

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP No 570 OF 2017  
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 Value Edge  
Research Services Private Limited (Transferor Company) and  
WNS Global Services Private Limited (Transferee Company) and  
their respective Shareholders

Value Edge Research Services Private Limited .....Petitioner/Transferor Company  
AND  
WNS Global Services Private Limited ..... Petitioner/Transferee Company

Judgment/Order delivered on 27<sup>th</sup> July, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)  
Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co  
Mr. Mr. Ramesh Golap, Assistant Director in the office of Regional  
Director

Per: **V. Nallasenapathy**, Member (T)

Order

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 Sections 230 to 232 of the Companies Act, 2013 for the Scheme of Amalgamation between Value Edge Research Services Private Limited (Transferor Company) and WNS Global Services Private Limited (Transferee Company) and their respective Shareholders.

3. The learned Counsel for the Petitioner Companies submits that the Transferor Company is engaged in providing high-value customized business research, intelligence and analytics reports and databases and the Transferee Company is engaged in the business of providing Information Technology enabled Business Process Outsourcing services, including back-office administration services and call center services.
4. The amalgamation of the Transferor Company with the Transferee Company would *inter alia* have the following benefits:
  - a) Simplified shareholding structure and reduced shareholding tiers;
  - b) Optimal utilisation of existing resources through consolidation of operations into a single legal entity;
  - c) Provide an opportunity to leverage and pool skilled and experienced manpower of the respective companies;
  - d) Derive operational and financial synergies through prudent financial management and cost reduction;
  - e) Simplified management structure, better administration, reduction in costs, focused operational efforts, standardization and simplification of business processes, elimination of duplication and rationalization of administrative expenses; and
  - f) Creation of a single company brand image.
5. The Board of Directors of the Petitioner Companies have approved the said Scheme by passing the 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 Application and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Application.
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 undertake to comply with all statutory requirements, as required under the Companies Act, 2013 and the rules made there under, if any. The said undertaking is accepted.
8. The Regional Director has filed his Report dated 25<sup>th</sup> July, 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) 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 2<sup>nd</sup> and 3<sup>rd</sup> May 2017 has served a copy company scheme application no 365 of 2017 along with relevant orders etc., further this Directorate has also issued a reminder 13/07/2017, 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 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;*
- (d) Regarding **Clause 6 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;*
- (e) M/s. Value Edge Research Services Private Limited (Value Edge) the Transferor Company is a wholly owned subsidiary of M/s. WNS Global Services Private Limited (WNS India) the Transferee Company w.e.f. June 2016. Hence, this Hon'ble Tribunal may kindly direct the companies involved in the scheme to file solvency certificate with the Registrar of Companies, Mumbai, as required u/s 233(1)(c) read with Section 233(12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.*
- (f) Regarding **Clause 6 of the Scheme** it is submitted that as per Balance Sheet as at 31.12.2016, w.e.f June 2016, the entire share capital (3,42,872 equity shares of Rs. 2/-) of M/s. Value Edge Research Services Private Limited (Value Edge) the Transferor Company is held by M/s. WNS Global Services Private Limited (WNS India) the Transferee Company. Since the "Appointed Date" is 1<sup>st</sup> January, 2017, and the equity shares held by the Transferee Company in the*

*Transferor Company shall stand cancelled, the question of issue of shares as proposed in the scheme does not arise. Hence, the Portion "In consideration of the amalgamation, the Transferee Company shall, without any further application or deed, pay a cash consideration of Rs. 3,755/- (Rupees Three Thousand Seven Hundred and Fifty-Five) for every 1 equity share of Rs. 2/- each of the Transferor Company to the equity shareholders of the Transferor Company (other than equity shares held by the Transferee Company in the Transferor Company) whose name appear in the Register of Members of the Transferor Company as on the Effective Date or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title, as the case may be", needs to be deleted. Hence, Hon'ble NCLT may pass appropriate order/orders as deem fit and proper in the light of facts and circumstances of the case.*

*(g) As per Clause-1 Definitions & Share Capital of the Scheme "The Appointed Date" means 1<sup>st</sup> January, 2017 or such other date as may be fixed or approved by the National Company Law Tribunal or such other competent authority. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> January, 2017.*

9. In so far as observations made in paragraph IV (a) of the Report of Regional Director, the Petitioner Companies through their Counsel undertake to comply with all applicable provisions of the Indian Accounting Standards to the extent applicable in relation to the Scheme of Amalgamation.
10. In so far as observations made in paragraph IV (b) and (c) of the Report of Regional Director, the Petitioner Companies through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
11. In so far as observations made in paragraph IV (d) of the Report of Regional Director, the Petitioners through their Counsel undertakes 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.

12. In so far as observations made in paragraph IV (e) of the Report of Regional Director, the Counsel for the Petitioners submit that provisions of Section 233(1) of the Companies Act, 2013 are applicable in case the scheme of amalgamation is entered into between two small companies or between a holding company and its wholly owned subsidiary. Further, Section 233(12) of the Companies Act, 2013 states that *"The provisions of this section shall mutatis mutandis apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to in clause (b) of subsection (1) of section 232."*

In the present case, the Petitioner Companies have presented the Scheme to this Tribunal under Sections 230 to 232 of the Companies Act, 2013 and not under Section 233 of the Companies Act, 2013.

Further, the provisions of Section 233(12) of the Companies Act, 2013 shall apply to companies specified under Section 233(1) of the Companies Act, 2013 i.e. either two or more small companies or holding company and its wholly owned subsidiary. As on the date of filing of the scheme, neither were the Petitioner Companies small companies nor was the Transferor Company a wholly owned subsidiary of the Transferee Company and since the Scheme is presented under Sections 230 to 232 of the Companies Act, 2013, and since the Petitioner Companies don't fall within the ambit of companies referred to Section 233(1) of the Companies Act, 2013, the requirement of filing a declaration of solvency under Section 233 cannot be extended to the present case.

13. In so far as observations made in paragraph IV (f) of the Report of Regional Director, the Petitioner Companies through their Counsel state that consideration for amalgamation or demerger or re-construction ought to be discharged / paid / issued to the persons who are shareholders of the Transferor Company on the effective date. In the present case, admittedly the Transferor Company is a wholly-owned subsidiary of the Transferee Company as on the Appointed Date 1<sup>st</sup> January 2017. However, as on the date of filing of the Application with the Tribunal, the

Transferor Company was not a wholly-owned subsidiary of the Transferee Company. Hence, the shareholders of the Transferor Company as on the Effective Date (other than the Transferee Company) would need to be paid consideration in lieu of the shares held by them in the Transferor Company. Hence, the consideration clause needs to be retained in Clause 5 of the Scheme.

14. In so far as observations made in paragraph IV (g) of the Report of Regional Director, the Petitioner Companies through their Counsel confirms that the Appointed Date shall be 1<sup>st</sup> January 2017.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
16. The Registrar of Companies, Maharashtra has filed his Report dated 11<sup>th</sup> July, 2017, wherein no comments have been stated.
17. The Official Liquidator has filed his report dated 27<sup>th</sup> July, 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. 570 of 2017 filed by the Petitioner Companies is made absolute in terms of prayer clause (a) to (b) 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.

570 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 (T)**

Sd/-

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