

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

COMPANY SCHEME PETITION NO 225 OF 2017

IN

COMPANY SCHEME APPLICATION NO 2 OF 2017

Delta Corp Limited

.....Petitioner/Transferee Company

COMPANY SCHEME PETITION NO 251 OF 2017

IN

COMPANY SCHEME APPLICATION NO 2 OF 2017

Gauss Networks Private Limited

..... Petitioner/Transferor Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Gauss Networks Private Limited having CIN U72200MH2013PTC288316 (Transferor Company) with Delta Corp Limited having CIN L65493PN1990PLC058817 (Transferee Company) and their respective Shareholders and Creditors

Called for hearing

Ms. Alpana Ghone and Mr. Hemant Sethi i/b M/s Hemant Sethi & Co., Advocate for the Petitioners in all the Petitions

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director

Mr. Raghunath Pola, Deputy Registrar of Companies in the office of the Registrar of Companies

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date: 8th June, 2017

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Gauss Networks Private Limited

(Transferor Company) with Delta Corp Limited (Transferee Company) and their respective Shareholders and Creditors.

3. The learned Counsel for the Petitioners submit that Transferor Company is engaged in the business of developing software for online games of skill. The Transferee Company is engaged in the gaming and hospitality business.
4. The amalgamation of the Transferor Company with the Transferee Company would *inter alia* have the following benefits:
 - a. Integration of operations; and
 - b. Greater financial strength and flexibility for the merged entity.
5. Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Applications and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Applications.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under. The said undertaking is accepted.
8. The Regional Director has filed his Report dated 3rd May, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of 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) *Regarding **Clause 11 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 of the Transferee Company.*
 - c) *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 27th November,*

2016 has served a copy Company Scheme Petition No. 225 of 2017 along with relevant orders etc. further the Regional Director has also issued a reminder 01/05/2017 to IT Department.

- 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.*
 - e) *As on date ROC Mumbai has not submitted his report. Hon'ble Tribunal may pass appropriate order(s) as deem fit.*
 - f) *As per Part – A Definitions Clause 1.2 of the Scheme “The Appointed Date” means 1st April, 2016 or such other date as may be fixed by this Hon'ble Court. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2016.*
9. In so far as observations made in paragraph IV (a) and (b) of the Report of Regional Director is concerned, the Counsel for the Transferee Company undertakes to comply with IND AS – 103 and other applicable Indian Accounting Standards such as IND AS-8, etc. The Counsel for the Transferee Company further states that the surplus / deficit arising out of the Scheme, if any, shall be credited / debited to Capital Reserve Account / Goodwill Account, as the case maybe.
10. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Transferee Company undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies clarifies that the Appointed Date shall be 1st April, 2016.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Registrar of Companies, Maharashtra has filed his Report dated 7th June, 2017. In paragraph 32 of the said report, the Registrar of Companies has stated that:
- 1. *Consideration sought to be paid to Shri Mohit Aggarwal and Sri Anuj Gupta vide para 10.1(a) of the Scheme is not in the proportion of their shareholding.*
 - 2. *Pre-condition at para 15(e) and other para No. 1.5 of the Scheme need to be deleted from the Scheme as the Scheme upon sanction would be effective*

automatically from appointed date i.e. 01/04/2016 in terms of section 232(6) of the Companies Act, 2013, irrespective of compliance / noncompliance of such condition. Consequently Scheme to provide for cancellation of such 10,753 CCPS if already acquired by transferee company or other wise.

14. In so far as observations made in paragraph 32(1) of the Report of Registrar of Companies is concerned, the issue of shares to Mr. Mohit Aggarwal and Mr. Anuj Guptathe is one part of the discharge of total consideration as determined by the independent valuer and issue of such shares is not over and above the consideration specified in the said valuation report of the independent valuer. The Counsel for the Petitioners further states that such issue of shares is not detrimental to the shareholders of the Transferee Company and was also duly considered in the valuation report of the independent valuer, the Fairness Opinion from an independent merchant banker and by the Audit Committee of the Transferee Company.
15. In so far as observations made in paragraph 32(2) of the Report of Registrar of Companies is concerned, the Counsel for the Petitioners submits that the pre-condition at para 15(e) shall be deleted and the amalgamation of the Transferor Company with the Transferee Company shall take place with effect from the Appointed Date but shall be operative from the Effective Date. Counsel for the Petitioners further submits that so far as the cancellation of 2,501 equity shares and 10,753 compulsorily convertible preference shares of the Transferor Company to be acquired by the Transferee Company is concerned, the same is already provided for under Clause 10.2 of the Scheme and the same shall be cancelled upon acquisition which is certain.
16. The observations made by the Registrar of Companies have been explained by the Petitioner Companies in paragraphs 14 and 15 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
17. The Official Liquidator has filed his report dated 24th April, 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
18. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
19. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 225 of 2017 filed by the Transferee Company is made absolute in terms of prayer clause (a) to (e) of the Petition and Company Scheme Petition No.

251 of 2017 filed by the Transferor Company is made absolute in terms of prayer clause (a) to (f) of the Petition.

20. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, 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.
21. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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.
22. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 251 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
23. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
24. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member
(Technical)

Sd/-

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