

**THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH,  
AT NEW DELHI**

**COMPANY PETITION NO. (CAA)-36 (PB) 2018**

Under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the matter of:

Scheme of Amalgamation

of

Calypto Design Systems India Private Limited

Transferor Company

AND

Mentor Graphics (India) Private Limited

Transferee Company



*Judgment delivered on: 08.10.2018*

**CORAM:**

**CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President**

**Mr. S. K. MOHAPATRA, Hon'ble Member (T)**

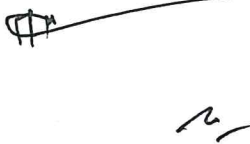
For Petitioners : Mr. Ravi Sharma, Adv.  
For Income Tax : Ms. Esha Kadian, Adv.  
For Regional Director, (NR), Delhi : Ms. Sonam Sharma, CP  
For Official liquidator : Mr. Shubham Pandey, Adv.  
: Ms. Swati Koshal, Adv.



## ORDER

**S. K. Mohapatra, Member**

1. This Joint application has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the transferor company into the Transferee Company. The copy of the Scheme has been placed on record.
2. The "Transferor Company", Calypto Design Systems India Private Limited (CIN No. U72200DL2004PTC128379) was incorporated on 17.08.2004 under the provisions of companies Act 1956, having its registered office P-24, Green Park Extension New Delhi, 110016.
3. The "Transferee Company", Mentor Graphics (India) Limited (CIN No. U 72200 DL 1997 PTC 221131) was incorporated on 03.06.1997 under the companies Act,



1956, having its registered office at P-24, Green Park Extension, New Delhi-110016.

4. A perusal of the petition discloses that initially the First Motion application seeking direction for convening the meeting of Shareholders and Creditors was filed before this Bench vide CA (CAA) No. 13 (PB) 2018 and based on such joint application moved under Sections 230-232 of the Companies Act, 2013, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of both the Petitioner Companies were dispensed with, vide order dated 09.02.2018 passed by this Bench.
5. On 20.04.2018 the Petitioners were directed to carry out publication in the newspapers 'Business Standard' English Delhi edition as well as in 'Jansatta' Hindi Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.



6. It is seen from the records that the Petitioners have filed an affidavit dated 16.05.2018 affirming compliance of the order passed by the Tribunal dated 20.04.2018. A perusal of the affidavit discloses that the petitioners have affected the newspaper publication as directed in one issue of the 'Business Standard' English edition on 10.05.2018 as well as in 'Business Standard' Hindi edition again on 10.05.2018 in relation to the date of hearing of the petition. Further, the affidavit also discloses that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region, official liquidator and Income Tax Department in compliance of the order and in proof of the same acknowledgement made by the respective offices have also been placed on record.

7. The Regional Director has filed its representation dated 08.06.2018 in which following submissions have been made:

*"9. The Registrar of Companies at para 32 of his report has inter-ilia stated as under:*

*'Refer to Clause 13 of the proposed Scheme of Amalgamation. upon the coming into effect of*

*the Scheme. the Authorized Share Capital of the Transferee Company shall automatically stand increased without any further act or deed by the Authorized Share capital of the Transferor Company in the manner set out below and the replaced by the following clause:*

*The Authorized Share Capital of the company is Rs. 4,82,50,000 divided into 48,25,000 equity shares of Rs. 10/- each'.*

*In the instant case, the Authorized Share Capital of the Transferor Company and Transferee Company is Rs. 5,00,000 and Rs. 4,82,50,000 respectively. Accordingly, the sum of Authorized Capital of both these companies will be Rs. 4.87.50.000. Whereas in Clause 13 of the proposed Scheme, it has been shown as Rs. 482,50,000/-."*

8. By way of clarification the petitioner companies have submitted that there is a typographical error in the proposed scheme and the correct amount of authorised



share capital of transferee company post the merger would be Rs. 4,87,50,000/- instead of Rs. 4,82.50,000.

9. In addition it is submitted by petitioners through affidavit dated 08.06.2018 that:

*“Further, this Hon'ble Tribunal recently passed an order dated May 2018 (received on May 31, 2018), approving the scheme of merger of Berkeley Design Automation India Private Limited into the Transferee Company (the copy of the order attached as Annexure 2). Pursuant to this approval the authorised share capital of the Transferee Company stands increased to INR 4,92,50,000 divided into 49,25,000 equity shares of INR 10 each. Thus, in the current scheme of amalgamation between Transferor Company and Transferee Company, the final authorised share capital of the Transferee Company, after the approval of this scheme of arrangement, would be INR 4,97,50,000 divided into 49,75,000 equity shares of INR 10 each.”*



10. The Official Liquidator has filed its report dated 05.06.2018 wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

11. It is pertinent to mention here that the petitioners were directed to file undertaking regarding pending Income Tax Liabilities and in compliance of the same the petitioner companies have filed an affidavit dated 24.07.2018 and submitted follows:

*“2. In response to the observation made by Income Tax Department and in compliance to the order dated 19.07.2018 of the Hon'ble NCLT, the Transferee Company submits it's response below:*

*a) **For Assessment Year ("AY") 2010-11: Appeal has been filed against the additions made by the Learned Deputy Commissioner of Income Tax,***



Circle 16(2), New Delhi ('Ld. A0'). The matter is pending with the Income Tax Appellate Tribunal, New Delhi and the disputed amount of tax payable of INR 4,78,11,494 will be dealt with according to the order of the ITAT. A copy of the acknowledgement of filing of appeal along with Form 36B of the same is attached as **Annexure 1**.

b) For AY 2011-12: Appeal was filed with the ITAT against the additions made by the Ld. AG. Subsequently, the Transferee Company executed a unilateral Advance Pricing Agreement ('APA') in accordance with section 92CC of the Income Tax Act, 1961 ('IT Act') with the Central Board of Direct Taxes (CBDT) (Government of India). "

C) Post the signing of the unilateral APA, modified return in accordance with section 92CD of the IT Act has been filed. Accordingly, the appeal filed with the ITAT has been withdrawn. A copy of the modified return and filing acknowledgement is attached as **Annexure 2**"

12. The department of income tax has also filed its counter report on 14.08.2018 in compliance of order dated 19.07.2018 stating that:

*“Accordingly, a report in respect. of proposed scheme of amalgamation of our assessee company M/s Mentor Graphics India P. Ltd. was furnished wherein details of outstanding demand for A.Ys. were given as under:-*

Sl. No.	A.Y.	O/s Demand	Remarks
1	2010-11	7,78,11,494/-	Appeal filed by the assessee is pending for adjudication before Hon'ble ITAT, Delhi bench.
2	2011-12	6,20,48,113/-	Subsequent to the Advance Price Agreement procedure the assessee has intimate that modified returns for A.Y. 2011-12 & 2012-13 has been filed, which is referred to Transfer Pricing Officer for examination. The TPO order on the modified return filed by the assessee is awaited.
3	2012-13	3,26,14,157/-	

3. In this regard, the assessee submitted an affidavit dated 24/07/2018 before the Hon'ble NCLT stating that no demand is outstanding



*against it owing the reason shown in 'Remarks' in table at para 2. It is reiterated here that the demands placed in table at para 2 is outstanding as on date and merely filing of modified return does not mean that the demands are non-existent. The claim made in the modified return has to be examined by the TPO/AO and if required a suitable order be passed resulting change in the status of demand. As on date, subsequent to filing of modified returns no order has been passed by the department hence the claim made by the assessee in the affidavit dated 24/07/2018 is factually incorrect.”*

13. Thereafter the transferee company was also directed vide order dated 14.08.2018 to file an undertaking to the effect that in case any demand is raised by the revenue the same shall be honored and the payment of tax shall not be hampered by the approval of the scheme. In compliance thereof the transferee company has filed an undertaking on 21.08.2018 with following submissions:



*“2. In response to the observation made by the Hon'ble NCLT, the Transferee Company unconditionally undertakes to honor any liability relating to any tax demand outstanding as on date or as raised by the Income Tax Department in future.*

*3. The payment of income tax shall not be hampered in any way as a result of the merger between Transferor and Transferee Company and any tax liability arising post assessment of income shall be duly paid by the Transferee company.”*

14. Needless to say that the transferee company has already filed an undertaking regarding payment of any pending or future tax liability in respect of the transferor company. In addition, it is clarified that there shall be no limitation on the power of the Income Tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.





15. It is pertinent to mention here that at the time of hearing on 27.09.2018, no objection has been raised by Ld. Counsel for Income Tax Department. Ld. Company Prosecutors for Regional Director and Official Liquidator have also submitted that there is no observation against the Scheme. The aforesaid submissions are reflected in the order dated 27.09.2018.
16. In the joint petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.
17. Certificates of respective Statutory auditors of both the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.



18. It is stated in the petition that as per clause 8.3 of the Scheme, no shares would be issued pursuant to the merger as the Transferor Company is wholly owned subsidiary of the transferee company.
19. It has also been affirmed in the petition that Scheme is in the interest of the transferor company and the transferee company including their shareholders, creditors, employees and all concerned.
20. The shareholders of the petitioner companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.



21. In the case of Hindustan Lever Employees Union Vs. Hindustan Lever Limited (1995) 5 SCC 491 the three judges bench of Hon'ble Supreme Court held that *a company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.*
22. Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.
23. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, the report of official liquidator and the Income Tax Department there appears to be no impediment in sanctioning the present Scheme.

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24. *Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013.*
25. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.
26. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
27. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.



28.

**THIS TRIBUNAL DO FURTHER ORDER**

1. *That the Transferor Company stands dissolved without following the process of winding-up; and*
2. *That all the property, rights and powers of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.*
3. *That all the liabilities and duties of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and*





4. *That all proceedings now pending by or against the Transferor Company, be continued by or against the transferee company; and*
5. *That all the employees of the Transferor Company in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the Transferor Company on the said date.*
6. *That Petitioner companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Company for registration and the Registrar of Company shall place all documents relating to the Transferor*





*Company registered with him on the file kept by him in relation to the transferee company and the files relating to both the petitioner companies shall be consolidated accordingly; and*

7. *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

Sd/-

(M.M. KUMAR)

08.10.2018

**PRESIDENT**

Sd/-

(S. K. MOHAPATRA)

**MEMBER (T)**