

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

CSP 506/230-232/NCLT/MB/MAH/2017

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Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Sys-Pro Technologies Private Limited

.....Petitioner in CSP 507/2017
(Transferor Company)

M/s. Infro-Alliance Trading Private Limited

.....Petitioner in CSP 506/2017
(Transferee Company)

Petitions Heard on : 15.09.2017

Order delivered on : 21.09.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Adv. Chandrakant Mhadeshwar – Advocate for the Petitioners.

For the Regional Director :

P. Sheela – Joint Director (WR).

For the Official Liquidator :

Santosh Dalvi – Representative for the Official Liquidator.

Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s Sys-Pro Technologies Private Limited (Transferor Company), with M/s Infro-Alliance Trading Private Limited, (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.



3. Transferor Company is presently engaged in the business of Prospecting, raising, operating, buying selling, trading, importing, exporting, purchasing otherwise dealing in all telecom infrastructure equipments.
4. The Transferee Company is presently engaged in the business of trading, importing, exporting, assembling, and fabricating all kinds of electronics and allied Equipments.
5. The amalgamation of the Transferor Company with the Transferee Company would have the benefits as both the companies are in trading business and considering competitive industry scenario, the Scheme will result in economies of scale, reduction in overheads, administrative, managerial and other expenditures, organisational efficiency and optimum utilisation of resources which would be beneficial for all members and other stakeholders. In the circumstances it is considered desirable and expedient to amalgamate the Transferor Company with the Transferee Company.
6. The Authorised Share Capital of the Transferor Company is ₹ 20,00,000/- comprising of 2,00,000/- Equity Shares of ₹ 10/- Each.
7. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company is 13,81,080/- comprising of 1,38,108 Equity Shares of ₹ 10/- each.
8. The Authorised Share Capital of the Transferee Company is 5,00,000/- comprising of 5,000 Equity Shares of ₹ 100/- each.
9. The Issued, Subscribed and Paid-up Share Capital of the Transferee Company is 1,49,200/- comprising of 1,492 Equity Shares of ₹ 100/- each.
10. The averments made in the petitions and the submissions made by the Learned Advocate for the Petitioners are:
 - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.



- b) The Regional Director has filed his Report, inter alia, stating therein that save and except as stated in paragraphs IV (a) to (c) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

(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 Arrangement to the Income Tax Department for their comments. It appears that the Company vide letter dated 24th April, 2017 has served a copy of Company Scheme Application No. 455 & 456 of 2017 along with relevant orders etc. further this Directorate has also issued a reminder 25th July 2017 to IT Department.

(c) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

- c) Apropos the observation of the Regional Director stated in paragraph IV (a) of his report are concerned, the Learned Advocate for the Transferee Company undertakes that, 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.,
- d) Apropos the observation of the Regional Director stated in paragraph IV (b) and (c) of his report are concerned, the Learned Advocate for the Petitioner states that, the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.



- e) The Official Liquidator has filed its report stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company may be dissolved without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
- f) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

11. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred to the Transferee Company and accordingly the same shall pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of Consideration for this Scheme of Amalgamation, the Transferee Company shall issue and allot 1 (One) Fully Paid-up Equity Share of ₹ 100/- each in respect of every 10 (Ten) equity shares of ₹ 10/- each, to the shareholders of the Transferor Company, in each case.
- d) Further, as the present Authorised Share Capital of the Transferee Company is not meeting up with the requirement after the Amalgamation, hence, the Transferee Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorized Share Capital by creation of such number of new Equity Shares, of ₹ 100/- each, to fulfil its obligations of issuance of shares in lieu of Consideration of the Scheme and the Transferee Company shall comply with the applicable provisions of the Act for raising of its Authorised Share Capital.



- e) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- f) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.
- g) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- h) Transferor Company i.e. Petitioner in CSP No. 507 of 2017 to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- i) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- k) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 1st April, 2016.

12. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 21.09.2017