

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

CA(CAA)NO.03/BB/18
Under Section 230 to 232 of Companies Act, 2013

IN THE MATTER OF
FORTINET INNOVATION CENTRE INDIA PRIVATE LIMITED
AND
FORTINET TECHNOLOGIES INDIA PRIVATE LIMITED

Order delivered on: 15th February, 2018

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s) Mr.Saji.P.John
Advocate
Unit No.1002, 10th Floor,
#30, Prestige Meridian II,
Bengaluru-560001

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 6.2.2018

ORDER

This is a Joint Application filed by the applicant companies namely Fortinet Innovation Centre India Private Limited (Applicant Company No.1/ Transferor Company) and Fortinet Technologies India Private Limited (Applicant Company No.2/ Transferee Company) under Section 230 to 232 of Companies Act, 2013 read with Rule 3 Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, praying to dispense with convening of meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies No.1 & 2 for considering the scheme of Amalgamation, where under Fortinet Innovation Centre India Private Limited (Applicant Company No.1/ Transferor Company) is proposed to be merged with Fortinet Technologies India Private Limited (Applicant Company No.2/ Transferee Company). The Scheme of Amalgamation is shown as **Annexure-F**.

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

The Applicants seek an order to dispense with convening of meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies No.1 & 2 for considering the scheme of Amalgamation where under the Fortinet Innovation Centre

India Private Limited (Applicant Company No.1/ Transferor Company) is proposed to be merged with Fortinet Technologies India Private Limited (Applicant Company No.2/ Transferee Company) in terms of Scheme of Amalgamation shown as **Annexure-F**.

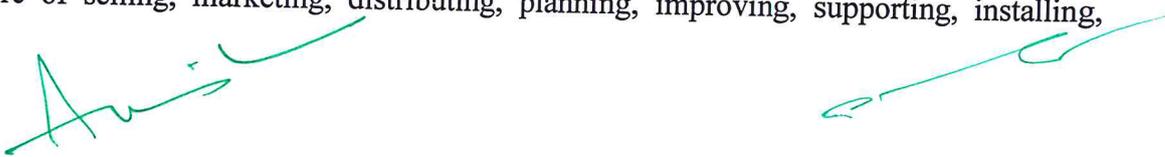
This Application is filed on behalf of the applicant companies stating that the Applicant Company No.1/ Transferor Company was incorporated on 16th October, 2003 under the name and style of Meru Networks India Private Limited with Registrar of Companies, Karnataka having CIN No.U64202KA2003PTC032742. Subsequently on 20th November, 2015 the name of the company was changed to Fortinet Innovation Centre India Private Limited. The Registered office of the Transferor Company is situated at C-1, C-2-201 & C1, C2, 301, 2nd Floor and 3rd Floor, Tower-C, The Millennia, #1 &2, Murphy Road, Ulsoor, Bengaluru-560008.

The main objects of the Applicant Company No.1/Transferor Company is to undertake the designing and development of telecommunication systems, application software, unified media technology, information technology related products, solution services, support systems either for its own use or for sale, lease or licensing in India or for export, lease, license outside India and to design and develop such systems and application software for or on behalf of manufacturers, owners and users of computer systems and digital/electronic equipment in India or elsewhere in the world. The copy of Memorandum and Articles of Association of the Transferor Company is shown as **Annexure-A**.

The latest authorised share capital of the Applicant Company No.1/Transferor Company is Rs.50,00,000/- divided into 5,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up capital of the Transferor Company is Rs.4,90,000/- divided into 49,000 Equity Shares of Rs.10/- each. The Audited balance sheet as on 31st March, 2017 is shown as **Annexure-B**.

It is further stated that Applicant Company No.2/ Transferee Company was incorporated on 6th June, 2008 under the name and style of Fortinet Technologies India Private Limited with Registrar of Companies, Karnataka vide CIN No.U51909KA2008PTC046691. The Registered office of the Transferee Company is situated at #301, Ground Floor, Tower C, The Millenia, Murphy Road, Ulsoor, Bengaluru-560008.

The main objects of the Transferee Company is to carry on the business in India and elsewhere of selling, marketing, distributing, planning, improving, supporting, installing,



altering or otherwise, repairing of network appliances and software using ASIC innovation and performance acceleration capabilities, detecting and eliminating the most damaging, content-based threats from email and web traffic such as viruses, worms, intrusions, inappropriate web content and more, in real time without degrading network performance. The copy of Memorandum and Articles of Association of the Transferee Company is shown as **Annexure-C**.

The latest authorised capital of the Transferee Company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The Audited balance sheet as on 31st March, 2017 is shown as **Annexure-D**.

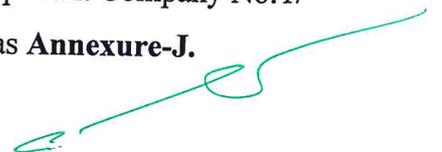
It is further stated that, the Board of Directors of the Transferor Company and Transferee Company have approved and adopted a Scheme of Amalgamation at their meetings held on 26th September, 2017 respectively by virtue of which Fortinet Innovation Centre India Private Limited (Applicant Company No.1/ Transferor Company) is proposed to be merged with Fortinet Technologies India Private Limited (Applicant Company No.2/ Transferee Company) subject to confirmation. Copies of the Board Resolution of Transferor and Transferee Company dated 26th September, 2017 approving and adopting the Scheme of Amalgamation are shown as **Annexure-E series**.

It is further averred in the scheme that the Board of Directors of the Transferor Company and Transferee Company are of the opinion that the amalgamation would result in following benefits:

1. Simplification of group structure by eliminating multiple companies in similar business thus enabling focus on core competencies and unlocking of value.
2. Greater efficiency in cash management of amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities, to further improve shareholders value.

It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company No.1/ Transferor Company has certified that there are two equity shareholders as on 30th November, 2017 of the Applicant Company No.1/ Transferor Company is shown as **Annexure-G series**.

It is further stated that there are no Secured Creditors in the Applicant Company No.1/ Transferor Company as certified by the Chartered Accountant shown as **Annexure-J**.



It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company No.1/ Transferor Company has certified that there are 13 Unsecured Creditors as on 30th November, 2017 of the Applicant Company No.1/ Transferor Company shown as **Annexure-L series**. It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company No.2/Transferee Company has certified that there are two Equity shareholders as on 30th November, 2017 of the Applicant Company No.2/Transferee Company shown as **Annexure-H series**. It is further stated that there no Secured Creditors in the Applicant Company No.2/Transferee Company as certified by the Chartered Accountant shown as **Annexure-K**.

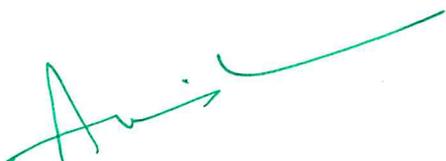
It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company No.2/Transferee Company has certified that there are 21 Unsecured Creditors as on 30th November, 2017 of the Applicant Company No.2/Transferee Company shown as **Annexure-M Series**.

We have seen the consent affidavits of the Two Equity shareholders of Applicant No.1/Transferor Company shown as **Annexure-G series** i.e., (i) Fortinet Networks Mauritius Limited holding 48,999 equity shares, constituting 99.99% of the paid-up capital,(ii) Kishore Reddy T N holding 1 equity share, constituting 0.01% of the paid-up capital.

We have seen the consent affidavits of the Two Equity shareholders of Applicant No.1/Transferor Company shown as **Annexure-H series** i.e., (i) Fortinet Singapore Private Limited holding 45,000 equity shares, constituting 99.99% of the paid-up capital,(ii) Micheal Joseph Pittappillil holding 5000 equity shares, constituting 0.01% of the paid-up capital.

It is stated that, the value of amounts due to unsecured creditors of the Applicant Company No.1/ Transferor Company is Rs.62,70,151/- and 94.70% of the unsecured creditors representing value of Rs.59,38,039/- have given their consent to the Scheme. We have seen consent affidavits issued by the Unsecured Creditors shown as **Annexure-L series**.

It is stated that, the value of amounts due to unsecured creditors of the Applicant Company No.2/Transferee Company is Rs.5,77,78,744/- and 91.34 % of the unsecured creditors representing value of Rs.5,27,78,711/- have given their consent to the Scheme. We have seen consent affidavits issued by the Unsecured Creditors shown as **Annexure-M series**.



The Applicant Companies are seeking an order to dispense with convening of meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies on the ground that, there are two Equity shareholders, No Secured Creditor and 13 Unsecured Creditors in Applicant Company No.1 and two Equity Shareholders, No Secured Creditor and 21 Unsecured Creditors in Applicant Company No.2 and all the Equity shareholders and 94.70% Unsecured creditors of the Applicant Company No.1 and all the Equity shareholders and 91.34% value of Unsecured Creditors of Applicant Company No.2 have given their consent by way of affidavits for the proposed scheme of amalgamation.

We have heard the Counsel appearing for the Applicant Companies. The Application is filed by the Applicant Companies which is a Transferee Company and Transferor Company for dispensing with the convening of meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies for approving the Scheme of Amalgamation of Fortinet Innovation Centre India Private Limited (Applicant Company No.1/ Transferor Company) which is proposed to be merged with Fortinet Technologies India Private Limited (Applicant Company No.2/ Transferee Company) in terms of Scheme of Amalgamation shown as **Annexure-F**.

In the result, the application is allowed and holding of meeting of the Equity Shareholders and Unsecured Creditors is dispensed with. In any eventuality when the Applicant Companies approaches this Tribunal for seeking approval of the scheme it would be open for any person who is interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL