

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

CSP NO 547 OF 2017

AND

CSP NO 548 OF 2017

**ATOS INDIA PRIVATE LIMITED**

**...Demerged /Petitioner Company**

**ATOS GLOBAL IT SOLUTIONS AND SERVICES PRIVATE LIMITED**

**...Resulting /Petitioner Company**

In the matter of the Companies Act, 2013

And

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013

And

In the matter of Scheme of Arrangement between Atos India Private Limited ('the Demerged Company') and Atos Global IT Solutions and Services Private Limited ('the Resulting Company') and their respective Shareholders

Order delivered on 2<sup>nd</sup> August, 2017

Coram:

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

For the Petitioner(s): Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocate for the Petitioner.

Per: SH. B.S.V. Prakash Kumar, Member (J)

**MINUTES OF THE ORDER**

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Arrangement between Atos India Private Limited and Atos Global IT Solutions and Services Private Limited and their respective Shareholders.

3. Learned counsel for the Petitioners states that the Demerged Company is primarily engaged in the business of information technology, application management, consulting services, business integration, business process solutions, security solutions and cloud services. Upon the sanction of the Scheme of Arrangement, the Resulting Company is proposed to be engaged in the business of application management, consulting services, business integration, and business process solutions and cloud services.
4. Learned counsel for the Petitioners further states that the scheme envisages segregation of Global Delivery Center Business from Demerged Company into Resulting Company, which would, interalia, have the following benefits:- Dedicated management focus for each business; Accelerate independent growth of businesses unlocking significant value for the shareholders; Greater visibility on the performance of individual businesses; Attribution of appropriate risk and valuation to different business based on their respective risk return profile and cash flows; Access to various funding options for rapid growth for each of the businesses; and Enhanced strategic flexibility.
5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 535 of 2017 and 536 of 2017 of the Hon'ble Tribunal.
7. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake 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. Pursuant to filing of the Company Scheme Application to this Hon'ble Tribunal, the Regional Director, Western Region, Mumbai has filed his Report dated 26<sup>th</sup> July, 2017 stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.
  - a) *As per Clause 1.3 Definitions of the Scheme. "Appointed Date" means 1<sup>st</sup> April, 2017 or such other date as may approved by the Tribunal. 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> April, 2017.*

- 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 8<sup>th</sup> May, 2017 has served a copy company scheme petition No. 535 & 536 of 2017 along with relevant orders etc. to the IT department. Further this office has also issued a reminder 19/07/2017, to the concerned Income Tax authorities.*
- 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 Tribunal 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) *As M/s. Atos Global IT Solutions And Services Private Limited – Atos Global the resulting company is a wholly owned subsidiary of M/s Atos India Private Limited-Atos, the Demerged Company, this Hon'ble Tribunal may kindly direct the companies involved in the scheme to file solvency certificate with Registrar of Companies, Mumbai, as required w/s 233(1)(c) read with section 233(12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.*
- e) *The Registrar of Companies, Maharashtra, Mumbai, vide report/letter No. ROC/JTA (SG) /292122/230-232 /817 dated 17/07/2017, at point No. 32 has mentioned that “the share capital of the Resulting Company shall reduce to be extent of share value of shares held by the Demerged Company” in this regard Hon'ble NCLT may pass appropriate orders/orders as deem fit.*
9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Petitioner Companies confirms that in terms of provisions of section 232(6) of the Companies Act, 2013 the Appointed Date for the Scheme of Arrangement shall be 1<sup>st</sup> April, 2017.
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) & (c) of his report is concerned, the Petitioners submit that the Petitioners undertake that they shall comply with all applicable provisions

of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned the Petitioners through their Counsel submit that 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 therefore there is no requirement of filing solvency certificate.

12. As far as the observation of the Regional Director as stated in paragraph IV (e) of his report is concerned, the Resulting Company through their Counsel submits the share capital of the Resulting Company shall be reduced to the extent of face value of shares held by the Demerged Company in the Resulting Company and that the cancellation of its share capital is an integral part of the Scheme of Arrangement.

13. The observations made by the Regional Director, Western Region, Mumbai, in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, have been explained by the Petitioner Companies in Para 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted.

14. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 547 and 548 of 2017 are made absolute in terms of prayer clauses (a) to (c).

16. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order by the Registry.
17. The Resulting Company to lodge a copy of this order and the Scheme duly certified 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, within a period of 60 days from the date of receipt of the order.
18. 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 receipt of the order.
19. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasnpathy, Member (T)

Sd/-

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