

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO. 558 OF 2017  
CONNECTED WITH  
TRANSFER COMPANY APPLICATION NO. 49 OF 2017**

Morgan Stanley India Capital Private Limited  
[CIN: U65990MH1996PTC100190]

...Petitioner Company  
(Transferor Company)

AND

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO. 555 OF 2017  
CONNECTED WITH  
TRANSFER COMPANY APPLICATION NO. 50 OF 2017**

Morgan Stanley India Securities Private  
Limited [CIN: U99999MH1995PTC086838]

...Petitioner Company  
(Transferee Company)

In the matter of the Companies Act, 2013 or  
any re-enactment thereof;

And

In the matter of Petition under Sections 230-  
232 of the Companies Act, 2013 or any re-  
enactment thereof;

And

In the matter of Scheme of Amalgamation  
amongst Morgan Stanley India Capital Private  
Limited and Morgan Stanley India Securities  
Private Limited and their respective  
shareholders and creditors.

**Order delivered on 21<sup>st</sup> September, 2017**

**Coram:**

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

**V. Nallasenapathy, Member (T)**

For the Petitioner Companies: Mr. Tapan Deshpande and Ms. Priya Patwa,

Advocates i/b. Cyril Amarchand Mangaldas.

For Regional Director:

Mr. S. Ramakantha.

***Per: B.S.V. Prakash Kumar, Member (J)***

### **ORDER**

1. Heard Advocate for the Petitioner Companies. No one appears before this Tribunal to oppose the present Company Scheme Petitions seeking sanction to the Scheme of Amalgamation amongst Morgan Stanley India Capital Private Limited ("**Transferor Company**") and Morgan Stanley India Securities Private Limited ("**Transferee Company**") (both Transferee Company and Transferor Company collectively referred to as "**Petitioner Companies**") and their respective shareholders and creditors ("**Scheme**"), nor has any party controverted the averments made in the Petitions.
2. The Advocate appearing for the Petitioner Companies states that the Petitions have been filed to seek sanction to the Scheme, pursuant to the provisions of Sections 230 - 232 and other relevant provisions of the Companies Act, 2013.
3. The Transferor Company was incorporated to engage *inter alia*, in the business of an investment company and to underwrite, sub-underwrite, to invest in, and acquire and hold, sell, buy or deal, whether as brokers or otherwise, in shares, debentures, debenture-stocks, bonds, units, obligations and securities issued or guaranteed by Indian or foreign governments, state,

dominions, sovereigns, municipalities, or public authorities or bodies and shares, stock, debentures, debentures-stock, bonds, obligations and securities issued and guaranteed by any company, corporation, firm or person whether incorporated or established in India or elsewhere and to manage investment pools, mutual funds, syndicates in shares, stocks, securities, finance and real estate, and to invest in and hold securities issued by any company. The Transferee Company is primarily engaged in the business of investing in the shares of group companies in India. The shares of the Transferor Company and the Transferee Company are not listed on any stock exchange. The Learned Advocate for the Petitioner Companies says that the background, circumstances, rationale and benefits of the Scheme are that since the Transferee Company and the Transferor Company are part of the same group of companies, the proposed amalgamation will allow the Morgan Stanley group to streamline its holding in India, simplify shareholding structure by eliminating cross-holdings and reduce shareholding tiers. Further, the Scheme shall enable simplification of management structure, leading to better administration and a reduction in costs from more focused operational efforts, rationalization, standardisation and simplification of business processes and the elimination of duplication and rationalization of administrative expenses. The Board of Directors of the Transferor Company and the Transferee Company, have approved the Scheme by passing their respective board resolutions which are annexed to the Company Scheme Petitions.

4. The Advocate for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have filed necessary Affidavits of compliance in this Tribunal. Moreover, Petitioner Companies undertake to comply with all the

statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.

5. The Regional Director has filed his Report dated 21<sup>st</sup> August, 2017 *inter alia* stating therein that save and except as stated in paragraph IV (a) to (f) of the said Report, it appears that the Scheme was not prejudicial to the interest of the shareholders and public. The observations made by the Regional Director in paragraph IV of the Report are, for sake of ready reference, reproduced hereunder:

“IV. The observations of the Regional Directors on the proposed Scheme to be considered by the Hon'ble NCLT are as under:-

- (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company 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 appears that the company vide letter dated 4<sup>th</sup> May 2017 has served a copy company scheme application No. 49 & 50 / 2017 along with relevant orders etc., further the Regional Director has also issued a reminder 11<sup>th</sup> August 2017 to IT Department.*
- (c) *Regarding Part-IV-Clause 15 of the scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against any other Account of the Transferee Company.*
- (d) *As per Part-I-(1)(1.1)(d) Definitions & Interpretations clause of the Scheme. “Appointed Date” means the 1<sup>st</sup> January, 2017 or such other date as may be determined by the Board of Directors of the Transferor Company and the Transferee Company. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> January, 2017.*
- (e) *As M/s. Morgan Stanley India Securities Private Limited, the Transferee Company is a wholly owned subsidiary of M/s. Morgan Stanley Mauritius Company Limited FEMA Regulations/RBI Guidelines if any applicable is to be complied with by the transferor/transferee company.*
- (f) *As this office not issued any notice to RBI. The company has to serve a notice to the Agencies mentioned under section 230(5) of*

*the Companies Act. In this regard Hon'ble NCLT may pass appropriate order as deem fit."*

6. As far as the observation in paragraph IV (a) of the said Report is concerned, the Advocate for the Petitioner Companies states that the Transferee Company is subject to the Accounting Standard (AS) 14 – Accounting for Amalgamations and that accounting shall be on the basis of “pooling of interest” method. The Petitioner Companies are not subject to IND AS and hence the IND AS-103 and IND AS-8 will not be applicable to them. The Transferee Company undertakes to comply with AS- 14, AS-5 and all the Accounting Standards, as applicable under law.
7. As far as the observation in paragraph IV (b) of the said Report is concerned, the Advocate for the Petitioner Companies states that the notices of the hearing of the Company Scheme Petition Nos. 555 and 558 of 2017 have been given to the concerned Income Tax Authorities and the requisite Affidavits proving service have been filed before this Tribunal, by the Petitioner Companies.
8. As far as the observation in paragraph IV (c) of the said Report is concerned, the Advocate for the Petitioner Companies on instructions states that the Transferee Company undertakes to account for the surplus / deficit on amalgamation in accordance with Accounting Standards, as applicable and as stipulated under Section 133 of the Companies Act, 2013.
9. As far as the observation in paragraph IV (d) of the said Report is concerned, the Advocate for the Petitioner Companies on instructions states that the Transferee Company undertakes to this Tribunal that Appointed Date of 1<sup>st</sup> January, 2017 will be retained in the Scheme.

10. As far as the observation in paragraph IV (e) of the said Report is concerned, the Advocate for the Petitioner Companies on instructions states that Transferee Company undertakes to comply with FEMA Regulations/RBI Guidelines, if any, applicable to the Transferor/Transferee Company.
11. As far as the observation in paragraph IV (f) of the said Report is concerned, the Advocate for the Petitioner Companies states that the Petitioner Company has given Notice of the meeting of the Equity Shareholders dated 2<sup>nd</sup> May, 2017 to the Reserve Bank of India (RBI). The Advocate for the Petitioner Companies also states that in response to the said Notice dated 2<sup>nd</sup> May, 2017, RBI vide its letter 4<sup>th</sup> May, 2017 had requested the Petitioner Company to keep them updated about the developments in the Scheme and to submit audited balance sheet of the amalgamated entity, which the Petitioner Company vide its letter dated 28<sup>th</sup> July, 2017 addressed to the RBI had agreed to do. As regards, the issuance of the Notice by the Transferor Company to the Reserve Bank of India is concerned, the Advocate for the Petitioner Companies also states that the Transferor Company had made an application to the RBI for cancellation of the Certificate of Registration as Non-Banking Financial Company dated 30<sup>th</sup> March, 2016, and *vide* its order dated 1<sup>st</sup> August, 2016, the RBI had cancelled the Certificate of Registration issued to the Transferor Company. The Advocates for the Petitioner Companies therefore states that the notice to the RBI under Section 230 (5) is not required to be given.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 6 to 11 above. The clarifications and undertakings given by the Petitioner Companies, are hereby accepted.

13. The Official Liquidator has filed his Report dated 15<sup>th</sup> June, 2017 stating that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 555 and 558 of 2017 are made absolute in terms of prayer clauses (a) to (c) and (a) to (d), respectively.
16. The Transferee Company to lodge a certified copy of this order along with the sanctioned Scheme attached thereto with the concerned Collector of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified copy of this order.
17. The Petitioner Companies are directed to file copy of the certified copy of this order alongwith a copy of the sanctioned Scheme attached thereto with the concerned Registrar of Companies, electronically, along with e-form INC 28 in addition to physical copy within 30 days of receipt of certified copy of this order along with the sanctioned Scheme.
18. The Petitioner Companies to individually pay costs of the Company Scheme Petition of INR 25,000/- to the Regional Director, Western Region, Mumbai. The Transferor Company to pay the costs of the Company Scheme Petition of INR 25,000/- to the Official Liquidator, High Court, Bombay as well. Costs to be paid within four weeks from the date of the order.

19. All concerned authorities to act on a copy of this order along with the sanctioned Scheme, duly certified by the Officer of National Company Law Tribunal, Mumbai Bench.

Sd/-

**V. Nallasenapathy**  
**Member (Technical)**

Sd/-

**B.S.V. Prakash Kumar**  
**Member (Judicial)**