

IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
AT HYDERABAD

C.P.No.405/2016
[CP(TCAA)No.59/HDB/2017]

&

C.P.No.406/2016
[CP(TCAA)No.60/HDB/2017]

Under Section 391/394 of the Companies Act, 1956

In the matter of

Semfirst Infra Private Limited
H.No.8-2-293/82/A/297, Road No.25,
Jubilee Hills, Hyderabad, Telangana – 500033.Petitioner/Transferor Company

Sahasra Infra Private Limited
H.No.8-2-293/82/G/A/104, Aditya Elegance,
Road No. 35, Jubilee Hills, Hyderabad,
Telangana – 500033. Petitioner/Transferee Company

Vs.

The Regional Director (SER),
Ministry of Corporate Affairs,
Corporate Bhavan, 3rd Floor,
Bandlaguda, Nagalore,
Hyderabad.

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OF THE ORIGINAL

2. The Official Liquidator,
Corporate Bhavan, 1st Floor,
Bandlaguda, Nagalore,
Hyderabad.

... Respondents

Order delivered on: 19.09.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittalana, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For Petitioner : Mr. V. Venkata Rami Reddy, Advocate

For Respondents : Mr. J. Srinath Reddy, Advocate for Official Liquidator.

: Mr. ~~B.~~ Appa Rao, Central Government Standing
Counsel for Regional Director.

Per: **Ravikumar Duraisamy, Member (Technical)**

ORDER

1. The Company Petitions bearing CP.No.405/2016 [CP(TCAA)No.59/HDB/2017] and CP.No.406/2016 [CP(TCAA)No.60/HDB/2017] were filed by Semfirst Infra Private Limited (Petitioner/Transferor Company) and Sahasra Infra Private Limited (Petitioner/Transferee Company) respectively before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh under Sections 391 & 394 of the Companies Act 1956, by seeking the Hon'ble High Court to sanction scheme of Amalgamation in question (enclosed to the Company Petition), so as to be binding on all the Shareholders, Creditors and employees of the Petitioner Companies.
2. As per Gazette Notification GSR 1134(E) dated 14th December, 2016 issued by the Ministry of Corporate Affairs with effective date of 15th December, 2016 and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 & Rule 23A of NCLT Rules R/w Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016, jurisdiction is conferred on this Tribunal in respect of subject cases and thus pending cases also transferred from the Hon'ble High Court to the NCLT. Accordingly, the Hon'ble High Court transferred these cases to this Bench. On transfer, cases were listed before this Bench on 02.02.2017, 14.02.2017, 28.02.2017, 16.03.2017, 05.04.017 and finally posted on 05.09.2017 for certain clarifications i.e. filing of Board Resolutions and Provisional Balance Sheets etc.
3. Heard, Mr. V. Venkat Rami Reddy, Learned Counsel for the Petitioner Companies, Mr. J. Srinath Reddy, Learned Counsel for the Official Liquidator, Mr. B. Appa Rao, Central Government Standing Counsel for RD and perused all pleadings along with material papers filed in its support.
4. Brief facts of case which are relevant to the issue in question, are submitted as under:
 - a. Initially, the Petitioner/Transferor Company has filed Company Application No.1562 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing



with the convening of meeting of shareholders of the transferor Company for consideration of the proposed scheme of amalgamation of Petitioner/Transferor Company with Sahasra Infra Private Limited (Transferee Company) as detailed in the Scheme.

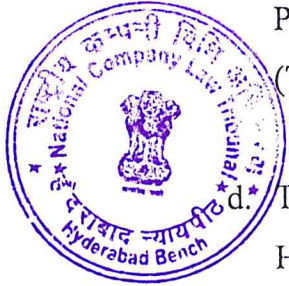
b. The said Company Application No.1562 of 2016 was disposed of by Hon'ble High Court vide its Order dated 21.11.2016 dispensing with the conducting of meeting of the shareholders of Petitioner/Transferor Company. It is also recorded in the Order that there are three shareholders, who have given written consent by way of Affidavit. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

c. Similarly, the Petitioner/Transferee Company has filed Company Application No.1563 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of meeting of shareholders of the transferee Company for consideration of the proposed scheme of amalgamation of Petitioner/Transferee Company with Semfirst Infra Private Limited (Transferor Company) as detailed in the Scheme.

d. The said Company Application No.1563 of 2016 was disposed of by Hon'ble High Court vide its Order dated 21.11.2016 dispensing with the conducting of meetings of the shareholders of Petitioner/Transferee Company. It is also recorded in the Order that there are four shareholders, who have given written consent by way of Affidavit. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

e. **Details of the Petitioner/Transferor Company**

The Petitioner/Transferor Company i.e. Semfirst Infra Private Limited is a Private Limited Company originally incorporated under the provisions of the Companies Act, 1956 on 09.07.2004 under the name of Semfirst Consulting Services Private Limited. Later on, the name of the Company was changed



to Semfirst Infra Private Limited on 17.01.2011 vide Corporate Identification No.U45400TG2004PTC043611. The Registered Office of the Company is situated at H.No.8-2-293/82/A/297, Road No. 25, Jubilee Hills, Hyderabad, Telangana – 500033.

The main objects of the Transferor Company as per its Memorandum of Association, in brief are to carry on the business of lay out, develop, construct, build, erect, demolish, re-erect, alter re-model or do any other work in connection with any building scheme roadshighways, docks, ship sewer, bridges, canals, wells, springs, multistoried, buildings, power plants, wharves, ports, reservoirs, embankments, tramways, irrigation improvements, sanitary, water, gas electric light, telephonic and power supply works or any other structural or architectural work of any kind whatsoever etc.

The Authorized Share Capital of the Petitioner/Transferor Company as on 31.08.2016 is Rs.1,00,00,000/- divided into 10,00,000 Equity Shares of Rs.10/- each. Issued, Subscribed and Paid-up Share Capital of the Petitioner/Transferor Company as on 31.08.2016 is Rs.1,00,00,000/- divided into 10,00,000 Equity Shares of Rs.10/- each.

Details of the Petitioner/Transferee Company

The Petitioner/Transferee Company i.e. Sahasra Infra Private Limited, is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 10.09.2007. The Registered Office of the Company is situated at H.No.8-2-293/82/A/104, Aditya Elegance, Road No. 35, Jubilee Hills, Hyderabad, Telangana – 500033.

The main objects of the Petitioner/Transferee Company as per its Memorandum of Association, in brief are to carry on the business of lay out, develop, construct, build, erect, demolish, re-erect, alter re-model or do any other work in connection with any building scheme roads highways, docks, ship sewer, bridges, canals, wells, springs, multistoried, buildings, power plants, wharves, ports, reservoirs, embankments, tramways, irrigation



improvements, sanitary, water, gas electric light, telephonic and power supply works or any other structural or architectural work of any kind whatsoever etc.

The Authorized Share Capital of the Petitioner/Transferee Company as on 31.08.2016, is Rs.5,00,00,000/- divided into 50,00,000 Equity Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.3,72,50,000/- divided into 37,25,000 equity shares of Rs.10/- each.

5. The object of Scheme of Amalgamation is as follows:

- a) The Scheme of Amalgamation provide for amalgamation of the Transferor Company with the Transferee Company, with the effect, the assets and liabilities of Transferor Company to be merged and be vested with the Transferee Company.
- b) The merger would help to consolidate the business of both the companies and to focus a single entity more effectively which requires diversified strategies and planning and will save the expenditure on infrastructure and machinery. The businesses of both the companies have unique identity and have undergone substantial growth and would require specific attention, planning and administration. This would bring about focus to the business with one entity.
- c) The merger will also provide scope for independent collaboration and expansion without any further more establishments.
- d) The Board of Director of both the companies are of the opinion that the merger would benefit the shareholders, employees, creditors and other stakeholders of both the Companies.
- e) With the above said objective, it is proposed for merger of the assets and liabilities of the Transferor Company into Transferee Company.

6. The following are brief terms of Scheme of Amalgamation:

- a) The Appointed Date for the purpose of this Scheme means 01.10.2016.
- b) Upon the Scheme becoming effective, the entire business and whole of the undertaking of the Transferor Company including all it properties and assets of whatsoever nature every kind, nature and descriptions whatsoever, shall



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.

c) The shareholders of Transferor Company, to whom equity shares are to be issued by the Transferee Company pursuant to the scheme, shall be issued in Physical mode. However, shareholders of Transferor Company shall have to surrender the share certificates of the Transferee Company as called for by the Board of Directors of Transferee Company before the allotment of shares of the Transferee Company which shall be declared by the Board of Directors as nullified/have no value since the Transferee Company shall allot equity share to the members of the Transferor Company is going to be dissolved without going through the process of winding up.

d) On the scheme sanctioned, the Petitioner/Transferee Company shall issue and allot to the equity shareholders of the Petitioner/Transferor Company whose name appears in the Register of Members of the Petitioner/Transferor Company as on the record date, his/her heirs, executors, administrators or the successors-in-title, as the case may be, 2 (two) Equity Shares of the face value of Rs.10/- each of the Transferee Company credited as fully paid-up, for every 1 (one) Equity Share of the face value of Rs.10/- each of Transferor Company.

On the scheme sanctioned the secured Loans availed by the Transferor Company shall be treated as the secured Loans availed by the Transferee Company and Unsecured Loans availed by the Transferor Company shall be treated as the Unsecured Loan availed by the Transferee Company.

f) On the scheme becoming operative, all permanent staff, workmen and employees of the Transferor Company in service on the Effective Date shall be deemed to have become permanent staff, workmen and employee of Transferee Company with effect from the Appointed Date without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with Transferee Company shall not be less favourable than those applicable to them with reference to the Transferor Company on the Effective Date.

g) Upon the scheme becoming effective, the Transferor Company shall stand dissolved without going through the process of winding up.



7. The Board of Directors of the Petitioner Companies at their meeting held on 22.10.2016 approved the Scheme in question.
8. It is further stated that the Hon'ble High Court by Orders dated 21.11.2016 passed in C.A.No.1562/2016 and C.A.No.1563/2016 dispensed with convening the meeting of the shareholders of the Petitioner Companies.
9. It is further stated that the Petitioner/Transferor Company has no secured Creditor. However, the Transferor Company has Current Liabilities to the extent of Rs.78,000/- consisting of two creditors and they have given their no objection for the scheme.
10. It is further stated that the Petitioner/Transferee Company has no secured Creditor. However, the Transferor Company has five (5) Unsecured Creditors to the extent of Rs.30,46,892/- and they have given their no objection for the scheme.
11. The Learned Counsel filed a Memo dated 03.04.2017 stating that as per the directions of the Hon'ble High Court, the Petitioner Companies got published in Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard – Hyderabad Edition) and Telugu Daily (Andhra Bhoomi – Hyderabad Edition) on 22.12.2016 and filed a proof of the same before the Hon'ble High Court on 29.12.2016. The Learned Counsel further submitted that they have not received any complaints/objections against the proposed scheme of amalgamation.
12. The learned Counsel further submits that in pursuant to the Orders dated 13.12.2016 of the Hon'ble High Court, notices were also issued to the Registrar of Companies; Regional Director (SER) and Official Liquidator on 27.12.2016 and filed proof of the same.
13. The Regional Director (SER), Hyderabad has filed a common affidavit dated 10.03.2017 in C.P.Nos.405/2016 and 406/2016, by inter-alia stating that the



Petitioner Companies are regular in filing statutory returns, and no complaints, no investigations and no inspections are pending against it.

He has further stated that in pursuant to the General Circular No.1/2014 dated 15.01.2014 issued by the Ministry of Corporate Affairs, New Delhi, wherein comments of Income Tax Department is required to be sought under Section 391 or 394 of the Companies Act, 1956, a letter dated 05.01.2017 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. However, no comment/objection of the Income Tax Department were received in response to the said notice till date.

14. The Official Liquidator vide his Report dated 16.03.2017 inter-alia stated that the affairs of the Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest.

15. We have perused all the pleadings, Report of the Regional Director (SER), Official Liquidator and also relevant provisions of Companies Act, 1956. We are convinced that the Petitioner Companies have complied with statutory requirements as required under Section 391 & 394 and other relevant provisions of Companies Act, 1956 as detailed supra. The Board of Directors of the Petitioner Companies at its meeting held on 22.10.2016 have duly considered the scheme of Amalgamation in question and it was approved. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner Companies are admittedly following all rules/regulations of Companies Act as stated by Regional Director. Hence, we are of considered view that the Company Petitions deserved to be allowed as prayed for.

16. In the result, the C.P.No.405/2016 [CP(TCAA)No.59/HDB/2017] and C.P.No.406/2016 [CP(TCAA)No.60/HDB/2017] are allowed with the following directions:-

- a) Sanctioned the Scheme of Amalgamation as proposed (which is enclosed along with material papers with the Petition) and fixed Appointed Date as 01.10.2016, and it is ordered that the same is binding on all the Equity



Shareholders/Members, Creditors (Secured & Unsecured), employees and of the Petitioner Companies.

- b) The Petitioner Companies are directed to take appropriate steps to submit the said scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.
- c) The Petitioner Companies are directed to issue newspaper publication with respect to approval of scheme of amalgamation, in the same newspapers in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.
- d) The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.
- e) Liberty is granted to any party/parties, who are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present CPs.
- f) The Petitioner Companies are directed to strictly adhere to the above directions and applicable provisions of the Companies Act.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
RAJESWARA RAO VITTANALA
Member (Judicial)

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for *16*
Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

**प्रमाणित प्रति
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केस संख्या
CASE NUMBER...*C.P. NO. 405/2016 (CP(TCAA)) NO.*
निर्णय का तारीख *29/09/2017*
DATE OF JUDGEMENT...*10.9.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON...*28.9.2017*