

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**BENCH, AT MUMBAI**

**COMPANY SCHEME PETITION NO.374 OF 2017**

**CONNECTED WITH**

**COMPANY SCHEME APPLICATION NO.136 OF 2017**

Syrma Services And Solutions Private Limited, ...Petitioner Company

**AND**

**COMPANY SCHEME PETITION NO.375 OF 2017**

**CONNECTED WITH**

**COMPANY SCHEME APPLICATION NO.137 OF 2017**

3G Wireless Communications Private Limited, ...Petitioner Company

**AND**

**COMPANY SCHEME PETITION NO.376 OF 2017**

**CONNECTED WITH**

**COMPANY SCHEME APPLICATION NO.138 OF 2017**

Syrma Technology Private Limited, ...Petitioner Company

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

And

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956.

And

In the matter of Scheme of Amalgamation of Syrma Services And Solutions Private Limited, First Transferor Company, and 3G Wireless Communications Private Limited, Second Transferor Company with Syrma Technology

Private Limited, the Transferee Company and their respective Shareholders and Creditors

**Called for Hearing**

Mr. Rahul Oak, Advocate for the Petitioner Companies.

Mr. S. Ramakantha, Joint Director for the Regional Director.

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

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

**DATE: 22nd June, 2017**

1. Heard learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act 1956 and Sections 230 to 232 read with Rule 15(1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of Companies Act, 2013, to a Scheme of Amalgamation between Syrma Services And Solutions Private Limited, First Transferor Company, and 3G Wireless Communications Private Limited, Second Transferor Company collectively to be called as Transferor Companies with Syrma Technology Private Limited, the Transferee Company and their respective Shareholders and Creditors.
3. The Learned Counsel for the Petitioners states that, the First Transferor Company is engaged in the business of Electronics manufacturing, assembly, and testing. Manufacturing services include printed circuit board assembly and product assembly, whereas the Second Transferor Company is engaged in the business of Installation and Integration of Wireless communication Systems. Whereas the Transferee Company is engaged in the business of electronics

manufacturing, electronic designs, fabrication, assembly, and testing company. Manufacturing services include printed circuit board assembly, metal / plastics fabrication, and complete product assembly.

4. The proposed Scheme of Amalgamation will lead to consolidation of companies within the group, reduction of intra-group transactions and compliance requirements under various laws, reduction of operating and compliance costs and achievement of administrative, operative and management efficiencies.
5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Resolutions which are annexed to the respective Company Scheme Petitions.
6. Learned Counsel for the Petitioners further states the petition has been filed in consonance with the order passed in their Company Summons for Direction No. 136 of 2017, 137 of 2017 and 138 of 2017 of Hon'ble National Company Law Tribunal, Mumbai Bench.
7. The Learned Counsel for the Petitioner further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble NCLT, Mumbai Bench and they have filed necessary affidavits of compliance with the Hon'ble NCLT, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
8. The Official Liquidator filed his report on 27<sup>th</sup> day of March, 2017 stating that the affairs of the Transferor Companies have been

conducted in proper manner and that the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed his report dated 24<sup>th</sup> day of May, 2017 and has stated that save and except as stated in Paragraph IV (a) and (e) of the said Report, 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:-

- (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 14 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 27<sup>th</sup> February, 2017 has served a copy company petition No. 136 to 138/2017 along with relevant orders etc., further this Directorate has also issued a reminder 17.05.2017 to IT Department.*
- (d) *The Tax implication if any arising out of 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) That In view of observations made by the Registrar of Companies Mumbai, Hon'ble Tribunal may kindly direct the Company to submit certificate from auditor of the Company in terms of proviso to section 232 (3) of the Companies Act, 2013.*

10. As far as the observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Transferee Company undertakes to comply with the passing of the accounting treatment given in the scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the scheme to comply with the accounting standards.

11. As far as the observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Transferee Company undertakes that if any surplus 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, the said undertaking is accepted.

12. As far as the observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies have noted comments in this regards and have already served notices to the Income Tax authorities. Further the petitioner companies submit that it has appropriately clarified/ replied to the queries raised by Income Tax Authorities.

13. As far as the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax implications, if any, arising out of the Scheme.
14. As far as the observation in paragraph IV (e) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the certificate regarding the accounting treatment proposed in the scheme of Compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.
15. The Observation made by the Regional Director have been explained by the petitioner Companies in Paragraph 10 to 14 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
16. 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.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 374, 375 and 376 of 2017 are made absolute in terms of prayers stated in the respective petitions.
18. The Petitioner Companies are directed to file a certified / authenticated copy of this order and the scheme with the concerned Superintendent of Stamps, within 60 days from the date of the receipt of Order, for the purpose of adjudication of stamp duty payable, if any, on the same.

19. The Petitioner Companies are directed to file a certified / authenticated copy of order and the scheme on the receipt of said order from National Company Law, Tribunal, Mumbai Bench 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, 2013.
20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the Order.
21. The Transferor Companies to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay, Mumbai. Costs to be paid within four weeks from the date of the Order.
22. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-

**V. Nallasenapathy**

**Member (Technical)**

Sd/-

**B.S.V. Prakash Kumar**

**Member (Judicial)**