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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 28.09.2018

PRESENT: 1. Hon'ble member (J) **Shri Rajeswara Rao Vittanala**,
2. Hon'ble member (T) **Dr. Ashok Kumar Mishra**


CP/CA No	Purpose	Section	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CA(CAA) No.38/BB/2018	For pronouncement of order	Sec 230-232	M/s Vmware Software India limited	Tri Legal Advocates		

SL. NO. NAME (IN CAPITAL) & PHONE NUMBER

REPRESENTATION TO WHOM

SIGNATURE

PETITIONER/s: Anuradha Agnihotri
Sahiti Gopalajosyula
Advocates

Counsel for Petn. 


RESPONDENT/s:

ORDER

Heard Ms. Anuradha Agnihotri along with Sahiti Gopalajosyula, counsel for the Petitioner. CA disposed of by separate order.


Member(T)

Prema Murray - Steno.


Member(J)

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

**CA(CAA)NO. 38/BB/18
Under Section 230 to 232 of Companies Act, 2013**

**IN THE MATTER OF SCHEME OF AMALGAMATION
BETWEEN
ARKINNET SOFTWARE PRIVATE LIMITED
(TRANSFEROR COMPANY)
AND
VMWARE SOFTWARE INDIA PRIVATE LIMITED
(TRANSFeree COMPANY)
AND THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

Order delivered on: 28.09.2018

VMware Software India Private Limited
Kalyani Magnum, Tower 1,
3rd Floor, No/165/2, Doraisanipalya,
IIM Post, Bannerghatta Road,
Bangalore – 560076

... Applicant Company/ Transferee Company

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Applicant : Trilegal
The Residency, 7th Floor,
133/1, Residency Road,
Bengaluru-560025

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Heard on: 6.07.2018, 31.07.2018, 09.08.2018, 5.09.2018, 19.09.2018

ORDER

This Application is filed by the Applicant Company/Transferee Company namely VMware Software India Private Limited (Applicant Company/ Transferee Company) under Section 230 to 232 of Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, praying to dispense with convening of meeting of Shareholders and Creditors of the Applicant Company/Transferee Company for considering the Scheme of Amalgamation, where under Arkinnet Software Private Limited is proposed to be merged with VMware Software India Private Limited (Applicant Company/ Transferee Company). The Scheme of Amalgamation is shown as **Annexure-M**.

The averments made in the Company Application are briefly described hereunder:-

The Applicant Company/Transferee Company seeks an order to dispense with convening of meeting of Shareholders and Creditors of the Applicant Company/Transferee Company for considering the scheme of Amalgamation where under the Arkinnet Software Private Limited is proposed to be merged with VMware Software India Private Limited (Applicant Company/Transferee Company) in terms of Scheme of Amalgamation shown as **Annexure-M**.

This Application is filed on behalf of the Transferee Company stating that the Applicant Company/Transferee Company was incorporated on 9th March, 2007 vide CIN No. CIN U72900KA2007PTC042047 under the name and style of VMware Software India Private Limited with Registrar of Companies, Karnataka. The Registered office of the Transferee Company is situated at Kalyani Magnum, Tower 1, 3rd Floor, No/165/2, Doraisanipalya, IIM Post, Bannerghatta Road, Bangalore – 560076.

The main objects of the Applicant Company/Transferee Company is inter alia to initiate, undertake research, developments, experiments, analysis, test of all kinds particularly those related to computers, to plan, design, develop, improve, market, distribute, sell, license, lease, install, alter, import, export, or otherwise deal in with all kind of software, hardware and programmes of any and all kinds and description including software based routers; bridges; workgroup systems; ATM switches; access servers; router management applications; computers and micro-processor based systems; mini and micro-computer based products; mini and micro-computer based products; computer peripheral equipment and terminals; speech processing equipment; office and factory automation equipment. The copy of Memorandum and Articles of Association of the Transferee Company is shown as **Annexure-B**.

The authorised share capital of the Applicant Company/Transferee Company is Rs. 31,00,000/- divided into 3,10,000 Equity Shares of Rs. 10/- each. The issued, subscribed and paid-up capital of the Transferor Company is Rs. 1,16,210/- divided into 11,621 Equity Shares of Rs.10/- each. The Audited balance sheet of the Applicant Company No.1/Transferee Company as on 31st March, 2017 is shown as **Annexure-D**.

It is further stated that the Transferor Company was incorporated on 26th April, 2013 under the name and style of Mahvash Enterprise Private Limited with Registrar of Companies, Mumbai. Subsequently on 4th November, 2013 the name of the Transferor Company was changed to Vnera Software Private Limited. On 29th December, 2014, name of the Applicant

Transferor Company was changed to Arkinnet Software Private Limited bearing CIN no: U72300MH2013PTC242550. The Registered office of the Transferor Company is situated at Fort Chambers, C Block, 65 Tamarind Street, Fort, Mumbai-400 001.

The main objects of the Transferor Company is inter alia to carry on the business of software development, maintenance, quality assurance, implementation, customisation, sale, distribution and customer support operations; to create software products to manage computer servers, networks, storage equipment and other infrastructure in data centres. The copy of Memorandum and Articles of Association of the Transferor Company is shown as **Annexure-H**.

The latest authorised, issued, subscribed and paid-up capital of the Transferor Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The Audited balance sheet of the Applicant Company No.2/Transferor Company as on 31st March, 2017 is shown as **Annexure-J**.

It is further stated that, the Board of Directors of the Applicant Company/Transferee Company and Transferor Company have approved and adopted a Scheme of Amalgamation at their meetings held on 21st March, 2018 respectively by virtue of which Arkinnet Software Private Limited is proposed to be merged with VMware Software India Private Limited (Applicant Company/Transferee Company) subject to confirmation. Copies of the Board Resolution of Transferor and Transferee Company dated 21st March, 2018 approving and adopting the Scheme of Amalgamation are shown as **Annexure-F & L**.

It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company/ Transferee Company has certified that there are four equity shareholders as on 2nd April, 2018 of the Applicant Company/Transferee Company is shown as **Annexure-N**.

It is further stated that there are no Secured Creditors in the Applicant Company/Transferee Company as certified by the Chartered Accountant on 12th April, 2018 shown as **Annexure-Q**.

It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company/Transferee Company has certified that there are 64 Unsecured Creditors as on 12th April, 2018 of the Applicant Company/ Transferor Company shown as **Annexure-R**.

We have seen the consent affidavits of the four Equity shareholders of Applicant Company/Transferee Company shown as **Annexure-N** i.e., (i) AirWatch LLC holding 1 equity share; (ii) A.W.S. Holding LLC holding 1,164 equity shares; (iii) VMware Bermuda Limited holding 10 equity shares; and (iv) VMware International Limited holding 10,446 equity shares.

It is stated that, the value of amounts due to unsecured creditors of the Applicant Company/Transferee Company is Rs. 50,64,25,221/- and 92.16% of the unsecured creditors representing value of Rs. 46,67,35,707/- have given their consent to the Scheme. We have seen consent affidavits issued by the Unsecured Creditors shown as **Annexure-R**.

The Applicant Companies are seeking an order to dispense with convening of meetings of Equity Shareholders and Unsecured Creditors of the Applicant Company/Transferee Company on the ground that, there are Four Equity shareholders, No Secured Creditor and 64 Unsecured Creditors in the Applicant Company/Transferee Company and all the Equity shareholders and 92.16% Unsecured Creditors of the Applicant Company/Transferee Company have given their consent by way of affidavits for the proposed scheme of amalgamation.

We have heard the Counsel appearing for the Applicant Companies and considered the materials on record. The Application is filed by the Applicant Companies which are a Transferee Company and Transferor Company for dispensing with the convening of meeting of Equity Shareholders and Creditors of the Applicant Company/Transferee Company for approving the Scheme of Amalgamation of Arkinnet Software Private Limited to be merged with VMware Software India Private Limited (Applicant Company/Transferee Company) in terms of Scheme of Amalgamation shown as **Annexure-M**.

In the result, the application is allowed and holding of meeting of the Equity Shareholders and Unsecured Creditors of the Applicant Company/Transferee Company is dispensed with. In any eventuality when the Applicant Company/Transferee Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who is interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.


ASHOK KUMAR MISHRA
 MEMBER, TECHNICAL


RAJESWARA RAO VITTANALA
 MEMBER, JUDICIAL

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