

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, PRINCIPAL  
BENCH**

**NEW DELHI**

**Company Petition No. CAA 83/PB/2018**

**Connected with**

**Company Application No. CA (CAA) 62/PB/2018**

**Judgment dated: 25.09.2018**

**Coram:**

**CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR,**

**HON'BLE PRESIDENT**

**&**

**MR. S.K. MOHAPATRA,**

**MEMBER (TECHNICAL)**

**In the matter of:**

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**BETWEEN**

**1. HEAD INFOTECH INDIA PRIVATE LIMITED**



Company registered under the Companies Act, 1956

Having Registered Office at:

Office No. 2, 1<sup>ST</sup> Floor, ASHI, 19, Rouse Avenue ,

Institutional Area

New Delhi-110002

..... Petitioner Company No. 1 / Transferor Company

## **2. CVG HI INDIA PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

Office No. 2, 1<sup>ST</sup> Floor, ASHI, 19, Rouse Avenue ,

Institutional Area

New Delhi-110002

... Petitioner Company No. 2 /Transferee Company

**For the Applicants:** Kumar Aditya, Advocates

### **ORDER**

**M.M. KUMAR, PRESIDENT**

1. This joint application has been filed by the Petitioner Companies under Sections 230 and 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 amongst the Petitioner Companies.

2. A perusal of the Petition shows that the First Motion petition seeking direction for convening the meeting of Shareholders and Unsecured Creditors was filed before this Tribunal being CA (CAA) No. 62 (PB) 2018 under Sections 230-232 of the Companies Act, 2013. In this petition directions were issued for dispensing with convening of the meetings of Shareholders and Creditors of both the Petitioner Companies.
3. On 04.07.2018 the Petitioners were directed to carry out a publication in the English Daily 'Business Standard' Delhi edition as well as Hindi Daily 'Business Standard' Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Norther Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other concerned sectoral regulators.
4. It is seen from the records that the Petitioners have filed an affirming compliance of the order passed dated 04.07.2018 by us. A perusal of the affidavit discloses that the petitioners have effected newspaper publication as directed in one issue of the 'Business Standard' as well as in 'Business Standard' on 13.08.2018 in relation to the date of hearing of the petition.



5. The Regional Director has filed its representation dated 07.09.2018 wherein he has stated that the Scheme does not clearly provide whether or not the fees be paid by the amalgamated company on increase of its authorised share capital subsequent to the sanction of the Scheme in terms of provisions of Section 232 (3)(i) of Companies Act 2013.
6. The Petitioner Companies have filed a rejoinder affidavit on 17.09.2018 wherein they have undertaken to pay any additional fee and stamp duty as applicable and payable in relation to increase in authorised share capital of the transferee company i.e. CVG HI India Private Limited.
7. The Official Liquidator has filed a report on 03.08.2018 wherein it has been stated that he has not received any complaint against the proposed Scheme of Amalgamation from any stakeholders 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, creditors or public interest.
8. The Department of Income Tax has filed its response to the Scheme on 19.07.2018. It has been stated that arrears of taxes are outstanding in the case of the assessee for AY 2015-16 and appeal is pending before the Hon'ble ITAT, Hyderabad. Two more appeals are pending for AYs 2013-14 & 2014-15 with the Hon'ble ITAT, Hyderabad. The department has not



submitted any adverse comment against the sanction to the proposed Scheme and has stated that it has no-objection to the Scheme.

It is clarified that there shall be no limitation on the power of the Income tax Department for recovery, including imposition of penalties etc. as provided in law.

9. Certificate of Statutory auditor of Transferee Company has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard prescribed by the Central Government in this regard under Section 133 of the Companies Act, 2013.
10. 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 Department of Income Tax, there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.



11. 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 would not come in the way of action being taken, albeit in accordance with law, against the concerned persons, company, directors and officials of the petitioners.

12. 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, GST, 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.

1. **THIS TRIBUNAL DO FURTHER ORDER :**

**(A) WITH RESPECT TO TRANSFEROR COMPANY AND  
TRANSFeree COMPANY**

1. That the Transferor Company stands dissolved without being wound-up; and
2. That all the property, rights and powers of all the Transferor Company, be transferred without further act or deed, to the Transferee Company and accordingly the same shall pursuant to

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Section 232 of the Act, be transferred to and vest in the Transferee Company for all the estate and interests of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

3. That all the liabilities and duties of the Transferor Company be transferred without further act or deed, to 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, if any, 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 conditions not less favourable than those subsisting in concerned Transferor Company on the said date.
6. That Petitioner companies shall within thirty days of the date of

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the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Company for registration and on such certified copy being so delivered the Transferor Company shall be dissolved 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 all the petitioner companies shall be consolidated accordingly.

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.

  
(M.M. KUMAR)

25.09.2016

**PRESIDENT**

  
(S.K. MOHAPATRA)

**MEMBER(T)**

(Vidya)