

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH, AT MUMBAI

C.P.(C.A.A)/1718/MB/ 2018

IN

CSA NO. 64 OF 2018

In the matter of Companies Act, 2013

AND

In the matter of Section 230 read with Section 232
of the Companies Act, 2013 and other applicable
provisions of the Companies Act, 2013

AND

In the matter of Scheme of Merger (by Absorption)
between Connode (India) Private Limited (the
Transferor Company) and Cyan Connode Private
Limited (the Transferee Company)

Connode (India) Private Limited, a }
company incorporated under the }
Companies Act, 2013 and having its }
registered office at D-207, Times Square, }
Near Marol Metro Station, Andheri-Kurla }
Road, Andheri East, Mumbai, Maharastra- }..... Petitioner Company
400059

Order delivered on 6TH September, 2018.

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi/b M/s. Hemant Sethi & Co.

For the Regional Director: Mr. S Ramakantha, Joint Director

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. Heard Ld. Counsel for the Petitioner. No objector has come before this Tribunal to oppose the scheme of merger (by absorption) of Connode (India) Private Limited, the Transferor Company or the Petitioner Company with and into Cyan Connode Private Limited, the Transferee Company and their respective shareholders and

creditors ("**Scheme**") nor any party has controverted any averments made in the Petition filed by Connode (India) Private Limited, the Transferor Company.

2. The sanction of the Tribunal is sought under sections 230 to 232 read with Rule 15(1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of Companies Act, 2013 in respect of the Scheme.

3. The Petitioner Company and the Transferee Company have approved the said Scheme by passing resolutions in their respective Board Meetings which has been annexed to the said company scheme petition ("**Petition**") as filed by the Petitioner Company.

4. The Ld. Counsel for the Petitioner Company states that the Petition has been filed in consonance with the order passed in Company Scheme Application No. 64 of 2018.

5. The Ld. Counsel for the Petitioner Company submits that the Transferor Company is engaged in the business of developing and providing smart grid technology. The Transferee Company is in the business of developing and providing smart grid technology through contract manufacturing.

6. The Rational for the Scheme is as follows:

1.1. This Scheme envisages amalgamation of Transferor Company with and into Transferee Company, resulting in strengthening position of amalgamated entity (i.e. Transferee Company) thereby enabling it to harness and optimize potential of the Transferor Company. It is intended that Transferee Company shall have a sharper focus on underlying businesses with an aim of achieving operational efficiencies. The proposed amalgamation is in line with the current global industry practice to achieve size, scalability, integration, greater financial strength and flexibility thereby maximizing shareholder value and to

achieve higher long-terms financial returns.

1.2. *The Companies believe that financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of Companies pooled in amalgamated entity (i.e. Transferee Company) coupled with focused management will lead to increased competitive strength, cost reductions, operational efficiencies, including efficiency in fund raising, productivity gains and logistical advantages thereby significantly contributing to economies of scale and future growth. Therefore, management of Companies believe that this Scheme shall benefit the respective Companies and their stake holders.*

7. The Ld. Counsel for the Petitioner Company further states that the Petitioner Company has complied with all requirements as per the directions of this Tribunal and they have filed necessary affidavit of compliance with this Tribunal.

8. Pursuant to the provisions of section 230(5) of the Companies Act, 2013 read with Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and in terms of order dated March 7, 2018 passed by this Tribunal, the Petitioner Company has served the notice to statutory authorities namely, Central Government through Regional Director (Western Region), Registrar of Companies, Mumbai, Official Liquidator attached to the Bombay High Court and the relevant Income Tax authority having jurisdiction on the Petitioner Company.

9. The Regional Director (Western Region) has filed a report dated June 22, 2018. Paragraph IV of the report, *inter-alia*, contain observations of the Regional Director (Western Region) for consideration by this Tribunal. The Regional Director (Western Region) in paragraph IV of the said report has stated as under:-

"IV. The observations of the Regional Director on the proposed scheme to be considered by the Hon'ble NCLT are as under:

- a. *It is observed that the Petitioner Company has not submitted a Chairperson's Report, admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner shall have to submit the same for the record of Regional Director before sanction of the scheme.*
- b. *The Hon'ble NCLT, Mumbai Bench may kindly direct to the Petitioner to file an undertaking to the extent that the Scheme enclosed to the Application and the scheme enclosed to the Petition are one & same and there is no deviation.*
- c. *It is submitted that the office of the Transferee Company is situated at B-41, Panchsheel Enclave, Lower Ground Floor, New Delhi-110017, which falls under jurisdiction of Registrar of Companies, New Delhi and Hon'ble NCLT, New Delhi Bench. In this regards, it is submitted that sanction of the scheme shall be subject to approval of Hon'ble NCLT, New Delhi Bench.*
- d. *Petitioner Company in the Clause 12.5 of the Scheme inter-alia mentioned that "The issue and allotment of New Equity Shares, pursuant to Clause 12.1 in the scheme is an integral part of this Scheme. The approval of this Scheme by the members of the Transferee Company shall be deemed to be due compliance with all applicable provisions of the Companies Act, 2013 including but not limited to Section 62(1)(c) of the Companies Act, 2013. It is hereby clarified that the Transferee Company will make an application for approval, if applicable, or filing to Reserve Bank of India or relevant Governmental and Registration Authority or authorized dealer, wherever required, for their approval under the provisions of the Foreign Exchange Management Act, 1999 of the issue and allotment of equity shares in the Transferee Company to the non-resident equity shares in the Transferee Company in accordance with the provisions of the Scheme and shall also file all relevant intimations, if required, with the Reserve Bank of India or relevant Governmental and Registration Authority or authorized dealer in this regard. Such application for*

approval, if required, shall be made by the Transferee Company within 30(Thirty) days of the Record Date.” In this regard, it is submitted that both the Transferor Company and the Transferee Company have foreign entities as shareholders as per list of shareholders dated 14.05.2018 and therefore, both the Transferor Company and the Transferee Company shall have to undertake to serve notice under section 230 (5) of the Companies Act, 2013 before sanction of the Scheme.

e. Petitioner Company by the Clause 14 of the Scheme inter alia mentioned that consequent upon the amalgamation, the Authorized Share Capital of the Transferee Company will be “The Authorized Share Capital of the Company is Rs.20,01,50,000 (Rupees Twenty Crores One Lakh and Fifty Thousand only) divided into 2,00,15,000 (Two Crore Fifteen Thousand) equity shares of Rs. 10/- each.” In this regard, Transferee Company have to undertake to comply with section 232(3)(i) of the Companies Act, 2013, where the Transferor Company is dissolved, if any, paid by the Transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee Company on its authorized capital subsequent to the amalgamation and therefore, Transferee Company to affirm that they comply the provisions of the section.”

10. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Ld. Counsel of the Petitioner Company has submitted that the copy of Petition and its annexures including Chairperson’s Report on the result of meeting of equity shareholders held on April 26, 2018 along with minutes of order thereon has been served upon the office of Regional Director on 10th August , 2018.

11. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, the Petitioner confirms that the Scheme enclosed

to the Application and the Scheme enclosed to the Petition are one and the same and there is no discrepancy or deviation.

12. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, the Ld. Counsel of the Petitioner Company has submitted that the Scheme shall become effective, only when the Scheme is sanctioned by this Tribunal and National Company Law Tribunal, New Delhi Bench and their respective orders are filed with Registrar of Companies at Mumbai and Registrar of Companies at National Capital Territory of Delhi and Haryana having jurisdiction on the registered offices of the Transferor Company and Transferee company, respectively.

13. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Ld. Counsel of the Petitioner Company submits that the Transferor Company and Transferee Company are engaged in the business of developing and providing smart grid technology in which 100% (One Hundred per cent) foreign direct investment is permitted as per the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 including any statutory modifications, amendments or re-enactments thereof from time to time ("FDI Regulations"). Therefore, the Transferor Company and the Transferee Company are under automatic route of Reserve Bank of India for obtaining foreign direct investment by way of issue of shares and hence, the Transferor and Transferee Company do not require prior approval of the Government or Reserve Bank of India for issue of any shares. Thus, the Transferor Company is not required to serve the notice in terms of section 230(5) of the Companies Act, 2013 as the same is issued only to the sectoral regulators for inviting their representations on the said Scheme. Further, the Ld. Counsel submitted that pursuant to the Scheme become effective, the Transferee Company shall file necessary application(s), document(s), intimation(s)

with the Reserve Bank of India or the Government or the authorized dealer banks as may be required under FDI Regulations for issue and allotment of equity shares to the shareholders of the Transferor Company in terms of clause 12.1 of the Scheme.

14. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned, the Transferee Company by way of letter dated August 17, 2018 undertook to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 and shall pay requisite fees, as applicable, on the increased authorized share capital of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand only) pursuant to the Scheme becoming effective after seeking set-off of the fee already paid by the Transferor Company since its incorporation.
15. The Observations made by the Regional Director have been explained by the Petitioner Company in Paragraph 10 to 14 above. The clarifications and undertaking given by the Petitioner Company and Transferee Company are accepted.
16. The Official Liquidator attached to the Bombay High Court filed its representation with this Tribunal stating that the Scheme is not prejudicial to the interest of its shareholders, creditors and public at large. Hence, he raised no objection towards the Scheme.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No.1718 of 2017 is made absolute in terms of prayers stated in the Petition.
 - a) The Petitioner Company is directed to file a certified authenticated copy of order and the Scheme on the receipt of said order from National Company Law Tribunal, Mumbai Bench with the concerned Registrar of Companies, Mumbai, electronically, along with e-Form INC-28 as per the relevant

provisions of the Companies Act, 2013;

- b) The Petitioner Company to pay costs of Rs. 25,000/- each to the Regional Director (Western Region) and to the Official Liquidator attached to the Bombay High Court. The cost to be paid within four weeks from the date of receipt of certified true copy of order;
- c) All concerned regulatory authorities to act on a copy of this order alongwith Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench; and
- d) The Scheme is hereby approved. The Appointed Date is April 01, 2017.

Sd/-

V Nallasenapathy

Member (T)

Sd/-

Bhaskara Pantula Mohan

Member (J)