme, all the shareholders of the Transferor Company, without any further application or deed, shall be allotted 23,55,000 (Twenty Three Lakhs Fifty Five Thousands) equity

shares of Rs. 10/- each credited as fully paid-up of the Transferee Company in respect of 5,00,000 (Five Lakhs only) equity shares of Rs. 10/- each fully paid-up held by them in the Transferor Company. M/s. Pravesh Kumar & Associates, Chartered Accountants, the valuer, appointed by the management of both the Companies, in its report dated 21/05/2016 has recommended the exchange ratio of 1:0.21 on the basis of Income approach, market approach and Net Asset Value approach.

12. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Arrangement will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st April, 2016.
13. There does not require any modification and the said Scheme of Amalgamation appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under section 391 of the Companies Act, 1956. Taking into consideration all the above, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on all the members, creditors and shareholders.
14. While approving the scheme as above, we 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. The Transferee Company is also directed to comply with the provisions of the Act, 2013 as has been desired by the RD in its report dated 3rd March 2017 for change of its main object as well as ancillary objects.

15. The Company 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. The Petitioner Company do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
16. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14th December, 2016.
17. Accordingly, the Company Petition stands disposed of.


(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)