

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO. 110 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 407 OF 2016  
(HIGH COURT TRANSFERRED APPLICATION).

I TENABLE INDIA PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO. 111 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 408 OF 2016  
(HIGH COURT TRANSFERRED APPLICATION)

DEEP INVESTRADE (BOMBAY) PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 2013 (18 of  
2013);

AND

In the matter of the Companies Act, 1 of  
1956 and other relevant provisions of the  
Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the  
Companies Act, 1956 and other relevant  
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of I  
TENABLE INDIA PRIVATE LIMITED, the  
Transferor Company with DEEP INVESTRADE

(BOMBAY) PRIVATE LIMITED, the Transferee Company.

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co.,  
Advocate for the Petitioner.

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V. Nallasenapathy  
Hon'ble Member (T)

Date: 22<sup>nd</sup> March, 2017

**MINUTES OF THE ORDER**

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of I TENABLE INDIA PRIVATE LIMITED, the Transferor Company with DEEP INVESTRADE (BOMBAY) PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of I TENABLE INDIA PRIVATE LIMITED, the Transferor Company with DEEP INVESTRADE (BOMBAY) PRIVATE LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 407 of 2016 and 408 of 2016 of the Hon'ble Bombay High Court.

5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
  
6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of information technology to all aspects of business, commerce, finance and industry, whether in India /or abroad and to also provide all aspects of Information and Technology (IT) enabling service and the Transferee Company has been carrying on the business of investment and to buy, invest in, acquire, hold and deal in shares, stocks, bonds, debenture, debenture-stock, debenture bounds, obligations and securities of any and every kind issued or guaranteed by any Company or statutory Corporation. As per the opinion of the management the management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefit that both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamated Company will have the benefit of the combined assets and cash flows of the two

companies and that the combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.

7. The Regional Director has filed a Report on 20<sup>th</sup> day of March, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

*“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:*

- a) *The submission made by the Company at Para No.13.2(c) of the Scheme is found to contrary to the AS-14. The Company stated in the said Para that the difference between the Share Capital issued by the Transferee Company to the shareholders of the Transferor Company shall be adjusted against the Reserves. Whereas amongst others as per Para No. 17 of AS-14 “on deduction of Consideration from the Net Assets of the Transferor Company by the Transferee Company, if the result of the computation is negative, the difference is debited to Goodwill arising on amalgamation and dealt with in the manner stated in paragraphs 19-20 of the said AS and if the result of the computation is positive, the difference is credited to Capital Reserve.” The Petitioner may be directed to make compliance of AS-14.*
- b) *In addition to compliance of AS-14 corresponding 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 etc.*

c) *The Authorised Share Capital of the Transferee Company is found insufficient for implementation of the Scheme. Therefore, the company may be directed to increase its Authorised Share Capital as per provisions of Section 61 read with 64 of the Companies Act, 2013, after making payment of applicable fees, stamp duty etc, after approval of the Scheme by the Hon'ble Court.*

d) *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 Court 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."*

8. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company is bound to comply with the surplus if any arising out of the scheme which 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 the Profit & Loss Account of the Transferee Company.

9. So far as the observation in paragraph IV(b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 etc.

10. So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Authorised Share Capital of the Transferee Company is

insufficient for implementation of the Scheme and that the company may be directed to increase its Authorised Share Capital as per provisions of Section 61 read with 64 of the Companies Act, 2013, after making payment of applicable fees, stamp duty etc, after approval of the Scheme by the Hon'ble Court.

11. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the tax implication if any arising out of the Scheme is subject to final decision of the Income Tax Authorities and the decision of the Income Tax Authority shall be binding on the Petitioner Companies.
12. The Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western region, Mumbai, has explained the objections.
13. The Official Liquidator has filed his report on 14<sup>th</sup> March, 2017 in the Company Petition No. 110 of 2017 inter alia, stating therein 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 by this Tribunal.
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 Petition No. 110 of 2017 is made absolute in terms of prayers clause (a) to (d) and 111 of 2017 is made absolute in terms of prayer clauses (a) to (c).
16. Petitioners are directed to lodge 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.

17. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any.
18. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 110 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the receipt of the Order.
19. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

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

Sd/-

V. Nallasenapathy Member (T)