

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.A. (CAA)No.50/BB/2020
U/S 230 to 232 of Companies Act, 2013
& Other Applicable Provisions of the Companies Act, 2013
R/w Companies (CAA) Rules, 2016

In the matter of:

M/s. E2open Software India Private Limited

Prestige Emerald Municipal
Door No.4/1-1, Madras Bank Road,
Corporation Division 61,
Bengaluru – 560 001 -

Applicant/ Transferee Company

Date of Order: 16th December, 2020

Coram: 1.Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Applicant Companies : Shri. Srihar.A.Jayagovind

O R D E R

Per: Rajeswara Rao Vittanala, Member (J)

1. C.A.(CAA) No.50/BB/2020 is filed by the Applicant/Transferee Company E2open Software India Private Limited under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 R/w Companies (Compromises, Arrangements and Arrangements) Rules, 2016, by inter alia seeking to dispense with the convening and holding the meeting of the Equity Shareholders & Secured & Unsecured Creditors of the Transferee Company etc.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:



- (1) **E2open Software India Private Limited** (hereinafter referred as the Transferee Company) was incorporated on 06.11.2013 under the name and style of 'Serus Software Development India Private Limited'. Subsequently, the name changed to 'E2open Software India Private Limited' with effect from 08.04.2015 with CIN: U2200KA2013FTC071699 and having its registered office situated at Prestige Emerald Municipal Door No.4/1-1, Madras Bank Road, Corporation Division 61 Bengaluru – 560 001. Its Authorised Share Capital is Rs.8,00,000/- divided into 8,00,000 Equity shares of INR 1/- each and Paid-up Share Capital is Rs.1,94,739/- divided into 1,94,739 equity shares of INR 1/- each fully paid. The main objects of the Transferee Company *inter-alia* to design, develop, improve, manufacture market, distribute, sell, license, lease, install, alter, import, export or otherwise deal in or with all software, hardware and programs of any and all kinds and description, including but not limited to those used in, for or in connection with electronic data processing equipment etc
- (2) The Applicant Company has filed the list of shareholders *inter alia* stating that there are 4 (four) Shareholders in the Applicant/Transferee company as on 15th March 2020 viz., Serus Corporation holding 99,999 Equity Shares of Rs.1/- each constituting 51.35%, Orchestro LLC holding 62,383 shares of Rs.1 each constituting 32.03%, Terra Technology holding 32,347 shares of Rs. 1/- each and Hitesh Trivedi holding 10 shares of Rs. 1/- each. Accordingly, Laura Lynn Fese, the Secretary and Authorized Signatory of Orchestro LLC has filed an Affidavit dated 13.08.2020, by *inter alia* stating that the Company is holding 62,383 Equity Shares of Rs.1/- each being 32.03% of total share capital of the Company and has accorded unconditional consent and no-objection to the Scheme. Similarly, other 3 (three) shareholder has filed their respective



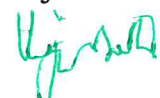
Affidavits with similar declaration, for approval of the proposed Scheme.

- (3) M/s. Manian & Rao, Chartered Accountants, have issued a Certificate dated 21.03.2020 by certifying that there are no Secured, Unsecured and Trade Creditors in the Transferee Company as on 15th March 2020.
 - (4) The Board of Directors of the Transferee Company in their respective meetings held on 3rd March, 2020 have approved and adopted the Scheme of Amalgamation.
 - (5) M/s. Manian & Rao, Chartered Accountants, the Statutory Auditors of the Transferee Company has issued a Certificate dated 05.01.2021, wherein it is inter alia certified that the Accounting Treatment contained in Clause 6.3 of Section 4 of Part B of the scheme is in compliance with the provisions of Section 133 of the Companies Act, 2013, the Companies (Accounting Standards) Rules, 2006, the Companies (Accounting Standards) Amendment Rules 2016 as applicable on amalgamation and other generally accepted accounting principles.
 - (6) The rationale for the Scheme inter *alia* that the amalgamation would result in the Transferee Company having presence in the software development, consulting services and related activities in the fields of inventory, supply and demand and greater leverage in operations, planning and process optimization and enhanced flexibility in operations.
 - (7) It is further stated that no investigations, proceedings are pending against the Applicant Company u/s 210 to 227 of the Companies Act, 2013 and 241 or 242 of the Companies Act, 2013 against the Applicant/Transferor Company.
3. Heard Shri Shrikar.A, Learned Counsel for the Applicant Company, **through Video Conference**. We have carefully perused the pleadings



of the party and extant provisions of the Companies Act, 2013 and the Rules made thereunder, and the Law on the issue.

4. Shri Shrikar A, learned Counsel for the Applicant Company, while pointing out various averments made in the Company Application, has further submitted that the Scheme in question is made in the best interests of the Companies. The Applicant Company have filed the list of Equity Shareholders on its Company letterhead constituting 100% shareholding. Further, all the Shareholders of the Applicant Company have given their consent to the Scheme in question and for dispensation of their meetings by the Tribunal. We have perused the list of shareholders provided by the Applicant Company, as mentioned above, and all the concerned affidavits wherein the parties have declared that they have 'no objection' for dispensation of their meetings by the Tribunal. The Companies have disclosed material information with regard to the Scheme in question, and in the normal circumstances, it is the prerogative of concerned Company to evolve a Scheme suitable to them and the Tribunal is only empowered to examine the Scheme broadly, whether the Scheme is prepared in accordance with law and the interest of all the stakeholders of Companies involved are taken care of by affording due notice of Scheme, etc. The Scheme in question, prima facie found to be in the larger interests of the Companies involved and their stakeholders.
5. The Tribunal is empowered, under Section 230(9) of the Companies Act, 2013, to dispense with calling of a meeting of creditors or class of creditors, where such creditors or class of creditors, having at least ninety per cent value, agree and confirm, by way of affidavit, to the Scheme of compromise or arrangement. Therefore, there is no necessity to convene the meetings for the same purpose and the Tribunal can allow the Application as prayed for, on the principle of ease of doing business. Dispensation do not arise when there are no Secured, Unsecured and Trade Creditors in the Company. The



Applicant can be permitted to file necessary second stage Petition seeking to sanction the Scheme, subject to fulfillment of all statutory conditions, after notice to respective Statutory Authorities.

6. In the result, **C.A. (CAA) No.50/BB/2020** is disposed of with the following directions:

- (i) It is hereby dispensed with the convening and holding the meetings of the Equity Shareholders of the Applicant Company;
- (ii) The Applicant Company is directed to issue paper notification one in English language 'Hindu' and one in vernacular language 'Udayavani' about the dispensation of the meetings by this Tribunal, within a period of 10 (Ten) days from the date of receipt of copy of this Order;
- (iii) Any party, aggrieved by this Order, is entitled to file miscellaneous application, in the instant Company Application, by seeking appropriate direction(s).
- (iv) The Company is permitted to file necessary Company Petition for the sanction of Scheme of Arrangement in question, after following extant provisions of law.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

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