

## In Re: J. and B. Software Private Limited, Prince Infocity

**Court:** Madras High Court

**Date of Decision:** June 9, 2011

**Acts Referred:** Companies Act, 1956 &" Section 235, 236, 237, 238, 239

**Hon'ble Judges:** Vinod K. Sharma, J

**Bench:** Single Bench

**Advocate:** A.R. Ramanathan, for the Appellant; Jeyakumar, for Official Liquidator High Court, Madras and M. Christella, Addl. Central Govt. Standing Counsel for Regional Director Ministry of Corporate Affairs, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

M/s. J & B Software Private Limited has filed this petition u/s 391 to 394 of the Companies Act, 1956 to sanction

the Scheme of Amalgamation of the Petitioner company with M/s. 31 Infotech Limited so as to be binding on all the members and creditors of the

Petitioner company and on the said company and Transferee Company.

2. The registered office of the Petitioner company situated at Prince Infocity, II Phase, 283/4, Rajeev Gandhi Salai, OMR, Kandanchavadi,

Chennai 600 96. Whereas the Transferee Company has its registered office at Tower #5, 3rd to 6th Floors, International Infotech Park, Vashi,

Navi Mumbai 400 703. The Transferor company is a wholly owned subsidiary company of the Transferee Company.

3. The circumstances and/or reasons and or grounds which had necessitated to justify the Scheme of Amalgamation are as follows:

a) The Petitioner company is a wholly owned subsidiary of the Transferee company and the complete shareholding of the Petitioner company is

held by the Transferee company its joint shareholders.

b) Moreover, in the present global economic scenario of liquidity crunch and measures of cost-cutting, all companies globally are looking various

ways to reduce operational costs and various expenditure. The Transferee company is no exception to this situation. Keeping separate existence of

the Petitioner company, involves various administrative, legal, compliance and other costs. Therefore, in view of the economic situation and

considering the commercial aspects and other cost factors, it is proposed to merge the Petitioner company with the Transferee company.

c) The capital structure, benefits of amalgamation, transfer of assets and liabilities of Petitioner company unto the Transferee company and other

details relating to the amalgamation of Petitioner company with the Transferee company are set out in the Scheme of Amalgamation. Exhibit E is

the copy of the Scheme annexed with the petition, has been approved by the Board of Directors of each of the Transferee company and the

Petitioner companies on April 24, 2009, April 21, 2009 respectively. Exhibit E1 is the copy of the Board Resolution of the Petitioner company.

d) The entire Issued, Subscribed and Paid up equity share capital of the Petitioner company is held by the Transferee Company and the joint

shareholders. Upon the scheme being effective, the said equity share capital of the Petitioner company will stand automatically cancelled and there

will be no issue and allotment of shares of the Transferee company as the Transferee company holds the entire share capital of the Petitioner

company apart from holding certain shares of the Petitioner company jointly with its shareholders.

e) The entire business of the Petitioner company was purchased by the Transferee company under a Business Purchase Agreement effective June

1, 2008 and all the assets and liabilities of the Petitioner company have been transferred to Transferee company.

4. No investigation proceedings have been instituted and/or pending in relation to the Petitioner company u/s 235 to 251 of the Act.

5. No petition u/s 397 or 398 of the Act have been filed against the Petitioner company/Transferee company.

6. There are no creditors either secured or unsecured of the Petitioner company as on 30.06.2010.

7. The Bombay Stock Exchange Limited has also granted "No objection" to the proposed Scheme of Amalgamation. Similarly, no objection has

also been obtained from National Stock Exchange of India Limited.

8. In C.A. No. 29 of 2011, this Court was pleased to dispense with the convening, holding and conducting of the meeting, in view of the consent

given by the equity shareholders to the Scheme of Amalgamation.

9. The Official Liquidator has filed a report stating that the affairs of the transferor company have not been conducted in a manner prejudicial to the

interest of its members or to the public interest. It is also reported that there were no transactions to attract the provisions of Section 542 and 543

of the Companies Act, 1956.

10. In pursuance to the notice issued, an affidavit has been filed by the Regional Director, Ministry of Corporate Affairs, Chennai u/s 394A of the

Companies Act, 1956 wherein it has been stated that the Transferor company is having its registered office at Chennai, whereas the transferee

company is having its registered office at Mumbai, within the jurisdiction of the Hon'ble Bombay High Court. However, it has been stated that

there is no objection to the Scheme of Amalgamation.

11. The learned Counsel for the Petitioner had placed reliance on the judgment of the Bombay High Court in the case of M/s. Mahaamba

Investments Ltd. v. IDI Limited [2001]105 Comp Cas (Bom) 16) to contend that petition by transferee company is not necessary in the Scheme

of merger with the subsidiary company.

12. The learned Counsel for the Petitioner has also placed reliance on the judgment of this Court in the case of In Re: Santhanalakshmi Investments

(P.) Ltd., to contend that there is no need to file separate petition by holding company.

13. The Scheme of merger is in the interest of the shareholders and not prejudicial to the interest of public at large.

14. The transferee company if so required by law, may move appropriate application for approval of Scheme of Amalgamation, in the Court of

competent jurisdiction.

15. the company petition being in the interest of its members and not prejudicial to the public at large, is ordered.