

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on 21.04.2017

Orders passed on 21.04.2017

CA/ 20, 21 & 22/CAA 2017

(Under Section 230 to 232 of the Companies Act, 2013)

In the matter of Scheme of Amalgamation
of

M/s.KG Financial Software Pvt Ltd (Transferor-1)

And

M/s. KG Software Pvt. Ltd. (Transferor-2)

with

M/s.KG Information Systems Private Ltd (Transferee)

Applicant companies represented by :

Counsels, M/s.N.P.Vijay Kumar, R.Pradeep and P.Rajaji

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ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ,
MEMBERS (JUDICIAL)

ORDER

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

Under consideration are three applications i.e. CA/20/CAA/2017, CA/21/CAA/2017 and CA/22/CAA/2017 filed under sections 230 to 232 of the Companies Act, 2013 r/w Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. M/s.KG Financial Software Private Limited is the Transferor Company No.1, M/s.KG Software Private Limited is the Transferor Company No.2 and M/s.KG Information Systems Private Limited is the Resulting company (Transferee company). Since all the three applications are with regard to the Scheme of Amalgamation, we take all the three together to pass a common order.

1. There are only three shareholders in Transferor-1 company. All of them have executed affidavits wherein it has been deposed that they give consent to the scheme of amalgamation of the company with the Transferee company. Their affidavits are placed at Pages 128 to 133 of the application. Since the equity shareholders have given their consent by way of affidavit to the proposed scheme, there is no requirement of convening their meeting. In view of this, we are satisfied that the requirement under law is fulfilled and order to dispense with the meeting of the equity shareholders in relation to Transferor-1 company. In regard to the creditors, it is submitted by the counsel that there is only secured creditor viz. Karur Vysya Bank Ltd., whose consent affidavit is placed at Page 135-136 wherein it has given consent to the proposed scheme of amalgamation. There are three unsecured creditors, among whom, two have submitted their affidavits (Page 138 to 141) giving consent to the scheme. The consent affidavits of the secured creditor and two unsecured creditors brings the total value of the credit to 99%. Therefore, the requirement of law is fulfilled. We order to dispense with the meeting of the unsecured creditors under clause 9 of Section 230 of the Companies Act, 2013.

2. Looking to the contents of the application and the scheme, we are inclined to issue notice to Regional Director, Ministry of Corporate Affairs, ROC concerned and Income Tax authorities. The applicant is private limited company and hence, there is no requirement to issue notices to RBI, SEBI and other regulators including the CCI. We also direct the Registry to issue notice to the Official Liquidator. He is directed to appoint a Chartered Accountant for the purpose of drawing a report and to submit the same within four weeks from the date, the copy of the order is received. The Registry is directed to issue notice to the authorities. In case the authorities are desirous of making any objection/

representation, they may do so within 30 days from the date of receipt of the notice. In case no objection/representation is made, it shall be presumed that they/any of them have/has no objection/representation to make.

3. The applicant company is directed to effect publication in newspapers one in English "Business Standard" (All India Edition) and another in vernacular language "Dinamalar" (Tamilnadu Edition) having wider circulation in the State of Tamilnadu, having not less than 30 days before the presentation of the petition. The applicant company is directed to upload the notice on its website and also display it on the notice board at its registered office. The Registry is also directed to display the notice on the notice board of this Tribunal. The applicant company is directed to issue private notice to the regulators by way of speed post/hand delivery and file the proof of sending and effecting the service thereon along with the newspaper publication by way of an affidavit.

CA/21/CAA/2017

4. There are two shareholders in Transferor-2 company. Both of the shareholders have executed affidavits wherein it has been deposed that they give consent to the proposed scheme of amalgamation and did agree to dispense with the meeting of the equity shareholders. Their affidavits are placed at Pages 110 to 113 of the application. Since the equity shareholders have given their consent by way of affidavit to the proposed scheme, there is no requirement of convening their meeting. In view of this, we are satisfied that the requirement under law is fulfilled and order to dispense with the meeting of the equity shareholders in relation to Transferor-2 company. In regard to the creditors, it is submitted that there is no secured creditor, but there are two unsecured creditors. Their consent affidavits are placed at Page 135-136 wherein they deposed that they give consent to the proposed scheme of amalgamation. Therefore, the requirement under law is fulfilled. We order to dispense with the

meeting of the unsecured creditors under sub-section (9) of Section 230 of the Companies Act, 2013.

5. Looking to the contents of the application and the scheme, we are inclined to issue notice to Regional Director, Ministry of Corporate Affairs, ROC concerned and Income Tax authorities. Accordingly, the Registry is directed to issue notice. The Transferor-2 is private limited company and hence, there is no requirement to issue notices to RBI, SEBI and other regulators including the CCI. We also direct the Registry to issue notice to the Official Liquidator. He is directed to appoint a Chartered Accountant for the purpose of drawing a report and submit the report within four weeks from the date, the copy of the order is received. In case the authorities are desirous of making any objection/representation, they may do so within 30 days from the date of receipt of the notice. In case no objection/representation is made, it shall be presumed that they/any of them have/has no objection/representation to make.

6. The Transferor-2 company is directed to effect publication in newspapers one in English "Business Standard" (All India Edition) and another in vernacular language "Dinamalar" (Tamilnadu Edition) having wider circulation in the State of Tamilnadu, having not less than 30 days before the presentation of the petition. The Transferor-2 company is directed to upload the notice on its website and also display it on the notice board at its registered office. The Registry is also directed to display the notice on the notice board of this Tribunal. The Transferee-2 company is directed to issue private notice to the regulators by way of speed post/hand delivery and file the proof of sending and effecting the service thereon along with the newspaper publication by way of an affidavit.

7. There are three shareholders in Transferee company. All the three shareholders have executed affidavits wherein it has been deposed that they give consent to the scheme of amalgamation of the applicant company with the Transferee company. Their affidavits are placed at Pages 135 to 140 of the application. Since the equity shareholders have given their consent by way of affidavit to the proposed scheme, there is no requirement of convening their meeting. In view of this, we are satisfied that the requirement under law is fulfilled and order to dispense with the meeting of the equity shareholders in relation to Transferee company. In regard to the creditors, it is submitted that there is no secured creditor, but there are ten unsecured creditors. The certificate of the Chartered Accountant placed at Page 143 confirms the list of creditors. The creditors in Sl. No.1, 3, 4 and 5 have given their consent affidavits supporting the scheme. They constitute 92% of the total value of the credit. Therefore, the requirement under law is fulfilled. We order to dispense with the meeting of the unsecured creditors under clause 9 of Section 230 of the Companies Act, 2013.

8. We are inclined to issue notice to Regional Director, Ministry of Corporate Affairs, ROC concerned and Income Tax authorities. Accordingly, the Registry is directed to issue notice. The applicant company is private limited company and hence, there is no requirement to issue notices to RBI, SEBI and other regulators including the CCI. In case the authorities are desirous of making any objection/representation, they may do so within 30 days from the date of receipt of the notice. In case no objection/representation is made, it shall be presumed that they/any of them have/has no objection/representation to make.

9. The Transferee company is directed to effect publication in newspapers one in English "Business Standard" (All India Edition) and another in vernacular language "Dinamalar" (Tamilnadu Edition) having

wider circulation in the State of Tamilnadu, having not less than 30 days before presentation of the petition. The Transferee company is directed to upload the notice on its website and also display it on the notice board at its registered office. The Registry is also directed to display the notice on the notice board of this Tribunal. The Transferee company is directed to issue private notice to the regulators by way of speed post/hand delivery and file the proof of sending and effecting the service thereon and newspaper publication along with an affidavit before the next date of hearing.

10. The Transferee company is directed to upload the notice on its website and also display it on the notice board at its registered office. The Registry is also directed to display the notice on the notice board of this Tribunal. We direct the applicant companies to present the Petition on or before 19.06.2017. Accordingly, the applications are disposed of.


ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)


CH MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)