

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, AT MUMBAI

COMPANY SCHEME PETITION NO.224 OF 2017

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.859 OF 2016

In the matter of Companies Act, 2013;

And

In the matter of Sections 230 to 232 of the Companies Act, 2013;

And

In the matter of Ignify Software Private Limited;

And

In the matter of Scheme of Amalgamation between Hitachi Solutions India Private Limited (CIN: U74999TN2013FTC091536) and Ignify Software Private Limited (CIN: U72200PN2001PTC016412) and their respective shareholders and creditors.

IGNIFY SOFTWARE PRIVATE LIMITED)
Incorporated under the Companies Act)
1956 and having its registered office at)
Upper Ground Level, Tower B5, Magarpatta)
City SEZ, Magarpatta City, Mumbai 411 013) ... PETITIONER COMPANY

Order delivered on 5th October, 2017

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Prakash K. Pandya, Practicing Company Secretary
for the Petitioner,

Per: V. Nallasenapathy, Member (T)

ORDER:

1. Heard Learned Counsel for Petitioner/Transferee Company. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme of Amalgamation of HITACHI SOLUTIONS INDIA PRIVATE LIMITED, the Transferor Company with IGNIFY SOFTWARE PRIVATE LIMITED, the Petitioner/Transferee Company.
2. The sanction of the Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of HITACHI SOLUTIONS INDIA PRIVATE LIMITED, the Transferor Company with IGNIFY SOFTWARE PRIVATE LIMITED, the Petitioner/Transferee Company.
3. The Petitioner/Transferee Company has approved the said Scheme of Arrangement by passing the Board Resolution, which is annexed to the Company Scheme Petition.
4. The Learned Advocate appearing on behalf of the Petitioner/Transferee Company states that the Petition has been filed in consonance with the order passed in their Company Summons for Direction Nos.859 of 2016 of the Hon'ble Bombay High Court.
5. The Learned Advocate appearing on behalf of the Petitioner/Transferee Company further states that the Petitioner/Transferee Company has complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner/Transferee Company undertakes to comply with all the statutory requirements if any, as required under the Foreign Exchange Management Act, 1999 and the Companies Act, 1956/2013 and the

Rules, Directions made/issued there under which ever is applicable.
The said undertaking is accepted.

6. The Learned Counsel for the Petitioner/Transferee Company states that the Transferor Company is presently engaged in business of providing offshore software development, support maintenance and management of information technology solutions relating to Microsoft Dynamics AX (ERP software package), Microsoft Dynamics CRM, Microsoft SharePoint (content management software), Microsoft BI (Business Intelligence tools) etc., and the Transferee Company at present is engaged in business of providing software solutions for e-commerce and e-business enabling, warehouse and inventory management, customer management for vertical industries including banking/financial services, insurance, retail telecommunication and manufacturing. The Transferor Company and the Petitioner/Transferee Company are both subsidiaries of Hitachi Solutions America Limited, USA and the Scheme will help consolidate the business under one entity and that the business of the Transferor Company is complementary to the business of the Petitioner/Transferee Company which has substantial growth opportunities. The proposed Amalgamation would provide a Digital convergence platform for both the Transferor Company and the Petitioner/Transferee Company to deliver integrated solutions to its customers and that the proposed Amalgamation would provide the Petitioner/Transferee Company various other potential business avenues based on the resources of the Transferor Company. Greater integration and greater financial strength and flexibility for the merged entity, would result in maximising overall shareholders' value, and will improve the competitive position of the combined entity. Greater efficiency in cash management of the merged entity, and unfettered access to cash flow generated by

the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholders' value. Improved organizational capability and leadership, arising from the pooling of financial resources, and human capital having diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry. Cost savings are expected to flow from more focused operational, efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement and the elimination of duplication and rationalization of administrative expenses. Strengthened leadership in the industry, in terms of the asset base, revenues, product range, production volumes and market share of the combined entity. The merged entity will have the ability to leverage on its large asset base, diverse range of products and services, and vast pool of intellectual capital to enhance shareholders' value.

7. The Regional Director has filed a Report on 6th day of September, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are asunder:

(a) In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.

(b) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It is observed that the company has not served a copy of company scheme application No.519 and 520 2017 along with relevant orders etc. to the Income Tax Department.

This Department prays that the Hon'ble Tribunal may pass orders as may deem fit.

(c) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

(d) Petitioner in the clause 14 inter alia has mentioned that upon the Scheme becoming effective, without any further act or deed, the Transferee Company shall be renamed as "HITACHI SOLUTIONS INDIA PRIVATE LIMITED" which is the existing name of the transferor Company. The approval and consent of the Scheme by the shareholders of the Transferee Company shall be deemed to be the approval of shareholders by way of special resolution for change of name as contemplated herein under Section 13 of Companies Act, 2013 (corresponding to Section 21 of Companies Act 1956). The sanction of the Scheme by High Court shall be deemed to be compliance of Section 13 of Companies Act, 2013 (corresponding to Section 21, 23 of Companies Act 1956) and other applicable provisions of the Act and the Rules framed thereunder.

This deponent prays that the Hon'ble Tribunal may pass orders directing the Petitioner to comply with the provisions of the Companies Act and the Rules thereof enabling the change of name. Further the Transferee Company has to justify the reason for change of name belonging to the Transferor Company.

(e) The Registered Office of the Transferor Company is situated in the State of Tamil Nadu i.e., outside of the jurisdiction of NCLT of this Tribunal and falls within the jurisdiction of NCLT Chennai. Accordingly, similar approval be obtained by the Transferor Company from the Hon'ble NCLT at Chennai respectively.

It is observed that the Hon'ble NCLT, DB, Chennai bench vide order dt. 25.04.2017 has approved the Scheme. Copy of the order is attached herewith as "Annexure E".

(f) Petitioner in Clause 14 inter alia has mentioned that upon the Scheme coming into effect, the Transferee Company Shall record on the statutory reserves of the Transferor Company at the close of business of the day immediately preceding the Appointed Date. The balance appearing in the financial statements of the Transferor Company whether debit or credit, loses its identity.

This Deponent prays that the Petitioner may be directed to clarify about the statutory reserves which are going to come in the Transferee Company pursuant to Amalgamation.

(g) It is observed that the Transferor Company has foreign/non-resident shareholders. The Transferee Company must observe the FEMA guidelines for allotment of shares to the shareholder of the Transferor Company in Transferee Company.

(h) It is observed that the Transferor Company and Transferee Company has not submitted the certificate from the Statutory Auditor

of the Company that the proposed accounting treatment are in compliance of Section 133 of Companies Act, 2013.

The Deponent prays that the Petitioner may be asked to submit the Compliance Certificate from the Statutory Auditor in compliance with proviso of Section 230(7) of the Companies Act, 2013.

8. So far as the observation in paragraph IV(a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner/Transferee Company states that the Petitioner/Transferee Company undertakes to pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc., in addition to compliance of AS-14 (IND AS-103).
9. So far as the observation in paragraph IV(b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner/Transferee Company submits that Office of the Assistant Commissioner of Income Tax, Circle 11, Pune has vide its letter dated 12th September 2017 accorded their consent cum No Objection to the Scheme of Amalgamation.
10. So far as the observation in paragraph IV(c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner/Transferee Company states that the Petitioner/Transferee Company agrees that the approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner/Transferee Company and the Petitioner/Transferee Company undertakes to abide by the decision of the Income Tax Authority in this regard.

11. So far as the observation in paragraph IV(d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner/Transferee Company submits that pursuant to the Scheme, the name of the Petitioner/Transferee Company will be renamed as 'HITACHI SOLUTIONS INDIA PRIVATE LIMITED" which is the existing name of the Transferor Company. The Regional Director has sought for a direction that the Petitioner/Transferee Company should comply with the provisions of the Companies Act and the rules thereof enabling the change of name. The Learned Counsel for the Petitioner/Transferee Company states that Petitioner/Transferee Company undertakes to comply with the provisions of the Companies Act and the Rules thereof enabling the change of name. The Petitioner/Transferee Company also undertakes to justify the reason for change of name presently belonging to the Transferor Company.
12. So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner/Transferee Company submits that the statutory reserves which are going to come in the Petitioner/Transferee Company pursuant to the amalgamation is NIL.
13. So far as the observation in paragraph IV(g) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner/Transferee Company states that the Petitioner/Transferee Company undertakes to observe the FEMA guidelines for allotment of shares in Transferee Company to the shareholder of the Transferor Company and the Petitioner/Transferee Company has lodged with the Registry of the Hon'ble Tribunal a certificate from its statutory auditor to the effect that the valuation of shares for allotment to foreign/non-resident shareholders of Transferor Company in the

Transferee Company is not and will not be below the price prescribed under the regulations of Foreign Exchange Management Act, 1999.

14. So far as the observation in paragraph IV(h) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner/Transferee Company submits that the Petitioner/Transferee Company has lodged with the Registry of the Hon'ble Tribunal the color Photostat copies of the Certificates from the Auditors stating that the accounting treatment proposed in the Scheme is in conformity with the applicable Accounting Standards prescribed under section 133 of the Companies Act, 2013 read together with Rule 7 of the Companies (Accounts) Rules, 2014 as amended from time to time and other generally accepted accounting principles.
15. The observations made by the Regional Director have been explained by the Petitioner/Transferee Company in Paragraph nos.8 to 14 above. The clarifications and undertakings given by the Petitioner/Transferee Company are accepted.
16. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No.224 of 2017 is made absolute in terms of prayers clause (a) to (e).
18. The Petitioner/Transferee Company is directed to lodge a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.

19. The Petitioner/Transferee Company to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
20. The Petitioner/Transferee Company to pay costs of Rs.25,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of the Order.
21. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.
22. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that maybe necessary.

Sd/-

V. Nallasenpathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)