

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
MISCELLANEOUS APPLICATION NO. 185 OF 2017
IN
TRANSFER COMPANY SCHEME PETITION NO. 285 OF 2017
(HIGH COURT COMPANY PETITION NO. 810 OF 2016)
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 314 OF
2016

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

AND

In the matter of Sections 391 to 394 of the
Companies Act, I of 1956 and other Sections
230 to 232 of Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of
VIRIDENT SYSTEMS PVT. LTD., the
Transferor Company (CIN No.
U72200KA2007PTC041364);

WITH

HGST TECHNOLOGIES INDIA PRIVATE
LIMITED, the Transferee Company (CIN No.
U72900PN2011PTC143834);

AND

Their respective shareholders

HGST TECHNOLOGIES INDIA PRIVATE LTD.,)
A Company registered under the Companies Act,)
1956 having its registered office at Unit No.701&702,)
7th Floor, SR Iriz, Plot A, S.No.134/2/1/1 and 134,)
CTS No.2344, Pashan, Pune- 411008, Maharashtra)

Represented by its Director, Mr. Davies)

Kuriyakku Thalakkottur)

...Petitioner/Transferee Company

CALLED FOR HEARING

Adv. Sheeja John i/b. M/s. M. P. Savla & Co. Advocate for the Petitioner Company.

Mr. Ramesh Golap, Assistant Director in the Office of Regional Director.

CORAM: Shri.B.S.V.Prakash Kumar, Hon'ble Member(J)

Shri.V.Nallaseanapathy,Member(T)

Date: 29.06.2017

MINUTES OF ORDER

1. Heard learned Counsel for Petitioner and the representative of the Regional Director.
2. The aforesaid Company Scheme Petition No. 285 of 2017 was filed by HGST Technologies India Private Limited (Petitioner / Transferee Company), situated in Pune, Maharashtra, to obtain the sanction of this Tribunal to the Scheme of Amalgamation by virtue of which Virident Systems Private Limited (Transferor Company, situated in Bangalore, Karnataka, would stand merged with Transferee Company. This Tribunal by an Order dated 2nd March,2017 has sanctioned the Scheme of Amalgamation of M/s. Virident Systems Private Limited (Transferor Company) and M/s. HGST Technologies India Private Limited (Transferee/Petitioner Company) under Sections 230 to 232 of the Companies Act,2013 (earlier Sections 391 to 394 of the Companies Act, I of 1956).
3. M/s. Virident Systems Private Limited (Transferor Company) is seeking sanction to the Scheme and the same is pending for hearing before the Hon'ble National Company Law Tribunal, Bangalore.

The effectiveness of the Scheme is subject to sanction of the Scheme by the Hon'ble National Company Law Tribunal, Bangalore.

4. As per the order dated 2nd March 2017, this Tribunal has sanctioned the Scheme of Amalgamation for the merger of the Transferor Company with the Transferee Company, subject to the Transferee Company complying with the additional directions provided by the Regional Director, Western Regional, Mumbai in his Report dated 21st February 2017. The Transferee Company also had given an undertaking to comply with the directions provided by the Regional Director, Western Regional, Mumbai.

5. The Regional Director, Western Regional, Mumbai, in paragraph IV (b) of his Report dated 21st February has specifically stated that:

(b) Regarding 5 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 Profit and Loss Account of the Transferee Company.

and in reference to the said observation the paragraph 8 of the Minutes of Order dated 2nd March, 2017 contains the submission by the Petitioner/Transferee Company that they submit 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 Profit and Loss Account of the Petitioner/Transferee Company.

6. Subsequent to the passing of the order by this Tribunal, it was realised by the Transferee Company that the recommendation made by the Regional Director, Western Regional, Mumbai in VI (b) of his report, is not in accordance as prescribed in the Scheme. In view of the same, the Petitioner/Transferee Company has taken

out the above Miscellaneous Application seeking clarification/modification of the said paragraph 8 of the Minutes of Order dated 2nd March, 2017.

7. The Petitioner/Transferee Company herein has agreed to delete the Clause 6.4 of the Scheme and accordingly paragraph 8 of the said Minutes of Order dated 2nd March, 2017 stands deleted and the new paragraph 8 in the said Minutes of Order dated 2nd March, 2017 will stand inserted as follows in terms of paragraph 35 of the Accounting Standards 14 as applicable in this case: -

"The Petitioner Company submits that the difference between the amount recorded as share capital issued (plus any additional consideration in the form of cash or other assets) and the amount of share capital of the transferor company should be adjusted in reserves."

8. All concerned regulatory authorities to act on a copy of this order along with the earlier Minutes of Order dated 2nd March, 2017 with the scheme duly authenticated by the Company Registrar, National Company Law Tribunal, Mumbai.

Sd/-
B.S.V.Prakash Kumar,
Hon'ble Member(J)

Sd/-
V.Nallaseanapathy
Hon'ble Member(T)

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PRIVATE LIMITED, the Transferee
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AND

Their respective shareholders
HGST TECHNOLOGIES INDIA PRIVATE
LIMITED...Petitioner/Transferee Company

MINUTES OF ORDER

Dated this 29th day of June, 2017

M/s. M.P. Savla & Co.,
Advocates for the Petitioner/ Transferee Company,
Bharat House, 2nd Floor,
104, Mumbai Samachar Marg,
Fort, Mumbai-400 001
Mob.no, 9323577044
MINUTES OF ORDER-HGST-29.06.2017