

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSA NO 1081 OF 2017

In the matter of the Companies Act, 2013 ;

AND

In the matter of Sections 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 Amalgamation of Sofgen India Private
Limited ('Transferor Company') with Tech Mahindra Limited
('Transferee Company') and their respective shareholders

Tech Mahindra Limited a company }
incorporated under the Companies Act, 1956 with its registered }
office at Gateway Building, Apollo Bunder, }
Mumbai – 400 001, Maharashtra, India }

..... Applicant/ Transferee Company

Order delivered on 21st December, 2017

CORAM: M. K. Shrawat, Member (Judicial)

V. Nallasenapathy, Member(Technical)

For the Applicant: Mr. Hemant Sethi i/b Hemant Sethi & Co.

Per: **V. Nallasenapathy, Member(Technical)**

ORDER

1. The Counsel for the Applicant states that the present Scheme is a Scheme of Amalgamation of a step down wholly owned subsidiary company namely, Sofgen India Private Limited ('Transferor Company') with its ultimate holding company namely Tech Mahindra Limited ('Applicant Company' / 'Transferee Company') and their respective Shareholders under the provisions of Sections 230 to 232 of the Companies Act, 2013.
2. The Transferor Company was incorporated 1st day of November 2001 under the provisions of Companies Act, 1956, as a private limited company. The Registered office of Transferor Company is situated at 3A, KG 360 IT Park, 232/1 Dr Mgr Salai, OMR Bypass Road, Perungudi, Chennai –600096, Tamil Nadu, India.

3. The Counsel for the Applicant submit that the Applicant Company i.e. Transferee Company is a multi-national company engaged in providing consulting-led integrated portfolio services to telecom equipment manufacturers, telecom service providers and other players in the telecom business as well as providing comprehensive range of Information Technology (IT) services, development and maintenance, consulting and enterprise business solutions and infrastructure management services to businesses in the sectors of insurance, banking, financial institutions, telecom, manufacturing, transportation and engineering.
4. The Counsel for the Applicant further submits that the Transferor Company is step down wholly owned subsidiary of the Transferee Company.
5. The rational for the proposed Scheme is as under;
 - a. Rationalizing the group structure to ensure optimized legal entity structure more aligned with the business;
 - b. Reorganizing the legal entity in the group structure in India so as to obtain significant cost savings and/or simplification benefits;
 - c. Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Transferor Company;
 - d. Transferor Company and Transferee Company are engaged in complementary businesses and combining the businesses will result in enhancing shareholder value and leveraging on synergies in doing business;
 - e. Rationalizing costs by elimination of administrative functions and multiple record-keeping.
6. The Applicant Company respectfully submits that:
 - a. The Transferee Company, holds 100% stake in the Transferor Company through its wholly owned subsidiaries;
 - b. Since it is a merger of step down wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. The proposed Scheme will not result in any dilution in shareholding of the public shareholders of the Transferee Company;

- c. The existence of the Transferee Company will remain as before without any change either to its shareholding pattern or debt position pursuant to the scheme;
 - d. No undertaking of the Applicant Company is being parted away or being disposed off and hence provisions of Section 180 of the Companies Act, 2013 are also not applicable;
 - e. Further, the net worth of the Transferee Company is highly positive. The assets of the Transferee Company are more than sufficient to discharge its liabilities;
 - f. Further, there is no compromise or arrangement with the members or creditors of the Transferee Company. Therefore the proposed Scheme of Amalgamation is not prejudicial to the interest of the shareholders or the creditors of the Transferee Company;
7. The Counsel for the Applicant Company submits that in view of above, no reconstruction or arrangement happens with its shareholders or creditors, and thus, it does not require to hold either shareholders' meeting or creditors' meeting for approval of the proposed Scheme, in view of ratio laid down by this Tribunal in ***CSA NO 243 of 2017 in the matter of Housing Development Finance Corporation Limited***. The Counsel for the Applicant submits that the facts in the present case are similar to the facts of above case therefore no meeting of shareholders and creditors of the Applicant Company is required to be convened. The Counsel for the Applicant further clarifies that the Applicant Company will file petition and comply with the provisions of service of notices upon all Regulatory authorities.
8. The Applicant Company is accordingly directed to serve notices along with the documents as mentioned (a) the draft of the proposed terms of the Scheme drawn up and adopted by the Board of Directors; (b) confirmation that a copy of the draft Scheme has been filed with the Registrar; (c) a report adopted by the Directors of the Applicant Company explaining the effect of the amalgamation on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties; (d) the report of the expert with regard to valuation, if any; (e) a supplementary accounting statement, if any, if the last annual accounts of the merging company relate to a financial year ending more than 6 months before the date of service of notice, upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made i.e. Office of The Assistant Commissioner Of Income Tax Circle 2(3)(1) (PAN NO AAACM3484F) (ii) the Securities and Exchange Board of India (iii) the Central Government through

the office of Regional Director, Western region, Mumbai, (iv) Registrar of Companies (v) BSE Limited and (vi) National Stock Exchange of India Limited (NSE), with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

9. The Applicant Company to file affidavit of service in the Registry that directions contained in clause 8 have been complied with.

Sd/-

V. Nallasenapathy, Member(T)

Date: 21.12.2017

Sd/-

M. K. Shrawat, Member (J)