

## BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT, HYDERABAD

C.P.No 240 of 2016

(CP(TCAA)No. 19/HDB/2017)

Date of Order: 03-04-2017

**ADVANSOFT INTERNATIONAL LIMITED**

Registered office at 8-2-293/82/F/C/30,  
Road No. 8, Film Nagar, Jubilee Hills,  
Hyderabad – 500096,  
Telangana.

: Petitioner /Transferor Company No.2

Counsel for the Petitioner

: Mr. V.Venkatarami Reddy along with  
Ms. Vanga Anitha

Counsel for Official Liquidator

: Mr. Anil Kumar

Counsel for Registrar of Companies

: Mr. B.Appa Rao

**CORAM**

Rajeswara Rao Vittanala, Member (Judicial)

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**ORDER**

(As per Rajeswara Rao Vittanala, Member (judicial))

1. The present Company petition bearing C.P.No 240 of 2016 (CP(TCAA)No. 19/HDB/2017) is originally filed before the Hon'ble High Court of Judicature for the State of Telangana and Andhra Pradesh under Sections 391 and 394 of the Companies Act, 1956 read with Rules, 79, 80, 81 and 9\* of the Companies (Court) Rules, 1959, by inter-alia seeking the following reliefs:

- i) Sanction the scheme of amalgamation as per **ANNEXURE-H**-enclosed hereto either with any modification or modifications as this Hon'ble Court may decide or without any modification, as to be binding on all the shareholders and creditors of the petitioner company and on the petitioner company.



- ii) Order that the Petitioner Company shall be dissolved without going through the process of winding up.
- iii) Order that the petitioner company shall file a certified copy of the order on this petition with the Registrar of Companies, Ministry of Corporate Affairs, Hyderabad within 30 days or such time as this Hon'ble Court may deem fit and fix.
- iv) Order that all the records of the Petitioner/Transferor Company No. 2 shall be merged with the records of transferee company in the database maintained by Registrar of Companies including Authorised Capital, Charges registered against the Secured Loans availed by the Petitioner company without any further application for such master data correction if any upon the register of Form No. INC28 by the Registrar of Companies.

2. The Company petition is transferred to this Tribunal by the Hon'ble High court on 27/01/2017 pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016, issued vide Notification dated 07-12-2016 conferring jurisdiction on this Bench to decide this issue in the present case. Hence, we have taken the case on the records of this Bench and heard it on various dates viz., 31-01-2017, 15-02-2017, 01-03-2017, 15-03-2017, 22-03-2017 and 03-04-2017.
3. Brief contentions, which are stated in the Company petition and are relevant to resolve the issue involved in this present case, are as under:



- (i) The object of the petition is to obtain sanction of this Hon'ble Court to a proposed scheme of amalgamation of A.K. ENTERTAINMENTS (INDIA) PRIVATE LIMITED (Transferor Company No. 1), ADVANSOFT INTERNATIONAL LIMITED (Transferor Company No. 2) and OPPORTUNITY MEDIA PRIVATE LIMITED (Transferor Company No. 3) with ADVENTURES INTERNATIONAL PRIVATE LIMITED (Transferee Company) pursuant to Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 W.e.f. 1st April 2015.
- (ii) The Transferor Company No. 2 viz. ADVANSOFT INTERNATIONAL LIMITED is originally incorporated under the Companies Act, 1956 in the State of Andhra Pradesh vide Corporate Identity Number. U45200TG2007PLC054573 under the name and style as "A.K. Infra Ventures International Private Limited" on 21<sup>st</sup> June 2007 (Twenty First day of June

Two Thousand Seven). Later on the name of the Company has been changed to "Advansoft International Limited" on 20<sup>th</sup> November 2013 (Twentieth day of November Two Thousand Thirteen). The Registered Office of the Petitioner/Transferor Company No. 2 is situated at 8-2-293/82/F/C/30, Road No. 8, Film Nagar, Jubilee Hills, Hyderabad – 500096, Telangana.

- (iii) The main objects of the Transferor Company No. 2, in brief, as set out in its Memorandum of Association are to carry out all types of construction, execution, development, maintenance and implementation of all types of civil, mechanical, electrical and electronic works in India and elsewhere etc : To purchase, take on lease or in exchange or otherwise, acquire any estates, proprietary or otherwise, land or lands and any right of way, water right and other right etc; To carry on the business of running lorries, cranes, trucks, dumpers, bulldozers, crushers, drills, tankers, cars, buses, and water, to establish and to maintain transport services, loading and unloading work incidental to transport and for merchandise of every nature and description whatsoever in support of the 1 & 2 of the main objects of the Company. The Authorised Share Capital of the Petitioner/Transferor Company No. 2 is Rs. Rs 50,00,000/- (Rupees Fifty Lakhs only) divided into 5,00,000 (Five Lakh only) equity shares of Rs 10/- (Rupees Ten only) each. The Present Issued, Subscribed and Paid Up Capital is Rs. 5,00,000/- (Rupees Five Lakh only) divided into 50,000 (Fifty Thousand) equity shares of Rs 10/- (Rupees Ten only) each.



- (iv) The Petitioner/Transferor Company No.2 closes its financial year on 31<sup>st</sup> March each year. The latest audited financial summary of the Transferor Company No. 2 as on 31<sup>st</sup> March 2015 is given below:

(In Rupees)

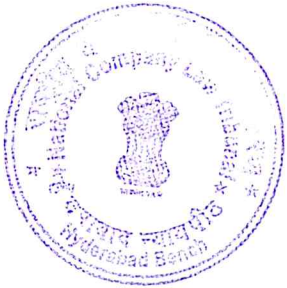
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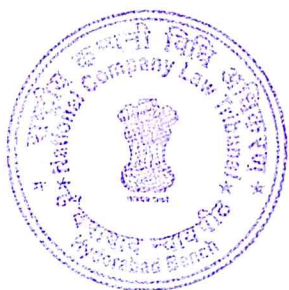
<b>EQUITY AND LIABILITIES</b>		
<b>Shareholders' Funds</b>		
Share Capital	5,00,000	5,00,000
Reserves and Surplus	5,96,446	(3,89,193)
Share Application Money	--	--



Non-Current Liabilities:		
Long-term borrowings	--	--
Long-term Provisions	--	--
Deferred Tax Liabilities (Net)	--	--
Current Liabilities:		
Short-term borrowings	--	--
Trade Payables	10,50,021	--
Other current liabilities	52,22,411	1,63,67,324
Short-term Provisions	--	--
<b>TOTAL</b>	<b>73,68,878</b>	<b>1,64,78,131</b>
<b>ASSETS:</b>		
<b>Non-current Assets</b>		
<b>Fixed Assets:</b>		
Tangible assets	5,01,161	1,80,591
Capital work-in-progress	--	--
Non-current Investments	--	--
Long-term loans and advances	--	--
Other non-current assets	--	--
Deferred Tax Assets	88,571	73,572
<b>Current Assets</b>		
Current Investments	--	--
Inventories	--	1,54,67,613
Trade Receivables	38,98,673	--
Cash & cash equivalents	3,69,212	6,34,450
Short-term loans & advances	--	--
Other current assets	25,11,261	1,21,905
<b>TOTAL</b>	<b>73,68,878</b>	<b>1,64,78,131</b>



- (v) **ADVENTURES INTERNATIONAL PRIVATE LIMITED** (herein after referred to as the Transferee Company) was registered as Partnership Firm on 16<sup>th</sup> November 2004 under the name and style of "ADVENTUTES" with the Registrar of Firms, Hyderabad. The Firm has been converted as Private Limited Company as per the provisions of Chapter IX of the Companies Act, 1956 vide Fresh Certificate of Incorporation No. 01-070337 (CIN: U72200TG2010PTC070337) under the name and style "**Adventures International Private Limited**" issued by the Registrar of Companies, Hyderabad on 07-09-2010 (Seventh Day of September Two Thousand and Ten). The Registered Office of the Transferee Company is situated at 8-2-293/82/F/C/30, Road No. 8, Film Nagar, Jubilee Hills, Hyderabad – 500096, Telangana.
- (vi) The main objects of the Transferee Company, in brief, as set out in its Memorandum of Association, are to carry on the business of erstwhile firm M/s. Adventures under the name and style "M/s. Adventures International Private Limited" incorporated under part IX of the Companies Act, 1956; to carry on the business of Software Development, Multimedia Solutions, Software and Hardware Training and to engage in the Business of Body Shopping, placement services, Business Process Outsourcing (BPO) Services and call centre services; To carry on the business of Advertising Agency, Contractors, Sub Contractors, Agents, Designers, Advertising, Publicity, Marketing Specialists and Event Managers; To represent, produce, manage, conduct and represent at any Theatre or other venue or place of amusement or entertainment plays or operas, revenues, promenades, and other exhibitions. To act as property Investments advisors/consultants, conduct property shows and other allied nature as may be agreed upon by the partners from time to time etc. To act as manufacturers, distributors, purchasers and sellers of all kinds of films and to produce and distribute motion pictures and to act as distributors and exhibitors of motion pictures produced by other companies.
- (vii) The Present Authorized Share Capital of the Transferee Company is Rs. 2,00,00,000/- (Rupees Two Crore Only) divided into 20,00,000 (Twenty Lakhs only) Equity Shares of Rs.10/- (Rupees Ten Only) each. The Issued, Subscribed and Paid-Up Capital is Rs. 1,85,22,340 (Rupees One Crore Eighty Five Lakhs Twenty Two Thousand Three Hundred and Forty Only) divided into 18,52,234 (Eighteen Lakh Fifty Two Thousand Two Hundred and Thirty Four only) Equity Shares of Rs.10/- (Rupees Ten Only) each.



4. The financial summary of Transferee Company as on 31<sup>st</sup> March 2015 is given below:

	31.03.2015	(In Rupees) 31.03.2014
<b>EQUITY AND LIABILITIES</b>		
<b>Shareholders' Funds</b>		
Share Capital	1,85,22,340	1,85,22,340
Reserves and Surplus	73,23,827	67,46,733
Share Application Money	--	--
Non-Current Liabilities:		
a. Long-term borrowings	4,70,39,635	2,75,75,784
b. Deferred Tax Liabilities	20,51,451	13,95,690
c. Long-term Provisions	2,88,461	2,88,461
Current Liabilities:		
a. Short-term borrowings	34,66,698	21,45,281
b. Trade Payables	3,850	--
c. Other current liabilities	11,32,72,321	6,57,62,128
d. Short-term Provisions	6,78,372	10,88,602
<b>TOTAL</b>	<b>19,26,46,955</b>	<b>12,35,25,019</b>
<b>ASSETS:</b>		
<b>Non-current Assets</b>		
Fixed Assets:		
Tangible assets	4,44,83,072	4,14,74,177
Capital work-in-progress	--	--
Non-current Investments	--	--
Long-term loans and advances	13,96,28,876	7,87,16,837
Other non-current assets	--	--
<b>Current Assets</b>		
Inventories	--	--
Trade Receivables	--	--
Cash & cash equivalents	26,61,445	10,43,057
Short-term loans & advances	58,73,562	22,90,948
Other current assets	--	--
<b>TOTAL</b>	<b>19,26,46,955</b>	<b>12,35,25,019</b>



5. The brief objects / benefits of the proposed Scheme of Amalgamation are as follows:

- I) Each of the several businesses carried on by Transferor Companies have significant potential for growth. The nature of risk and competition involved in each of these businesses is distinct from others and consequently each businesses or undertaking is capable of attracting a different set of business leaders, employees, investors, strategic partners, lenders and



other stakeholders. Transferor Company No. 1 is engaged in the business to produce, promote, project, participate, manufacture, manipulate, treat, process, prepare, alter, develop, expose, edit, exhibit, make, remake, display, print, reprint, convert, duplicate, finish, buy, sell, etc.

- II) The Transferor Company No.2 is engaged in the business of construction, execution, development, maintenance and implementation of all types of civil, mechanical, electrical and electronic works in India and elsewhere.
- III) The Transferor Company No. 3 is engaged in the business of producers, transmitters and distributors of news, entertainment, advertisements, serials, documentaries, feature films, advertisement films, educational programmers, special programmers and all such programmes in English etc.
- IV) The Transferee Company is into the business of entertainment, construction, civil, electrical, technical works, Media, TV Channels, produce, exhibit and distribute films, videos etc. There are considerable synergies in combining all the existing activities of the stated companies so that a larger entity can come into being which can have the ability to access larger investments in the form of debt and equity which is otherwise would not be available for smaller and fragmented enterprises.
- V) The merger of these companies will result in a sizeable entity and facilitate to compete in all respects such as financial viability, infrastructure, Human Resource, Personnel Management, production and marketing etc and will result in compete with National and International Standards.
- VI) This merger enables to have more market share and therefore it is in a position to set higher prices and make more profit. Increasing market share is necessary in a declining market with falling profitability.



- 6. The Board of Directors of the Petitioner / Transferor Company No. 2 had in its meeting held on 28<sup>th</sup> December 2015, passed a resolution approving the Scheme of Amalgamation to be effective from 01<sup>st</sup> April 2015 subject to the approval/directions of this Hon'ble High Court.

7. Salient Features of Scheme of Amalgamation are with effect from the Appointed Date, the entire business and whole of the undertakings of the Transferor Companies including all its properties and assets (whether movable or immovable, tangible or intangible) etc., be transferred and/or deemed to be transferred to and vested in the Transferee Company so as to become the properties and assets of the Transferee Company.

➤ **Transferor Company No. 1**

Transferee Company shall issue and allot to the equity shareholders of Transferor Company No. 1 and whose name appears in the Register of Members of Transferor Company No. 1 as on the Record Date, his/her heirs, executors, administrators or the successors-in-title, as the case may be, 1 (One) Equity Share of the face value of Re. 10/- each of Transferee Company credited as fully paid-up, for every 24 (Twenty Four) Equity Shares of the face value of Rs. 10/- each of Transferor Company No. 1.

➤ **Transferor Company No. 2**

Transferee Company shall issue and allot to the equity shareholders of Transferor Company No. 2 and whose name appears in the Register of Members of Transferor Company No. 2 as on the Record Date, his/her heirs, executors, administrators or the successors-in-title, as the case may be, 1 (One) Equity Share of the face value of Re. 10/- each of Transferee Company credited as fully paid-up, for every 2 (Two) Equity Shares of the face value of Rs. 10/- each of Transferor Company No. 2.

➤ **Transferor Company No. 3**

Transferee Company shall issue and allot to the equity shareholders of Transferor Company No. 3 and whose name appears in the Register of Members of Transferor Company No. 3 as on the Record Date, his/her heirs, executors, administrators or the successors-in-title, as the case may be, 1 (One) Equity Share of the face value of Re. 10/- each of Transferee Company credited as fully paid-up, for every 42 (Forty Two) Equity Shares of the face value of Rs. 10/- each of Transferor Company No. 3.

➤ **Transfer of Authorized Capital:**

The Authorized Capital of the Transferor Companies have to be transferred and merged with the Authorized Capital of transferee company without payment of any fee and or filing any Forms and deeds with Registrar of companies to this effect. Upon the sanction of the scheme and upon the said transfer and merger of Authorised Capital of Transferor Company No. 1 is Rs. 5,00,000/- (Rupees Five Lakhs Only) divided into





50,000 (Fifty Thousands) equity shares of Rs. 10 /- each, Authorised Capital of Transferor Company No. 2 is Rs. 50,00,000/- (Rupees Fifty Lakhs) divided into 5,00,000 (Five Lakhs) equity shares of Rs. 10/- each and Authorised Capital of Transferor Company No. 3 is Rs. 22,00,00,000/- (Rupees Twenty Two Crore) divided into 2,20,00,000 (Two Crore Twenty Lakhs) equity shares of Rs. 10/- each with the Authorised Capital of Transferee Company Rs. 2,00,00,000/- (Rupees Two Crore Only) divided into 20,00,000 (Twenty Lakhs) equity shares of Rs. 10/- each, the resulting Authorized Capital of Transferee company will become Rs. 24,55,00,000/- (Rupees Twenty Four Crore Fifty Five Lakhs only). In addition to the inclusion of the Authorised Capital of the transferor companies to that of transferee company as afore mentioned, the Transferee Company shall increase its Authorised Capital to the possible extent within the meaning of Section 61 of the Companies Act, 2013.



➤ **Secured and Unsecured Loans:**

Upon the Scheme sanctioned, the Unsecured Loans availed by the Transferor Companies shall be treated as the Loans availed by the Transferee Company.

➤ **Winding Up**

Upon the Scheme becoming effective, the Transferor Companies shall stand dissolved without going through the process of winding up.

8. It is stated that the total number of members/share holders in the Transferor Company No. 2 are 7 (Seven). All the members of the petitioner company have gone through the scheme and have given written consent for the proposed Scheme of Amalgamation through Affidavits declaring their shareholding and No Objection to the Scheme of Amalgamation. The same were filed before this Hon'ble Court vide Company Application Nos. 489 of 2016 based up on which this Hon'ble court has ordered on 06<sup>th</sup> April 2016 dispensing with the meeting of share holders in of Transferor Company No. 2. The Transferor Company No. 2 has no Secured Creditors as on 31.03.2015. The Petitioner Company/Transferor Company No. 2 has unsecured Loans/ unsecured or trade Creditors to the extent of Rs. 42,71,654/-. No objection from unsecured/secured creditors/loans obtained from the concerned. As per the Clause 6 of the Scheme, the Loans and advances availed by the Transferor Companies will become the Loans and advances of the Transferee Company.

9. It is further stated that the Directors of the Petitioner Company have no material interest in the proposed Scheme of Amalgamation except as shareholders in general. The Scheme of Amalgamation is in the interest of the Transferee Company, Transferor Company No. 2, their employees and their members and all concerned. The assets of the Transferee Company and Transferor Companies are sufficient to meet all the liabilities. The Scheme of Amalgamation does not involve any compromise with any Creditors of the Transferor Companies and Transferee Company and will not affect any of the Creditors of the Companies in any manner whatsoever. All the four companies involved in the scheme of amalgamation are closely held companies and are unlisted.
10. Hence, the petitioner prays the relief as sought for.
11. I have heard Mr. V. Venkatarami Reddy along with Ms. Vanga Anitha Counsel for the Petitioner, Mr. Anil Kumar Counsel for Official Liquidator, Mr. B.Appa Rao Counsel for Registrar of Companies, and carefully perused all pleadings along with extant provisions.
12. The official Liquidator has filed his report dated 16<sup>th</sup> March, 2017 and he has not opposed scheme of amalgamation in question, and thus confirmed all the material averments made by the petitioner Company in the present petition by interalia stating that the proposed amalgamation, there are considerable synergies in combining all the existing activities of the stated companies so that a larger entity can come into being which can have the ability to access larger investments in the form of debt and equity which is otherwise would not be available for smaller and fragmented enterprises. And the merger of these companies will result in a sizeable entity and facilitate to compete in all respects such as financial viability, human resource, personnel management, production and marketing etc., and will result in compete with National and International standards Therefore concluded that the Company appears to have not been conducted in a manner prejudicial to the interests of member or to public interest in general.
13. The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad has filed an Additional Affidavit dated 9<sup>th</sup> March, 2017, in addition to affidavit dated 29.11.2016 by interalia confirming all the material averments made in the Company petition and further submitted that that in pursuance to General Circular No. 1/2014 dated 15.1.2014 issued by the Ministry of Corporate Affairs, New Delhi, a letter dated 08.08.2016 was issued to the Income Tax Department for submitting their comments/objections, if any within 15 days. And the petitioners companies also sent notices to Income Tax Department. However, there are no objections/ comments received in response to those notices. The Hon'ble High Court has also





duly dispensed with requirement of meeting of the shareholders of petitioner companies. And further confirmed that companies involved in the present scheme are regular filing statutory returns and no complaints, no investigations are pending against them. Therefore, he submits that the Scheme in question can be considered as per merits by the Tribunal.

14. The above facts and circumstances confirm that the Scheme of Amalgamation in question, is initiated by the Companies for good and sufficient reasons for the interests of all stake holders of Companies involved; all statutory rules/regulations have been followed; All statutory authorities have not opposed it; the Companies have disclosed fair state of Affairs of the Companies by duly filing all statutory audit report, balance sheets; it has been duly approved by majority of stake holders and minority interests also are duly taken into consideration . Hence, I am of the considered opinion that the scheme in question is fair and it is bonafide interests of all shareholders/creditors , all stake holders in the Company and for the Company itself and no public interest is caused to suffer by virtue of acceptance of Scheme in question and it deserves to be sanctioned.

15. In the result, the Company petition bearing CP No. 240 of 2016 (CP /TCCA No. 19/HDB/2017) is disposed of with following directions:

- a) Sanctioned the scheme of amalgamation as per ANNEXURE-H, at page 170-184 of C.P by declaring it to be binding on all the shareholders and creditors of the petitioner company and also on the petitioner company;
- b) That the Petitioner Company shall be dissolved without going through the process of winding up;
- c) That the petitioner company shall file a certified copy of this order on this petition with the Registrar of Companies, Ministry of Corporate Affairs, Hyderabad within 30 days from the date of receipt of copy of order and the Registrar of Companies is directed to take appropriate action on it;
- d) It is ordered that all the records of the Petitioner/Transferor Company No. 2 shall be merged with the records of transferee company in the database maintained by Registrar of Companies including Authorised Capital, Charges registered against the Secured Loans availed by the Petitioner company without any further application for such master data correction if any upon the register of Form No. INC28 by the Registrar of Companies;



e) Hereby directed the Company to strictly adhere to all terms and conditions mentioned in the Scheme without any deviation and in case, any deviation /variation of terms and conditions of the Scheme is required in the interest of business, it is open for the company, to approach this Tribunal by way of suitable application seeking permission/directions;

f) Communicate this order of sanctioning this Scheme, to all stake holders by accepted mode of communication of Company as per rules and law.



CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

*V. Annapoorna*  
V. ANNA POORNA  
Asst. DIRECTOR  
NCLT, HYDERABAD - 68

*Sd/-*  
**Rajeshwara Rao Vittanala**  
**Member(Judicial)**