

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
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. S. Ramakantha, Joint Director for Regional Director.

CORAM: Shri. B.S.V. Prakash kumar, Member(J)

Date: 02.03.2017

MINUTES OF ORDER

1. Heard learned Counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
2. The sanction of this Hon'ble Tribunal is sought under Sections 230 to 232 of the Companies Act,2013(earlier Sections 391 to 394 of the Companies Act, I of 1956) to a Scheme of Amalgamation of M/s. Virident Systems Private Limited (Transferor Company) and M/s. HGST Technologies India Private Limited (Transferee/Petitioner Company).
3. The Petitioner Company has approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.
4. The Learned Advocate appearing on behalf of the Petitioner Company states that the Petition has been filed in consonance with the Order passed in the High Court Company Summons for Direction No.314 of 2016.
5. The Learned Advocate appearing on behalf of the Petitioner Company states that the Petitioner has complied with all

requirements as per directions of the Hon'ble Bombay High Court and they have filed necessary Affidavits of compliance in the Hon'ble Bombay High Court. Moreover, the Petitioner Company undertake to comply with all statutory requirements, if any, as required under the Companies Act,1956/2013 and the Rules made there under whichever is applicable.

The said undertaking is accepted.

6. The Regional Director has filed his Report dated 21st February,2017, *inter alia*, stating that save and except as stated in paragraph IV (a) to (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 :

“IV. The Observations of the Regional Directors on the proposed scheme to be considered by the Hon'ble NCLT are as under:

- (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 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.*
- (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 14th December, 2016 has served a copy company*

petition No.807/2016 along with relevant orders etc., to IT Department. However, as on date, there is no response from Income Tax 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) The Registered Office of the M/s. Virident Systems Private Limited the Transferor Company is situated at Second floor, North Wing, Hulkul Brigade Centre, No.82 Lavelle Road, Bangalore-560 001 is outside the Jurisdiction of the Hon'ble Tribunal and falls within the Jurisdiction of Hon'ble Tribunal at Bangalore. Accordingly, similar approval be obtained by the Transferor Company from Hon'ble Tribunal at Bangalore."

7. As far as observations made in paragraph IV(a) of Report of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes that in addition to compliance of AS-14 (IND AS-103) the Petitioner/ 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.

8. As far as the observation of the Regional Director, Western Regional, Mumbai as stated in paragraph IV (b) of his Report is concerned, the Petitioner/Transferee Company submits 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.

9. As far as the observation of the Regional Director, Western Regional, Mumbai as stated in paragraph IV (c) and (d) of his Report is concerned, Counsel for the Petitioner Company states that the Scheme is in compliance with the Income Tax Act, 1961. The tax implication if any, of the Scheme shall, in any event, be subject to final decision of the Income Tax Authority and the Final Orders, if any, of the Appeals that may be preferred therein. The Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
10. As far as the observation of the Regional Director, Western Regional, Mumbai as stated in paragraph IV (e) of his Report is concerned, Counsel for the Petitioner Company states that the Petition filed by M/s. Virident Systems Private Limited the Transferor Company seeking sanction to the Scheme 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.
11. Mr. S. Ramakantha, Joint Director, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the explanation and the

undertakings given hereinabove by the Petitioner/Transferee Company through its Counsel.

12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
13. Since all the requisite statutory compliance have been fulfilled, Transfer Company Scheme Petition Nos.285 of 2017 (High Court Company Scheme Petition No.807 of 2016) is made absolute in terms of prayer clause (a) to (c).
14. The Petitioner Company is directed to lodge a copy of this Order along with a copy of the scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy, as per the relevant provision of the Companies Act, 2013, whichever is applicable.
15. The Petitioner Company to pay costs of Rs. 25,000/- (Rupees Twenty Five Thousand only) to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the Order.
16. All concerned regulatory authorities to act on a copy of this order along with the scheme duly authenticated by the Company Registrar, National Company Law Tribunal, Mumbai.

Sd/-
B. S. V. PRAKASH KUMAR
Member (Judicial)