

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CP 64/2016
&
CP 65/2016

Under Sections 391 to 394 of the Companies Act, 1956

In the matter of Scheme of Amalgamation

between

**M/s. Reeva Securities Consultancy Services Private
Limited (Transferor Company)**

With

**M/s. Pink Management Consultancy Private
Limited (Transferee company)**

Order passed on 19th of September, 2017

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CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Applicant(s): Mr. B. Dhanaraj, Advocates

ORDER

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

1. Under consideration are Company Petitions (CP 64/2016 and CP 65/2016) filed under Sections 391 to

394 of the Companies Act, 1956. The purpose of the Company Petitions is to obtain sanction of the Scheme of Amalgamation (in short, 'Scheme') between M/s. Reeva Securities Consultancy Services Private Limited (Transferor Company) with M/s. Pink Management Consultancy Private Limited (Transferee Company). These Petitions were initially filed before Hon'ble High Court of Madras, and have been transferred to this Bench.

2. The Hon'ble High Court has ordered the notices and appointed the Official Liquidator to scrutinise the books of accounts of the Transferor Company. The Hon'ble High Court was also pleased to dispense with the meeting of the shareholders. The Petitioners submitted that there are no secured/unsecured creditors. In short, the preliminary procedure with regard to the sanction of the Scheme under consideration has been complied with by the Petitioner Companies.

3. The Official Liquidator has submitted the report stating that they have not come across any act of misfeasance by the Directors, attracting the provisions of Sections 542 and 543 of the Companies Act, 1956 and the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interests of its members or public. The report of the Official Liquidator finds placed on record.

4. The Regional Director (SR), Ministry of Corporate Affairs, Chennai has given report, which also finds placed on record. The ROC, in his report, under para 11 has observed as follows.

“ROC, Chennai has reported that the company in clause 6 (2)(b) of the scheme proposes to recognize the difference between the book value of the assets and the fair value of the assets in the Reserve for Business Restructuring. The scheme also proposes that the Reserve for Business Restructuring shall be withdrawn and credited to the General Reserve Account of Transferee Company as and when considered appropriate by the Board of Directors of the Transferee Company. This amounts to converting the Revaluation Reserve Account to General Reserve Account which the transferee company may use for declaring dividend in future which is not permissible under the law. Hence the Companies may be directed to amend the scheme so as to ensure in future the amount so transferred to the General Reserve Account should not be appropriated for declaring the paying dividend.”

In relation to the above observation, the Counsel appearing for the Petitioner Companies submitted that in the event the Scheme is sanctioned, the Transferee Company shall not use General Reserve for declaring the Dividend in future. Therefore, to that extent, the Scheme stands modified that the amount so transferred to the General Reserve Account shall not be appropriated for declaring and paying Dividends.

5. Perusal of the Scheme provides that with effect from the 'appointed date', the debts, liabilities, contingent liabilities, duties and obligations of every kind, nature, description, whether or not provided for in the books of accounts and whether disclosed or undisclosed in the balance sheets of the Transferor Company shall also, under the provisions of Sections 391 and 394 of the Act without any further act or deed, be transferred to or be deemed to be transferred to the Transferee company.

6. Under para 4, the Scheme provides that the authorised capital of the Transferee company will be increased to the effect without filing any forms and no separate procedure shall be followed under the Act. The amended Memorandum of Association and Articles of Association as prescribed for increasing the authorised capital shall be filed with the ROC after coming the Scheme into effect.

7. The issue of shares by the Transferee Company to the shareholders of the Transferor Company provides that the 22 fully paid equity share of Rs.10/- each of Transferee Company shall be issued and allotted for every one fully paid equity share of Rs.10/- each held in the Transferor Company. Under para 6, the Scheme provides the details of the accounting treatment, which appears to be in consonance with accounting standard₅. The Scheme also provides that on its becoming effective, the Transferor Company shall stand dissolved without being wound up. The 'appointed dated' is 1st of April, 2015.

8. The Petitioner Companies are private limited, companies. Therefore, there is no requirement to make any compliance of the listing agreement or any SEBI Rules/Regulations.

9. Save as mentioned, there is no additional requirement for any modification in the Scheme as the same does not appear to be contradictory to the public policy or violative of any provisions of Companies Act, 2013. Taking into consideration the above facts, the Company Petitions are allowed and the Scheme of the Amalgamation annexed with the Petitions is hereby sanctioned which shall be binding on the members, creditors and shareholders. However, the sanction of the Scheme will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charged if so 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.

10. The companies 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.

11. The Petitioner Companies shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

12. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with Registrar of Companies.

13. Upon receiving the certified copy of this order, the ROC, is directed place all documents relating to the Transferor company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.

14. 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 notified on 14th December, 2016.

15. Accordingly, the Scheme stands sanctioned and CP 64/2016 and CP 65/2016 stand disposed of.

S. Vijayaraghavan

S.VIJAYARAGHAVAN,
MEMBER (TECHNICAL)

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CH.MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)