

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

T.P. No.185/2017

IN

CoP No. 164/2016

IN

C.A. No.173/2016

DATED: THURSDAY THE 1ST DAY OF JUNE, 2017

**PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL**

IN THE MATTER OF COMPANIES ACT, 2013(18 OF 2013)

AND

**IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT,
1956 AND SECTION 230-232 OF THE COMPANIES ACT, 2013**

AND

IN THE MATTER OF MINDTREE LIMITED

T.P. NO.185/2017 IN CoP No. 164/2016

MINDTREE LIMITED,

Global Village,

PVCE Post, Mysore Road,

Bengaluru-560059

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PETITIONER / TRANSFEREE COMPANY

PARTIES PRESENT : 1) Sri K.G.Raghavan, Sri. N.K. Dilip & Sri M.G.Nanjappa,
Advocates, Tatva Legal Bangalore, 4th Floor, Phoenix
Pinnacle 46 Ulsoor Road, Bangalore-560042.
2) Smt. Sinchana M.R. Standing Counsel for Central
Government, Representing for ROC & R.D.

Heard on: 09/02/2017, 16/02/2017, 01/03/2017, 14/03/2017, 23/03/2017, 04/04/2017
& 12/04/2017.

O R D E R

Company Petition bearing No.164/2016 in Company Application No. 173/2016 was filed on behalf of Petitioner Company before the Hon'ble High Court of Karnataka at Bengaluru. Consequent upon issuing of Notification No. GSR111(E) dated 7th December 2016 by the Ministry of Corporate Affairs, New Delhi, this petition is transferred from the file of Hon'ble High Court of Karnataka to this Tribunal and it is renumbered as T.P. No.185/2017 on the file of this Tribunal.



The averments made in the Company Petition are briefly described hereunder:-

This Company Petition is filed under section 391-394 of the Companies Act, 1956 for sanction of Composite Scheme of Amalgamation. The petitioner is Transferee Company. The scheme involves amalgamation of **DISCOVERTURE SOLUTIONS L.L.C** (Transferor Company No.1) and **RELATIONAL SOLUTIONS INC** (Transferor Company No.2) which are wholly owned subsidiaries of the Petitioner Company to be merged with Petitioner Company by virtue of considering the Composite Scheme of Amalgamation. A copy of the Composite Scheme of Amalgamation is produced and marked as **Annexure-A**.

It is averred in the Company Petition that, the Petitioner Company/Transferee Company was incorporated under the Companies Act, 1956 as a private company on 5th August 1999 under the name and style of MindTree Consulting Private Limited. Subsequently, MindTree Consulting Private Limited ceased to be a private company and converted as Limited Company and changed to MindTree Consulting Limited on 6th November 2006. Again the name of the Transferee Company was changed to Mindtree Limited on 28th March 2008. The Registered Office of the Transferee Company is situated at Global Village, RVCE Post, Mysore Road, Bengaluru-560059.

The main objects of the Transferee company is to carry on the business of software development, installations, maintenance and supply services including providing associated hardware and software products; to carry on the business of development and programs for software programs of all kinds; and to render services to customers in India and elsewhere by processing their jobs these centers. A copy of Certificate of Incorporation and Memorandum and Articles of Association of the Transferee Company are produced and marked as **Annexure B**.

It is further averred that, the Assets and Liabilities of the Petitioner/Transferee Company and its financial position are shown in the audited Profit and Loss Account and Balance sheet as at 31st March 2015. It is marked herewith as **Annexure-C**.



It is further averred that, the **DISCOVERTURE SOLUTIONS L.L.C** (Transferor Company No.1) was incorporated on 1st October 2002 having its Registered office at 16100 North 71st Street Suite 250, Scottsdale, Arizona 85254. The Transferor Company No.1 is involved in the business of providing technology services for property and casualty insurance and healthcare industries. The Articles of Organization and Second Amended and Restated Limited Liability Company Operating Agreement of the Transferor Company No.1 is produced herewith and marked as **Annexure-D**.

It is further averred that, the Assets and Liabilities of the Transferor Company No.1 and its financial position are shown in the audited Profit and Loss Account and Balance sheet as at 31st March 2015. It is marked herewith as **Annexure-E**.

It is further averred that, **RELATIONAL SOLUTIONS Inc** (Transferor Company No.2) was incorporated on 22nd January 1996 having its Registered office at Great Northern Corp Centre III, 25050 Country Club Blvd, Suite 105, North Olmsted, Ohio 44070. The Transferor Company No. 2 is involved in the main business of providing technology services for consumer products and goods industries. The Articles of Incorporation as Amended and Restated Articles of Incorporation of the Transferor Company No.2 are produced herewith and marked as **Annexure-F**.

It is further averred that, the Assets and Liabilities of both the Transferor Companies and their financial position are shown in the audited Profit and Loss Account and Balance sheet as at 31st March 2015. It is marked herewith as **Annexure-G**.

It is further averred that, the Transferor Company No.1 is a foreign company and has the authority to do all things permitted by law and that are appropriate to promote and attain its purposes pursuant to Arizona Revised Statutes Section 29-610(A) (14). This article permits Transferor Company No.1 to do all things permitted by law. They deal with General Powers of a domestic limited liability company.

Extracts of Arizona Revised Statutes Sections 29-610 and 29-2201 are produced herewith and marked as **Annexure-H**.



- A) By complying with this article, one or more domestic entities may merge with one or more domestic or foreign entities.
- B) A foreign entity may be a merging entity in a merger under this article or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of organization.

It is further averred that, the Transferor Company No.2 has also got the authority to do all things permitted by law pursuant to Ohio Revised Code Section 1701.13(F)(8) and the said provision is as follows:

"In carrying out the purposes stated in its articles and subject to limitations prescribed by law or in its articles, a corporation may:

Do all things permitted by law and exercise all authority within the purposes stated in its articles or incidental to its articles"



By complying with this article, Transferor Company No.2 may be merged into a domestic or foreign parent corporation.

Extracts of Ohio Revised Code Section 1701.13(F)(8) and 1701.80(A) are produced herewith and marked as **Annexure-H**.

It is further averred that, Clause B8 of the Memorandum of Association of the Petitioner/Transferee Company permit the amalgamation as proposed. It is further averred that, Petitioner/Transferee Company is a member of Bombay Stock Exchange Limited and National Stock Exchange Limited of India, in respect of the proposed Composite Scheme of Amalgamation.

The approvals obtained from Bombay Stock Exchange Limited and National Stock Exchange Limited of India are produced herewith and marked as **Annexure-K** and **L** respectively.

It is further averred that, all the Directors and Members are of the opinion that, the Composite Scheme of amalgamation would prove beneficial and be cost effective in the long run and further stated that, the entire assets, liabilities and duties of the Transferor Companies will be taken over by the Transferee Company with effect from 1st April 2015 being the appointed date as per the Composite Scheme of Amalgamation.



It is further averred that, the Composite Scheme of amalgamation provides that all the creditors of Transferor Companies No. 1 & 2 shall become creditors of the Transferee Company on the terms and conditions as it exists presently.



It is further averred that, the Composite Scheme of amalgamation provides that, the services of all employees of Transferor Companies No. 1 & 2 shall stand transferred to the Petitioner/Transferee Company on such terms and conditions which are not less beneficial to the employees on which they had been employed by Transferor Companies No. 1 & 2.

It is further averred that, the directors of the Petitioner/Transferee Company and Transferor Company No. 2 at their meeting held on 15th October 2015 has passed a resolution approving the Composite Scheme of Amalgamation. Certified copy of the said Board Resolution is produced herewith and marked as **Annexure-M** and **P** respectively.

It is further averred that, the Transferor Company No. 1 does not have a board of directors and has only members. The members of the Transferor Company No. 1 at their meeting held on 15th October 2015 has passed a resolution approving the Composite Scheme of Amalgamation. Certified copy of the said Board Resolution is produced herewith and marked as **Annexure-N**.

It is further averred that, the shareholders of the Transferor Company No. 2 at their meeting held on 15th October 2015 has passed a resolution approving the Composite Scheme of Amalgamation. Certified copy of the said Board Resolution is produced herewith and marked as **Annexure-Q**.

It is further averred that:-

- a) The amalgamation has enable the Transferee Company to integrate its business operations and provide significant impetus to the growth of the Transferee Company. The consolidation of the activities will lead to synergies of operations and a stronger and wider capital and financial base for future growth/expansion etc.,
 - b) The amalgamation will result in economy of scales and reduction in overheads, administrative, managerial and other expenditure etc.
 - c) The managerial expertise of the Transferor Companies will contribute to the strength of the Transferee Company.
 - d) Duplication of administrative functions will be eliminated.
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- e) The amalgamation will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present and the banks, creditors and institutions, if any, are not affected by the proposed amalgamation as their security is maintained.



It is further averred that at the first instance, the petitioner company filed Company Application bearing No. 173/2016 before the Hon'ble High Court of Karnataka at Bengaluru for a direction to hold meeting of shareholders and unsecured creditors of the Applicant Company for purpose of considering the Composite Scheme of Amalgamation and to dispense with convening of meeting of secured creditors. The Hon'ble High Court of Karnataka at Bengaluru by order dated 21st April 2016 was pleased to direct the Applicant Company to convene meeting of shareholders and unsecured creditors for purpose of considering the Composite Scheme of Amalgamation. Order passed by Hon'ble High Court of Karnataka is produced and marked as **Annexure-R**.

Advertisement was also made in newspaper for convening the meeting is marked as **Annexure-S**.

The Chairman was appointed and convened the meeting and filed report which is produced herewith and marked as **Annexure-T**.

Both the shareholders and unsecured creditors meeting convened as per the directions of the Hon'ble High Court of Karnataka at Bengaluru, a copy of the Chairman's report in respect of shareholders meeting is produced and marked as **Annexure-V**.



Therefore, it is prayed the Tribunal may please to sanction the Composite Scheme of Amalgamation.



We have heard the counsel appearing for Petitioner Company. The learned Counsel has filed Memorandum of submissions. At the first instance, the learned counsel made submission that, this Tribunal has power by virtue of provisions of section 391-394 (4) (b) of the Companies Act, 1956 to approve the Composite Scheme of Amalgamation of the two subsidiaries of the Petitioner/Transferee Company. The contention of the learned counsel that, this petition was originally filed before the Hon'ble High Court of Karnataka, Bangalore in Company Petition No. 164/2016 for approval of the Composite Scheme of Amalgamation. Counsel would contend that, amalgamation of a foreign company with an Indian Company was permissible having regard to Section 394 (4) (b) of the Companies Act, 1956. The Counsel referred to the provisions of section 434 (1) (c) of the Companies Act, 2013 that: "all proceedings under the Companies Act, 1956 including proceedings relating to arbitration, compromise, arrangement and reconstruction and winding up of companies pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer".

The contention of the learned counsel that, a Notification was issued dated 7th December 2016 by the Central Government viz., Companies (Transfer of Pending Proceedings) Rules 2016 where under Rule 3 provides that, all proceedings relating to arbitration, compromise, arrangement and reconstruction including winding up stand transferred to the respective benches of the Tribunal exercising respective territorial jurisdiction and Rules came into effect from 15/12/2016. The Counsel would contend that, the present company petition is transferred from the Hon'ble High Court of Karnataka, Bangalore to this Tribunal by virtue of the Notification and renumbered as T.P No. 185/2017.

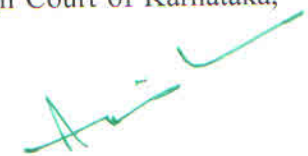

Counsel would contend that, Companies Act, 1956 is not repealed by virtue of provisions of section 465 of the Companies Act, 2013. Therefore, this Tribunal constituted under section 408 of the Companies Act, 2013 has jurisdiction to decide this matter under the provisions of Section 394 (4) (b) of the Companies Act, 1956. So the main contention of the learned counsel that, this Tribunal can approve the Composite Scheme of Amalgamation of the two foreign companies which are 100% wholly owned subsidiaries of the Petitioner/Transferee Company.



When the proceedings are pending, Ministry of Corporate Affairs, Government of India issued Notification dated 13/04/2017 under which the provisions of section 234 of the Companies Act, 2013 came into effect from 13/04/2017. Section 234 of the Companies Act, 2013 provides for Merger and Amalgamation between Companies registered under the Companies Act, 2013 and companies incorporated in the jurisdiction of such countries as may be notified from time to time by the Central Government. So the provisions of Section 234 of the Companies Act, 2013 have come into effect from 13/04/2017 permitting merger or amalgamation of companies registered in India with companies registered in other countries as notified by the Central Government. As rightly contended by the learned counsel, this Tribunal has power to approve the composite scheme of Amalgamation with foreign company with Indian company by virtue of provisions of section 394 (4) (b) of the Companies Act, 1956 and also by issue of provisions of section 234 of the Companies Act, 2013 which came into effect from 13/04/2017.

The next contention of the learned counsel is that, the two foreign companies viz., **DISCOVERTURE SOLUTIONS L.L.C** (Transferor Company No.1) is incorporated in the State of Arizona, USA and the other company **RELATIONAL SOLUTIONS Inc** (Transferor Company No.2) is incorporated in the State of Ohio, USA. These two Transferor Companies are wholly owned subsidiaries of Petitioner/Transferee Company. The two Transferor Companies are to be merged with Petitioner/Transferee Company by virtue of Composite Scheme of Amalgamation.

Counsel would contend that, originally the C.A No. 173/2016 was filed by the Petitioner/Transferee Company for considering the Composite Scheme of Amalgamation. The Hon'ble High Court of Karnataka, Bangalore by order dated 21/04/2016 directed to convene the meeting of shareholders to be held on 14/06/2016 at 12 p.m., and further directed meeting of unsecured creditors on the same date at 10.00 a.m., for approving the Composite Scheme of Amalgamation. Annexure-R at page No.405 of company Petition is the order of Hon'ble High Court of Karnataka, Bangalore.

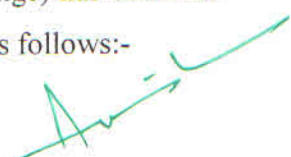



The Chairman appointed had convened meeting and notice of meeting was also advertised in the two newspapers. The Chairman has filed report in pursuant of meeting held stating that, the shareholders as well as unsecured creditors have approved the Composite Scheme of Amalgamation. The report of the chairman was accepted by the Hon'ble High Court of Karnataka, Bangalore and directed the company to file petition for approving the scheme.

Subsequently, notice was published in the newspapers as per the direction of Hon'ble High Court of Karnataka, Bangalore in The Business Standard and Kannada edition of Samyukta Karnataka and besides taking the notice to Regional Director and Registrar of Companies fixing the date of hearing dated 28/08/2016.

The petitioner company has since complied the order of Hon'ble High Court of Karnataka by publishing notice in two newspapers and also taking out notice to the Regional Director and Registrar of Companies. The present petition was filed before Hon'ble High Court of Karnataka, Bangalore, it was later transferred to this Tribunal.

The contention of the learned counsel that, Regional Director through Registrar of Companies, Karnataka, Bangalore had filed his Affidavit dated 30/11/2016 stating that notice was issued to the Income Tax Department but no response was received from the Income Tax Department and further informed that, Hon'ble High Court of Karnataka may take into consideration the observations made by National Stock Exchange and Bombay Stock Exchange. It is true that, Regional Director through Registrar of Companies, Karnataka, Bangalore had filed his Affidavit. We have gone through the Affidavit of Registrar of Companies, Karnataka, Bangalore. It is stated that, a notice was issued to Income Tax Department giving time to offer comments/objections if any but no response. It is further stated that, a reference was also made to SEBI (Securities Exchange Board of India) and copy to BSE (Bombay Stock Exchange) and NSE (National Stock Exchange). The Registrar of Companies, Karnataka at Bangalore stated that, comments and objections were not received. However, the Petitioner/Transferee Company had enclosed copies of letters received from BSE (Bombay Stock Exchange) and NSE (National Stock Exchange). According to Registrar of Companies, Karnataka, Bangalore, the NSE (National Stock Exchange) has observed as per its letter dated 16/02/2016 filed by the Transferee Company as follows:-



"This has reference to draft Composite Scheme of Amalgamation of Mindtree Limited and Discoverture Solutions L.L.C and Relational Solutions Inc. submitted to NSE vide your letter dated 20th October 2015."


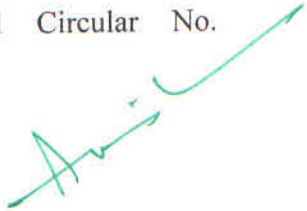
Based on our letter reference No. NSE/LIST/54758 submitted to SEBI and pursuant to SEBI Circular No. CIR/CFD/DIL/5/2013 dated 4th February 2013 and SEBI Circular No. CIR/CFD/DIL/8/2013 dated 21st May 2013, SEBI vide letter dated 12th February 2016 has given following comments on the draft Scheme of Arrangement:

"The Company shall duly comply with various provisions of the Circulars."

We hereby convey our "No objection" with limited reference to those matters having a bearing on listing/delisting/continuous listing requirements within the provisions of the Listing Agreement, so as to enable the companies to file the Scheme with the Hon'ble High Court.

However, the Exchange reserves its rights to raise objections at any stage if the information submitted to the Exchange is found to be incomplete/incorrect misleading/false or for any contravention of Rules, Bye-laws and Regulations of the Exchange, Listing Agreement, Guidelines/Regulations issued by statutory authorities.

The validity of this "Observation Letter" shall be six months from 16th February 2016 within which the Scheme shall be submitted to the Hon'ble High Court. Further, pursuant to the above cited SEBI circulars upon sanction of the Scheme by the Hon'ble High Court, the Transferee Company shall submit to NSE the following:

- a) Copy of Scheme as approved by the Hon'ble High Court;
 - b) Result of voting by shareholders for approving the Scheme;
 - c) Statement explaining changes, if any, and reasons for such changes carried out in the Approved Scheme vis-a-vis the Draft Scheme.
 - d) Status of compliance with the observations letter/s of the stock exchanges.
 - e) The application seeking exemption from Rule 19(2) (b) of SCRR, 1957, wherever applicable; and
 - f) Complaints Report as per Annexure II of SEBI Circular No. CIR/CFD/DIL/5/2013 dated 4th February 2013."
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The Affidavit of Registrar of Companies, Karnataka, Bangalore further goes to show the observations made by the BSE (Bombay Stock Exchange) as per its letter dated 18/03/2016.

The BSE (Bombay Stock Exchange) vide letter dated 18/03/2016 informed the Petitioner Company as follows:

“We are in receipt of draft Scheme of Arrangement between Mindtree Limited and Discoverture Solutions L.L.C and Relational Solutions Inc.”

As required under SEBI Circular No. CIR/CFD/DIL/5/2013 dated 4th February 2013 and SEBI Circular No. CIR/CFD/DIL/8/2013 dated 21st May 2013, SEBI vide letter dated 17th March 2016 has inter alia given the following comments on the draft Scheme of Arrangement:

“The Company shall duly comply with various provisions of the Circulars.”

Accordingly, based on aforesaid comment offered by SEBI, the company is hereby advised:

To duly comply with various provisions of the circulars.

In the light the above, we hereby advise that, we have no adverse observations with limited reference to those matters having a bearing on listing/delisting/continuous listing requirements within the provisions of the Listing Agreement, so as to enable the companies to file the Scheme with the Hon'ble High Court.

Further, pursuant to the above cited SEBI circulars upon sanction of the Scheme by the Hon'ble High Court, the Transferee Company shall submit to BSE the following:

- a) Copy of the Hon'ble High Court approved Scheme;
- b) Result of voting by shareholders for approving the Scheme;
- c) Statement explaining changes, if any, and reasons for such changes carried out in the Approved Scheme vis-a-vis the Draft Scheme.
- d) Copy of the observations letter issued by all the Stock Exchanges where company is listed.
- e) Status of compliance with the observations letter/s of the stock exchanges.
- f) The application seeking exemption from Rule 19(2) (b) of SCRR, 1957, wherever applicable; and
- g) Complaints Report as per Annexure II of this Circular;
- h) Any other documents/disclosure as informed by the Exchange

The Exchange reserves its rights to withdraw its 'No adverse observation' at any stage if the information submitted to the Exchange is found to be incomplete/incorrect misleading/false or for any contravention of Rules, Bye-laws and Regulations of the Exchange, Listing Agreement, Guidelines/Regulations issued by statutory authorities.

Please note that aforesaid observations does not preclude the company from complying with any other requirements."

Thus, Registrar of Companies, Karnataka, Bangalore has observed that, Tribunal has to take into consideration the observations made by National Stock Exchange and Bombay Stock Exchange.

In this connection, the learned counsel appearing for Petitioner/Transferee Company has filed:

- 1) SECURITIES CONTRACTS (REGULATION) RULES, 1957
- 2) SEBI Circular No. CIR/CFD/DIL/5/2013 dated 4th February 2013
- 3) SEBI Circular No. CIR/CFD/DIL/8/2013 dated 21st May 2013
- 4) SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30th November 2015

We have gone through the letter of National Stock Exchange dated 16/02/2016. In this letter SEBI Circulars dated 4th February 2013, 21st May 2013 and 12/02/2016 were referred to. The learned counsel has filed the Circulars dated 4th February 2013, 21st May 2013 and 30th November 2015.

The Affidavit undertaking is filed by the Chief Financial Officer of the Petitioner/Transferee Company. In this Affidavit an undertaking was given by the Transferee Company that, the company would comply with all contents set out by National Stock Exchange in its letter dated 16/02/2016 and Bombay Stock Exchange in letter dated 18/03/2016.



In the Affidavit, it is also averred that, the Assistant Commissioner of Income Tax, Circle 1, Large Tax Payer Unit, JSS Towers, 100 Feet Ring Road, Banashankari 3rd Stage, Bengaluru-560085 has given "no objection" for approval of Composite Scheme of Amalgamation. It is marked as Annexure-A to the Affidavit dated 6th December 2016. We have gone through the letter from Income Tax Department, wherein it is clearly mentioned that, Department has no objection in the Composite

Scheme of Amalgamation of Discoverture Solutions L.L.C Arizona, USA and Relational Solutions Inc. Ohio, USA with Mindtree Limited. Thus, it is clear that, the Income Tax Department has no objection for approval of the Composite Scheme of Amalgamation and further the Transferee Company had given an undertaking to comply the directions issued by National Stock Exchange and Bombay Stock Exchange in their letters referred to above.

The contention of learned counsel that, the Statutory Auditor has given certificate regarding Accounting Treatment of the scheme. It is referred to as Annexure-C in the 2nd Additional Affidavit dated 12/04/2017 filed by the Company Secretary.

We have gone through the Affidavit contents of the Company Secretary, wherein she referred to the Accounting Treatment certificate issued by Statutory Auditor that, the scheme is in conformity with Accounting Standard as prescribed under section 133 of the Companies Act, 2013. We have seen Auditor's certificate issued by Deloitte Haskins & Sells, Chartered Accountants, Deloitte Centre, Anchorage II, 100/2 Richmond Road, Bengaluru-560025 dated 15th October 2015 and a letter dated 9th March 2017 marked as Annexure-C in the 2nd Additional Affidavit. As seen from the Auditor's certificate the scheme complies the Accounting Standards prescribed under section 133 of the Companies Act, 2013.

The Affidavit further goes to show that the Composite Scheme of Amalgamation provides for amalgamation of two wholly owned foreign subsidiary companies of the Petitioner/Transferee Company into itself and as per clause 8.1 of the Composite Scheme of Amalgamation upon coming into effect of the Composite Scheme of Amalgamation, the investment made by the Petitioner/Transferee Company in the share capital of the Transferor Companies shall stand cancelled and no shares will be issued by the Petitioner/Transferee Company to the shareholders of the Transferor Companies. It is further averred since the Composite Scheme of Amalgamation contemplates cancellation of all the shares held by the Petitioner/Transferee Company in the Transferor Companies (Disinvestment), the Petitioner/Transferee Company had applied for approval of the Composite Scheme of Amalgamation to the Reserve Bank of India by its letter dated 25th July 2016 through Hongkong and Shanghai Banking Corporation Limited, the authorized dealer of Petitioner/Transferee Company by



letter dated 1st August 2016 issued by Hongkong and Shanghai Banking Corporation Limited. It is further averred in the Affidavit that, Reserve Bank of India through the authorized dealer permitting the disinvestment through its letter dated 24th October 2016. Copy of the letter of the Company is marked as **Annexure-D 1** of the Affidavit and letter by Hongkong and Shanghai Banking Corporation Limited is marked as **Annexure-D 2** of the Affidavit and a letter by Reserve Bank of India is marked as **Annexure-D 3** of the Affidavit.

We have gone through **Annexure-D-1, D-2 and D-3** of the Affidavit. This is a letter of Petitioner/Transferee Company through its authorized dealer Hongkong and Shanghai Banking Corporation Limited, Bengaluru seeking approval of the Reserve Bank of India under all relevant applicable provisions of FEMA, the CAT Regulations and the TIS Regulations and all other FEMA Regulations as appropriate, in relation to amalgamation of Discoverture Solutions L.L.C and Relational Solutions, Inc. with Mindtree Limited to the Reserve Bank of India by the Petitioner Company vide letter dated 25th July 2016 and the letter dated 1st August 2016 from Hongkong and Shanghai Banking Corporation Limited, Bengaluru to the Reserve Bank of India. We have seen copy of letter **Annexure-D-3** dated 24/10/2016 of Reserve Bank of India. As seen from this letter of Reserve Bank of India, the Petitioner Company was advised to do as follows:-

- i. Report online the remittance made to the WOS, DSI;
- ii. Report online the part III of Form ODI for disinvestment on behalf of the IP, ML for disinvestment of stake held in the WOS, DSI; and
- iii. You may report online the remittance details as and when made to the WOS, RSI; after which the part III of Form ODI for disinvestment on behalf of the IP, ML may be reported online for the disinvestment of stake held in the WOS, RSI.

The Affidavit further reads that a letter was also addressed to the Securities and Exchange Board of India and copy of the acknowledgement and tracking details of the letter addressed to the Securities and Exchange Board of India are marked as **Annexure-F** of the Affidavit.

So it is clear that, a letter was sent by the Petitioner/Transferee Company to the Securities and Exchange Board of India. Already National Stock Exchange and Bombay Stock Exchange sent letter that, Petitioner/Transferee Company to observe/perform certain things referred to in the letters, wherein Securities and Exchange Board of India (SEBI) circulars were referred to.

The contention of the learned counsel is that, the two foreign companies/transferor companies 1 and 2 have power to merge. The Counsel would contend that, Transferor Company No.1 **DISCOVERTURE SOLUTIONS L.L.C** was incorporated under the provisions of Arizona Limited Liability Company Act, 1992 (ALCC Act) Arizona Revised Statutes, title 29 and Chapter 4. The Counsel would contend that, Annexure-D is the Articles of Organisation and Annexure-E to the Company Petition is Auditors report of Transferor Company No.1.



The contention of the learned counsel is that, Transferor Company No.2 **RELATIONAL SOLUTIONS Inc** was incorporated as per the provisions of General Corporation Law of the State of Ohio, Sections 1701.01 to 1701.99 of the Ohio Revised Code. The Articles of Incorporation and Amended and Restated Articles of Incorporation of the Transferor Company No.2 is marked as **Annexure-F** of the main petition.

The learned counsel contend that, section 29-610(A)(14), Section 29-610 (14) of Arizona Revised Statutes provides any Arizona entity, including an LLC may merge with one or more domestic or foreign entities under Arizona Revised Statutes section 29-2201.

The learned counsel would further contend that, Transferor Company No.2 **RELATIONAL SOLUTIONS Inc** was incorporated as per the provisions of General Corporation Law of the State of Ohio, Sections 1701.01 to 1701.99 of the Ohio Revised Code to do all things permitted by law pursuant to Ohio Revised Code section 1701.13(F) (8) that, an Ohio Corporation may be merged into a domestic or foreign parent corporation under Ohio Revised Code section 1701.80(A).

Thus Transferor Companies are permitted to be amalgamated with Petitioner/Transferee Company. So the contention of the learned counsel that, law provides, relating to the Transferor Companies for merger or amalgamation.

The Counsel would contend that, the directors of the Transferor Companies and the Transferee Company have approved the Composite Scheme of Amalgamation on 15th October 2015. They are marked as **Annexure-M, N and P** of the main petition.





Thus the learned counsel would contend that the Board of Directors of the Transferor Companies approved the Composite Scheme of Amalgamation. The learned counsel would contend that, all necessary permissions have been obtained.

We have seen the letters from National Stock Exchange and Bombay Stock Exchange and also from the Income Tax Department besides letter from Reserve Bank of India. We have also consider the observations made by the Registrar of Companies, Karnataka, Bangalore. The undertaking given by the Company that it would comply all the directions issued by the National Stock Exchange and Bombay Stock Exchange.

Since two Transferor Companies **DISCOVERTURE SOLUTIONS L.L.C** and **RELATIONAL SOLUTIONS Inc** which are wholly owned subsidiaries of Petitioner/Transferee Company **MindTree Limited**. The Composite Scheme of Amalgamation is approved subject to following directions:-
THIS TRIBUNAL DO FURTHER ORDER:

While Approving the Scheme as above, it is further clarified 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 and duties, or any exemption under provisions of Income Tax Act or other applicable regulations or in respect to any permission/compliance with any other requirement which may be specifically required under any law for the time being in force including the approval of Reserve Bank of India, Securities and Exchange Board of India, National Stock Exchange and Bombay Stock Exchange and any other Regulatory Applicable Authorities.

The Whole of the property, rights and powers of the **Discoverture Solution L.L.C.** and **Relational Solution Inc.** be transferred without further act or deed to the Petitioner Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013 or any relevant provisions of the Companies Act, 2013, be transferred to and vest in the Petitioner Company for all the state and interest of the Transferor Companies therein but subject nevertheless to all the charges now affecting the same; and



All the liabilities including taxes and duties of the Transferor Companies be transferred without further act or deed to the Petitioner Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Petitioner Company; and

The taxes, charges, duties or any other implications, if any, of the Transferor Companies arising out of the scheme is subject to final decision of concerned assessing Authorities and the decision of these Authorities shall be binding on the Petitioner Company under the applicable laws for the time being in force.

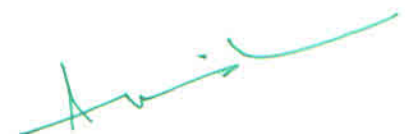

All the proceedings now pending by or against the Transferor Companies be continued by or against the Petitioner Company, if any; and

The Scheme shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e. 1st April, 2015.

The Petitioner Company has sought the approval of Reserve Bank of India under various applicable provisions of various Regulations like FEMA, CAT Regulations, TIS Regulations and all other FEMA Regulations and Reserve Bank of India has communicated certain directions for various compliances. The Petitioner Company is directed to strictly comply with observations made by Reserve Bank of India and other applicable laws and regulations.

The Petitioner Company shall within ninety days, after complying with the observations mentioned above cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the concerned Registrar of Companies for registration in accordance with Rule 25(7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The Petitioner Company is directed to strictly comply with the observations made by the National Stock Exchange and Bombay Stock Exchange in their observation letter as per the Undertaking filed by the Chief Financial Officer of the Petitioner Company in his Affidavit.



The Petitioner Company or its authorised signatory is directed that after the completion of the process of Amalgamation to take over the possession of the Books of Accounts and other relevant documents of the Transferor Companies for the purpose of compliance of Section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply to this Tribunal in the above matter for any directions that may be necessary.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 16th DAY OF JUNE, 2017