BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI

C.A (M) 111/2016

AND

Co. Appln No. 3954 OF 2016

Present: CHIEF JUSTICE (Retd.) SHRI M.M. KUMAR, HON'BLE PRESIDENT &
SHRI R. VARADHARAJAN, MEMBER (JUDICIAL)

(TRANSFERRED FROM THE HON'BLE HIGH COURT)

IN THE MATTER OF SECTION 391 & 394 OF

THE COMPANIES ACT, 1956
(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

AMONGST

1. ATHEROS COMMUNICATIONS INDIA PRIVATE LIMITED,

Having its registered office at:
141, TVH Agnitio Park, Kandanchavadi, OMR,
Chennai-600096, TamilNadu, India,

.....TRANSFEROR COMPANY NO.1/ NON APPLICANTCOMPANY

2. CSR INDIA PRIVATE LIMITED,
Having its registered office at:
7th Floor, Wing-A, Etamin Blk, Prestige Tech Park II,
Sarjapur Marathalli Outer Ring Road, Marathalli,
Bangalore-560 103, Karnataka, India,

.....TRANSFEROR COMPANY NO.2/ NON APPLICANTCOMPANY

3. CSR TECHNOLOGY (INDIA) PRIVATE LIMITED,
Having its registered office at:
7th Floor, Wing-A, Etamin Blk, Prestige Tech Park II, Sarjapur
Marathalli Outer Ring Road, Marathalli,
Bangalore-560 103, Karnataka, India,

.....TRANSFEROR COMPANY NO.3/ NON APPLICANTCOMPANY

4. KANOS COMMUNCIATIONS (INDIA) PRIVATE LIMITED,
having its registered office at 3rdFloor,
Corporate Miller no. 332/1, Thimmiah Road,
Vasanthnagar, Bangalore-560 052, Karnataka, India,
.....TRANSFEROR COMPANY NO.4/ NON APPLICANTCOMPANY

AND

QUALCOMM INDIA PRIVATE LIMITED
having its registered office at:
Unit No. 201, 2nd Floor, Tolstoy House, 15, Tolstoy Marg,
New Delhi, India,
CIN: U64202DL1996PTC076991
..... APPLICANT/Transferee Company

Counsel for the Applicant Transferee Company: Mr Sharad Vaid,Advocate

Ms Shilpi Jain, Advocate

ORDER

1. This is an application filed by Qualcomm India Private Limited (for brevity the "Applicant Transferee Company") under Sections 391 to394 and other applicable provisions of the Companies Act, 2013(for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016(for brevity 'The Rules') in relation to a Scheme of Amalgamation of Atheros Communications India Private Limited (hereinafter referred to as Transferor Company No. 1), CSR India Private Limited (hereinafter referred to as Transferor Company No. 2), CSR Technology (India) Private Limited (hereinafter referred to as Transferor Company No. 3), Ikanos Communications (India) Private Limited (hereinafter referred to as Transferor Company No. 4) (hereinafter collectively referred to as "**Transferor Companies**"), with Qualcomm India Private Limited (hereinafter referred to as Applicant Transferee Company). The Scheme of Amalgamation (for brevity the "Scheme")has been annexed as Annexure – A to the application with the following prayers:

   i) for dispensing with the requirement of convening and holding the meeting of the equity shareholders of the Applicant Transferee

Company for considering and if though fit, approving, with or without modification(s), the Scheme;

ii) *for dispensing with the requirement of convening and holding the meeting of the secured creditors of the Applicant Transferee Company for considering and if though fit, approving, with or without modification(s), the Scheme;*

iii) *for dispensing with the requirement of convening and holding the meeting of the unsecured creditors of the Applicant Transferee Company for considering and if though fit, approving, with or without modification(s), the Scheme;*

iv) *Such further directions and order/orders as may be deemed fit and proper as per the facts and circumstances of the case.*

2) An Affidavit in support of the application sworn for and on behalf of all the Applicant Companies has been filed by one Ms.Jingu Saira Jacob being the authorized representative of the transferee Company along with the application. Counsel for the applicants took us through the averments made in the application as well as the typed set of documents annexed there with. It is further represented that an application filed by the applicants are maintainable in view of Rule 3(2) of the Rules. Further, the registered office of the Transferee Company

is situated within New Delhi and subject to the territorial jurisdiction of Registrar of Companies, NCT, New Delhi as well as that of this Tribunal. Whereas, the registered office of all the Transferor Company is situated outside the territorial jurisdiction of Delhi and separate applications are being moved for directions taking into consideration the territorial jurisdiction of the respective companies.

3) The above joint application had been originally filed before the Hon'ble High Court of Delhi and was subsequently transferred to this Tribunal, as evident from the order dated 27.02.2017 passed by Hon'ble High Court of Delhi, and in light of the notification of the provisions of Sections 230 to 232 of Companies Act, 2013 and as well as Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 framed thereunder this Tribunal proceeds to entertain the above application.

4) Learned Counsel for the applicant represents that the 'Scheme' does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act.

5) In relation to Qualcomm India Private Limited being the Transferee Company/ Applicant Company in the Scheme marked as Annexure – "A", Learned Counsel represents that the Transferee Company/ Applicant Company, having 4(four) Equity Shareholders as on

30.06.2016. It is further represented by the counsel for Applicant that the Applicant/ Transferee Company has 1(one) Secured and 239(Two hundred thirty nine)Unsecured Creditors. In relation to Equity shareholders and Secured Creditor since consent from all of them have been obtained for the proposed Scheme and therefore prayer has been made to dispensing with convening and holding of various meetings. In relation to Unsecured Creditors since the consent of the Unsecured Creditors representing more than 93.2% of the shareholdings have been obtained for the proposed Scheme, prayer has been made to dispensing with convening and holding of meeting.

6) Learned Counsel for the Applicant also represents that the provisions of Section 233 of the Act will not apply. Further, the registered office of the applicant/ transferee company as already stated is situated in New Delhi and subject to the Jurisdiction of Registrar of Companies, NCT, and New Delhi and hence amenable to the territorial jurisdiction of this Tribunal.

7) We have perused this application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant Company.

8) The Applicant Transferee Company was incorporated under Companies Act, 1956 on 8th March 1996 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9) Authorized share capital of Applicant Transferee Company is Rs. 2,10,78,35,000/- (Rupees Two Hundred Ten Crore, Seventy Eight Lakh and Thirty Five Thousand only) divided into 14,45,76,000 equity (Fourteen Crore, Forty Five Lakh, Seventy Six Thousand) shares of Rs 10/- each and 66,20,750 (Sixty Six Lakhs, Twenty Thousand and Seven Hundred Fifty) Preference Shares of Rs.100/- (Rupees Hundred only) each. The present issued, subscribed and paid-up share capital of the company is Rs.39,15,33,630/- (Rupees Thirty Nine Crore Fifteen Lakh Thirty Three Thousand Six Hundred and Thirty only) divided into 3,91,53,363 (Three Crore Ninety One Lakh Fifty Three Thousand Three Hundred and Sixty Three) equity shares of Rs 10/- each fully paid up.

10) The Transferee Company operates through its following units in India:

- Hyderabad Unit: This unit provides services for design, development and testing for enhancement and improvement of the Transferee Company's existing products and new products. The unit is

a 100% Export Oriented Unit ("EOU") registered under the STPI Scheme of the Government of India.

- Bangalore Unit: This unit is involved in the design and development of CDMA chipsets. This unit is also registered as a 100% EOU under the STPI Scheme.

- Mumbai, Gurgaon and New Delhi Units: These units provide business support, technical support and market research services to the Transferee Company's group of companies.

- Chennai Unit: This unit is engaged in providing software development and testing services. This unit is also registered as a 100% EOU under the STPI Scheme.

11) The main objects of the Transferee Company/ Applicant Company as stated in the application are:

i) *To invent, design, develop, construct, manufacture, produce, erect, assemble, test import, export, alter, install, maintain, repair, renovate, refurbish, recondition, utilize, operate, manage, acquire, sell, hire, hire out, supply and otherwise deal in plant, equipment and apparatus for the purposes of communications of all kinds(including, without prejudice to the generality of the foregoing, plant, equipment and apparatus which is intended for, or capable of, or*

designed for use in, with, in connection with, in conjunction with, connected (directly or indirectly), to, or ancillary to, all part or parts of telecommunication, data processing, information storage or retrieval or process control, systems, services, facilities, apparatus, plant and equipment as the case may be), and anything capable of being used for or in connection with or ancillary to such plant, equipment and apparatus as aforesaid.

ii) *To provide remotely located office services and systems(including without prejudice to the generality of the foregoing telephone answering, calling and related services and computer bureaux) and remotely located services and systems for the control of machinery utilizing telecommunication or data processing facilities, to act as business and office managers, secretaries, messengers, telephone operators, commercial agents, mail order bureaux, market researchers and to provide services in connection with the reception, processing and forwarding of signals and information by telephone, telemessage, telegram, telex, letter, wireless telegraphy and (without limitation) any other means of communication and the processing, ordering and payment for and despatch and delivery of goods, articles and services of all kinds by any means whatsoever.*

iii) *To acquire, produce, transmit, publish, print and reproduce in any form whatsoever (including, without prejudice to the generality of the foregoing, visual or audible forms and forms capable of being used by, in, or in connection with computers) and to buy, sell, supply and otherwise deal in directories, brochures, manuals, journals, periodicals, magazines, newspapers, books, pictures, photographs, stationery and other documents.*

iv) *To establish, acquire, manage, supply, sell, hire, hire out, maintain and otherwise deal in facilities, plant, apparatus and equipment (including but not limited to radio and television stations and studios) used or designed for use for the purposes of receiving and broadcasting or otherwise transmitting (by wireless telegraphy, closed circuit, cables or otherwise) and of making, producing, recording, replaying or reproducing programs and cinematographic films for radio and television and for any other means of communication or reproduction, and to make, produce, record, buy sell hire, hire out and otherwise deal in cinematographic and television films, programs for radio, television and all other means of communication, sound and visual recordings and other products of all kinds (whether pre-recorded or not) for recording in permanent*

or semi-permanent form, and replaying or reproducing sounds, images and signals of all kinds.

v) *To carry on all or any of the businesses of, and provide services associated with, engineers (including without limitation, telecommunications, mechanical, chemical, electrical, civil, heating and ventilation engineers), bankers, financiers, factors, underwriters and dealers in securities, insurers, insurance brokers and agents, insurance underwriters, property developers, freight contractors, carriers by land, water and air of freight and passengers, forwarding agents, shipping agents, travel agent, employment agents, estate agents, surveyors, architects, wharfingers, warehousemen, garage proprietors, motor mechanics, storage contractors, electricity supply undertakers, general traders, licensed victuallers, restauranteurs, food processors manufacturers and distributors of things of all kinds, club, hotel and in proprietors, builders, painters, decorators, producers of exhibitions and displays, entertainers, photographers, cartographers, couriers and retailers, wholesalers and mail order operators for the sale, hire or other supply of any products or services.*

12) A copy of the Memorandum and Articles of Association of the Applicant Transferee Company has been placed on record.

13) A copy of the Scheme of Amalgamation as stated supra as Annexure – A has been placed on record .The salient features of the Scheme have been incorporated and detailed in the application. It has been stated that the amalgamation shall result in the consolidation of the businesses of the Transferor Companies and will enable better and efficient management, control and running of the businesses to attain operational efficiencies, cost competitiveness, create synergies and will be beneficial for capitalizing on the growth opportunities to the fullest extent. It is further claimed that the proposed amalgamation is as such in the interest of the shareholders, creditors, employees and all other stakeholders of all the companies involved as it would enable a focused business approach for the maximization of benefits to all stakeholders.

14) The appointed date as specified in the Scheme is 01.04.2016 subject to the directions of this Tribunal.

15) The Board of Directors of the Transferor Company vide separate meeting held on 7th June, 2016 have unanimously approved the

proposed Scheme of Amalgamation and copies of resolutions passed thereat, have been placed on record by the companies

16) The applicant company have submitted that no investigation proceedings are pending against them either under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013. Further, the applicants have also submitted that the Scheme is not otherwise opposed to Public Policy or interests of the members of the respective applicant companies.

17) Taking into consideration the application filed by the Transferee company and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors or dispensing with the same as well as issue of notices including by way of paper publication in relation to transferee Company as follows:-

A. **In relation to the Transferee Company**.

(i) With respect to Equity shareholders:

Meeting of the Equity Shareholders of the transferee Company/ Applicant Company is dispensed with as consent letters have been received from all

the Equity Shareholders of Transferor Company / Applicant Company and are placed on record.

(ii) With respect to Secured Creditors:

Meeting of the Secured Creditors of the transferee Company/ Applicant Company is dispensed with as consent letters have been received from all the Secured Creditors of Transferee Company / Applicant Company and are placed on record.

(iii) With respect to Unsecured Creditors:

Meeting of the Unsecured Creditors of the transferee Company/ Applicant Company is dispensed with as consent letters have been received from Unsecured Creditors representing more than 93.2% in value and has been placed on record and checked.

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The amendments to the Scheme as set out in the Company Application being Co. Appln No. 3954 of 2016 in terms of the resolutions passed by the respective

Board of Directors of the Applicant Transferee Company and each of the Transferor Companies, are approved and confirmed.

The application stands allowed on the aforesaid terms.

11.05.2017

Sd/-

(CHIEF JUSTICE (Retd.) M.M.KUMAR)

(PRESIDENT)

Sd/-

(R.VARADHARAJAN)

MEMBER (JUDICIAL)