

IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
AT HYDERABAD

C.P.No.380/2016
[CP(TCAA)No.43/HDB/2017]

Under Section 391/394 of the Companies Act, 1956

In the matter of

Invesco (Hyderabad) Private Limited
SEZ Unit, Divya Sree Orion, 14th 15th Floor,
Block-6, North Tower, Survey No.66/1,
Raidurga, Hyderabad -- 500 032.
Telangana.

.... Petitioner/Transferor Company

And

1. The Regional Director (SER)
Ministry of Corporate Affairs
3rd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole
Bandlaguda, Hyderabad -- 500 068.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

2. The Registrar of Companies
Andhra Pradesh and Telangana
Ministry of Corporate Affairs,
GSI Post, Tattiannaram, Nagole
Bandlaguda, Hyderabad -- 500 068.

3. The Official Liquidator,
Attached to the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh
Corporate Bhawan,
GSI Post, Tattiannaram, Nagole
Bandlaguda, Hyderabad -- 500 068.

.... RESPONDENTS

Order delivered on: 15.05.2017

CORAM:

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

For Petitioner : Mr. Ch. Pushyam Kiran, Advocate
Ms. G. Sahiti, Advocate

For Respondents No.1 & 2 : Mr. B. Appa Rao, Central Govt. Standing Counsel
For Respondent No.3 : Mr. M. Anil Kumar, Advocate



Per: **Rajeswara Rao Vittanala, Member (Judicial)**

ORDER

1. The Company Petition bearing CP.No.380/2016 [CP(TCAA)No.43/HIDB/2017] was filed by Invesco (Hyderabad) Private Limited (Petitioner/Transferor Company) 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 High Court to sanction scheme of Amalgamation in question (Page No.32 of the Company Petition)so as to be binding on all the Equity Shareholders/Members, Creditors and employees of the Petitioner/Transferor Company.
2. A 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 this case to this Bench. On transfer, case is listed before this Bench on 02.02.2017, 21.02.2017, 17.03.2017, 29.03.2017, 10.04.2017, 20.04.2017, 24.04.2017, 12.05.2017 and finally on 15.05.2017.
3. Heard, Mr.Ch. Pushyam Kiran, Learned Counsel for the Petitioner/Transferor Company, Mr. B. Appa Rao, Central Government Standing Counsel and have carefully 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.1348 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 and unsecured creditors of the



transferor Company for consideration of the proposed scheme of amalgamation of Petitioner/Transferor Company with Hyderabad IT Support Service Private Limited (Transferee Company) as detailed in the Scheme.

- b. The said Company Application No.1348 of 2016 was disposed of by Hon'ble High Court vide its Order dated 26.09.2016 dispensing with the conducting of meetings of the shareholders and unsecured creditors of Petitioner/Transferor Company. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

c. Details of the Petitioner/Transferor Company

The Petitioner/Transferor Company is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 26.08.2009. The Registered Office of the Company is situated at SEZ Unit, Divya Sree Orion, 14th and 15th Floor, Block 6, North Tower, Survey No.66/1, Raidurga, Hyderabad -- 500 032, Telangana. The main objects of the Petitioner/Transferor Company as per its Memorandum of Association, in brief are to carry on in India and abroad business and technology process outsourcing to process the data covering software infrastructure for any industry etc. The Authorized Share Capital of the Petitioner/Transferor Company as on 31.03.2006, is Rs.30,00,00,000/- divided into 3,00,00,000 Equity Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.1,26,000/- divided into 12,600 equity shares of Rs.10/- each.

d. Details of the Transferee Company

The Transferee Company i.e. Hyderabad IT Support Services Private Limited is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 11.01.2012. The Registered Office of the Company is situated at 2nd Floor (Part), GMR Aero Towers, Rajiv Gandhi International Airport, Shamshabad, Hyderabad, Telangana -- 500 409. The



main objects of the Transferee Company as per its Memorandum of Association, in brief are to engage in the business of setting up and maintaining a disaster recovery site for offering Disaster Recovery Solutions, Real-Time Data Protection, Business Continuity Planning and Offsite Data Storage Solutions for use by its customers as and when any disaster/disruption happens at the customers' facility, etc. The Authorized Share Capital of the Petitioner/Transferor Company as on 31.03.2006, is Rs.5,00,000/- divided into 50,000 Equity Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

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

- a) There is an inherent synergy between the Transferor Company, which is primarily engaged in the business of providing information technology and information technology enabled services and Transferee Company, which is focused on setting up and maintaining a disaster recovery site for offering disaster recovery solutions. Thus, Transferor Company and Transferee Company operate in the similar lines of business with focus on different verticals. In view of the commonality of business interests of Transferor Company and Transferee Company, significant synergistic linkages exist between them.
- b) Emergence of a fully integrated single entity positioned to provide more extensive and integrated products in the IT/ITES sector.
- c) The benefit of consolidation of financial resources, managerial, technical and marketing expertise of the Transferor Company and the Transferee Company shall be available to the amalgamated entity. The amalgamation will enable appropriate consolidation of the activities of Transferor Company and Transferee Company, with pooling and more efficient utilization of their resources, greater economies of scale, reduction in overheads and other expenses and improvement in various operating parameters. The same will result, inter-alia, from advantages of vertical integration of the operations of the said companies.



- d) The amalgamation would result in enhanced potential for increase in revenues and profits for the amalgamated entity and its shareholders.
- e) The proposed amalgamation will lead to combined business of Transferee Company and the Transferor Company being carried on more advantageously and economically and conveniently resulting in lower cost and increased opportunities to grow business with a marked improvement in the utilization of resources.
- f) The unified and combined organization will enable the Transferee Company to render the business more competitively.
- g) The proposed amalgamation will bring administrative and operational rationalization, organizational efficiencies and rationalization in economics of scale and greater optimal utilization of various resources.
- h) The proposed amalgamation will enable streamlining the activities of the Companies and will also reduce managerial overlaps, which are involved in running multiple entities.
- i) Consolidation would enable the Transferee Company to improve its financial strengths and net worth, which would be to the benefit of the shareholders at large.

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



- a) The Appointed Date for the purpose of this Scheme and the IT Act means 01.04.2016.
- b) Upon the Scheme becoming effective, the undertaking of the Transferor Company shall be transferred to the Transferee Company such as all the movable assets including investments and cash in hand, if any, of the Transferor Company, capable of passing by manual delivery of possession or by endorsement, shall be so transferred by the Transferor Company to the Transferee Company by physical delivery and shall on such transfer, become the assets and properties of the Transferee Company without requiring any separate deed or instrument or conveyance for the same, etc.
- c) With effect from the effective date, all legal or other proceedings by or against the Transferor Company under any statute, whether pending on the

Appointed Date, or which may be instituted any time in the future shall be continued and enforced by or against the Transferee Company on and after the effective date, to the extent legally permissible.

- d) With effect from the effective date, all the employees of the Transferor Company shall stand transferred to the Transferee Company on terms and conditions which shall not be less favourable than those applicable to them immediately before the effective date, on a cost-to-company basis, without any interruption in service as a result of transfer of undertaking of the Transferor Company to the Transferee Company, etc.
- e) With effect from the effective date and subject to the provisions of this Scheme, all licenses, approvals or permits, whether Government or otherwise, contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of whatsoever nature in relation to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or having effect immediately before the effective date, shall be in full force and effect on or against or in favour of, as the case may be, and shall with the approval of the authority concerned, vest in the Transferee Company, and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obligee thereto, etc.

All taxes paid or payable by the Transferor Company, in so far as it relates to the tax payment, whether by way of deduction at source, advance tax or otherwise howsoever, by the Transferor Company in respect of the profits or activities or operation on or after the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company, and shall, in all proceedings, be dealt with accordingly, etc.

- g) With effect from the Appointed Date, all inter-company transactions between the Transferor Company and Transferee Company shall be considered as intra-company transactions for all the purposes, etc.

7. The Board of Directors of the Petitioner/Transferor Company at the meeting conducted on 02.08.2016 approved the Scheme in question.



8. It is further stated that the Hon'ble High Court by Orders dated 26.09.2016 passed in C.A.No.1348/2016, has dispensed with convening the meeting of the equity shareholders/Unsecured Creditors of the Petitioner Company as all the equity shareholders/Unsecured Creditors have given their no objection by means of affidavits/letters.
9. The Learned Counsel filed an Affidavit dated 17.02.2017 stating that as per the directions of the Hon'ble High Court, the petitioner 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 04.01.2017 and filed a proof of service before the Hon'ble High Court on 17.01.2017. The Learned Counsel further submitted that in pursuance to said notification, no objections/oppositions were received about the scheme in question.
10. The learned Counsel further submits that in pursuant to the Orders dated 30.11.2016 of the Hon'ble High Court, notices were also issued to the Registrar of Companies; Regional Director (SER) and Official Liquidator.
11. The Regional Director(SER),Hyderabad has filed a common affidavit dated 31.03.2017 in C.P.Nos.380/2016 and 381/2016, by inter-alia stating that the Petitioner Company is 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 06.01.2017 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. It is further submitted by the RD that the Deputy Commissioner of Income Tax, Office of the Principal Commissioner of Income Tax-2, Hyderabad vide letter dated 27.01.2017 stated that the above Scheme of Amalgamation is verified and found that a demand of Rs.42,659/- is pending in the case of M/s



Invesco (Hyderabad) Private Limited (Transferor Company) for the Assessment Year 2014-15 and prayed that the Transferor Company liquidate the arrears of Income Tax before the Scheme of Amalgamation is approved by the Hon'ble High Court.

12. It is further submitted by RD that the name of the transferee Company shall stand to be altered to Invesco (India) Private Limited and the same change of name of the transferee company may be subject to filing of all requisite e-forms with necessary filing fee in terms of the Companies Act, 2013.
13. The Deputy Official Liquidator vide his Report dated 19.04.2017 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.
14. We have carefully gone through all the pleadings, Report of the Regional Director (SER), Report of the Official Liquidator and also relevant provisions of Companies, 1956. We are convinced that the Petitioner/Transferor Company has complied with all 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/Transferor Company at its meeting held on 02.08.2016 have duly considered the pros and cons of Scheme of Amalgamation in question, after perusing various reports on the issue, and found it is advantageous and beneficial to the Company, its Members, the Secured Creditors and all other concerned parties of the Company, and thus it was approved. We are satisfied that the Scheme of Amalgamation in question is for bonafide reasons meant for favour of all concerned parties of the Companies in question and public in general. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner Company is admittedly following all rules/regulations of Companies Act as stated by Regional Director. Hence, we are of considered view that the Company Petition deserved to be allowed as prayed for.



15. In the result, the C.P.No.380/2016 [CP(TCAA)No.43/HDB/2017] is allowed with the following directions:-

- a) Sanctioned the Scheme of Amalgamation as proposed (which is placed at Page No.32 along with material papers enclosed with the Petition), and it is ordered that the same is binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of the Petitioner/Transferor Company and Transferee Company.
- b) The Petitioner Company is 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/Transferor Company is 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/Transferor Company is 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 Company Petition.
- f) The Petitioner Company is directed to strictly adhere to the above directions and provisions of Section 230 of the Act.



Sd/-
RAVIKUMAR DURAISAMY

Sd/-
RAJESWARA RAO VITTANALA

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

Order received by the
registry on 24/7/2017
प्रमणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP.No. 380/2016/CP(TCAA)
निर्णय का तारीख 43/HDB/2017
DATE OF JUDGEMENT 15.5.2017.
प्रति तैयार किया गया तारीख
COPY MADE READY ON 24-7-2017