

(2014) 04 MAD CK 0252

In the Madras High Court

Case No : Company Petition Nos. 64 to 66 of 2014

Sify Software Limited

APPELLANT

Vs

Hermit Projects Private Limited and Sify Technologies Limited
Secretary

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Companies Act, 1956 — Section 231, 232, 233, 234, 235

Citation : (2014) 04 MAD CK 0252

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Judgement

R. Sudhakar, J.—These company petitions are preferred under Sections 391 and 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the two transferor companies with the transferee company with effect from 1st April 2013. The scheme of arrangement is annexed as Annexure "D" in all the company petitions. The petitioners in C.P. Nos. 64 and 65 of 2014 are the transferor companies and the petitioner in C.P. No. 66 of 2014 is the transferee company.

2. A perusal of the records shows that the petitioners have complied with the prescribed procedure. The no objection certificates from the Statutory Auditor certifying that there are no secured creditors for the transferor companies are annexed as Annexure "E" in each of the company petitions. In respect of the transferee company, the list of secured creditors and their consent letters are enclosed as Annexures "E" and "F. The copies of the resolutions of the Board of Directors adopting the scheme of amalgamation are annexed as Annexure "C" in each of the company petitions.

3. This Court, by order dated 30.9.2013 made in Comp. A. Nos. 1039 and 1040 of 2013, in the case of transferor companies dispensed with the convening of the meeting of the equity shareholders. Insofar as transferee company is concerned, this Court, by order dated 30.9.2013 made in Comp. A. No. 1041 of 2013,

directed convening of a meeting of its equity shareholders and pursuant to the same, meeting of the equity shareholders was convened on 11.11.2013 and majority of the members voted in favour of the scheme. The report of the Chairman of the Meeting is annexed as Annexure "G" in C.P. No. 66 of 2014.

4. On notice, the Regional Director, Ministry of Company Affairs has filed his report opining as follows:

4. I respectfully submit that in clause 13 of Part B of the scheme of amalgamation protects the interest of all the staff, workmen and employees of the transferor companies in service upon amalgamation.

5. I respectfully submit that the petitioner transferor companies M/s. Sify Software Limited and Hermit Projects Private Limited seek dissolution without winding up.

The scheme of amalgamation filed with the petitions have been examined and it has been decided not to make any objection to the scheme and it is therefore prayed that this Hon"ble Court may dispose of the petitions on merits and pass such order as deemed fit and proper.

5. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The report of the Chartered Accountant states that the affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of its members or their creditors or to public, and nor were there any transactions which may attract the provisions of Sections 542 or 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant and there are no materials to indicate that the affairs of the transferor companies were being conducted in a manner prejudicial to the interest of its shareholders, creditors and others.

6. I have perused the scheme filed in the company petitions and find it beneficial to the working of the transferee company and is in the interest of the transferor companies. There is no objectionable feature in the scheme of amalgamation detrimental either to the employees of the transferor companies or the transferee company. The said scheme is not violative of any statutory provisions. The scheme is fair, just, sound and is not against any public policy or public interest. No proceedings are pending under Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions are complied with.

7. Consequently, there shall be an order approving the scheme of amalgamation of the transferor company No. I M/s. Sify Software Limited-the petitioner in C.P. No. 64 of 2014 and the transferor company No. II-Hermit Projects Private Limited the petitioner in C.P. No. 65 of 2014 with the transferee company-Sify Technologies Limited, the petitioner in C.P. No. 66 of 2014, as provided in the respective annexure in these company petitions, with effect from 1.4.2013, as the procedure laid down under Sections 391 and 394 of the Companies Act is

duly complied with. These company petitions are allowed.

8. Taking note of the report filed by the Chartered Accountant, as enclosed by the Official Liquidator, and in terms of the order passed by this Court, the transferor companies shall stand dissolved without winding up. The learned Central Government Standing Counsel is entitled to a fee of Rs. 5,000/- from the first petitioning company.