

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
TRANSFER COMPANY SCHEME APPLICATION NO. 49 OF 2017
CONNECTED WITH
B.H.C. COMPANY SUMMONS FOR DIRECTION NO. 1036 OF 2016

In the matter of the Companies Act, 1956 or
any re-enactment thereof;

And

In the matter of Application under Sections
391 to 394, of the Companies Act, 1956 or
any re-enactment thereof;

And

In the matter of Morgan Stanley India
Capital Private Limited [CIN:
U65990MH1996PTC100190], a company
incorporated under the Companies Act, 1956
having its registered office at 18F, Tower 2,
One Indiabulls Centre, 841, Senapati Bapat
Marg, Mumbai 400013;

And

In the matter of Scheme of Amalgamation
amongst Morgan Stanley India Capital
Private Limited and Morgan Stanley India
Securities Private Limited and their
respective shareholders and creditors.

Morgan Stanley India Capital Private Limited)
[CIN: U65990MH1996PTC100190], a company)
incorporated under the Companies Act, 1956)
having its registered office at 18F, Tower 2, One)
Indiabulls Centre, 841, Senapati Bapat Marg,)
Mumbai 400013) ...Applicant Company

Mr. Tapan Deshpande and Ms. Priya Patwa, Advocates of M/s. Cyril Amarchand Mangaldas, Advocates for the Applicant Company.

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

V Nallasenapathy, Member (Technical)

Date: 5th April, 2017

MINUTES OF THE ORDER

UPON the Application of the Applicant Company above named by the Company Scheme Application and upon hearing Mr. Tapan Deshpande, Advocate for the Applicant Company AND UPON READING the Affidavit dated 26th October, 2016 of Mr. Seetaraman Subramanian, an Authorised Signatory of the Applicant Company, in support of the Company Summons for Direction and the Exhibits referred therein AND UPON READING the further Affidavit dated 24th March, 2017 of Ms. Samta Mehta, Authorized Signatory of the Applicant Company, **IT IS ORDERED:**

1. That a meeting of the equity shareholders of the Applicant Company be convened and held at 18F, Tower 2, One Indiabulls Centre, 841, Senapati Bapat Marg, Mumbai 400013, on 5th June, 2017 at 12:30 p.m. for the purpose of considering and, if thought fit, approving the Scheme of Amalgamation amongst Morgan Stanley India Capital Private Limited and Morgan Stanley India Securities Private Limited and their respective shareholders and creditors (**Scheme of Amalgamation**).
2. That at least 30 clear days before the said meeting of the equity shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting together with a copy of the Scheme of Amalgamation, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules,

2016 and the prescribed Form of Proxy, shall be sent by Courier or Registered Post or Speed Post or Air- Mail or by hand delivery or through e-mail (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the equity shareholder of the Applicant Company, at their last known address or email addresses as per the records available with the Applicant Company.

3. That at least 30 days before the meeting of the equity shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of the meeting as aforesaid be published in "Fress Press Journal" in English Language and "Navshakti" in Marathi language, both circulated in Mumbai and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy shall be obtained free of charge at the registered office of the Applicant Company as aforesaid and / or at the offices of its Advocates, Cyril Amarchand Mangaldas, Advocates & Solicitors, 5th Floor Peninsula Chambers, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400013.
4. The Applicant Company undertakes to:
 - i. Issue Notice convening the meeting of the equity shareholders as per Form No. CAA 2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;

- iii. Issue Form of Proxy as per Form No. MGT- 11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
- iv. Advertise the Notice convening the meeting as per Form No. CAA 2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

The undertaking is accepted.

5. That Mr. Daryl Francis, a Director of the Applicant Company and failing him, Ms. Vilma Mathias Gangahar, a Director of the Applicant Company and failing her, Mr. S. Seetaraman, a Director of the Morgan Stanley India Securities Private Limited shall be the Chairman of the aforesaid meeting of the equity shareholders to be held at the 18F, Tower 2, One Indiabulls centre, 841, Senapati Bapat Marg, Mumbai 400013, on 5th June, 2017 at 12:30 p.m. or any adjournment or adjournments thereof. The Scrutinizer for the meeting shall be Ms. Sonali Bendke, a Company Secretary (Membership No. A18108).
6. That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all the powers as per the Articles of Association, also under the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or the resolution, if any proposed at the meeting by any person(s).
7. That the quorum of the aforesaid meeting of the equity shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.

8. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its registered office at 18F, Tower 2, One Indiabulls Centre, 841, Senapati Bapat Marg, Mumbai 400013, not later than 48 hours before the aforesaid meeting.
9. That the value and the number of the shares of each equity shareholder shall be in accordance with the books / register of the Applicant Company or depository records and where the entities in the books / register/ depository records are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
10. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
11. That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within three (3) days of the conclusion of the meeting and the said Affidavit shall be verified by his Affidavit as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. That in view of the averment in paragraphs 4 and 5 of the further Affidavit dated 24th March, 2017 that there are no secured and unsecured creditors of the Applicant Company, and hence issue of Notice to them does not arise.

13. The Applicant Company to serve the notice upon the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules 2016. If no response is received by the Tribunal from the Regional Director within 30 days of the date of receipt of the notice, it will be presumed that the Regional Director and/or the Central Government has no objection to the Scheme of Amalgamation as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.
14. The Applicant Company to serve the notice upon the Registrar of Companies, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice, it will be presumed that the Registrar of Companies has no objection to the Scheme of Amalgamation as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.
15. The Applicant Company to serve the notice upon the Official Liquidator, High Court of Bombay, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules 2016. If no response is received by the Tribunal from the Official Liquidator, High Court of Bombay, within 30 days of the date of receipt of the notice, it will be presumed that the Official Liquidator, High Court of Bombay has no objection to the Scheme of Amalgamation as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. Yogesh A. Oza & Co.,

Chartered Accountant is appointed with remuneration of INR 2,00,000/- to assist the Official Liquidator to scrutinize the books of accounts of the Applicant Company. Remuneration of the Chartered Accountant shall be paid by the Applicant Company within period of two weeks from today.

16. The Applicant Company to serve the notice upon the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules 2016. If no response is received by the Tribunal from the concerned Income Tax Authority within 30 days of the date of receipt of the notice, it will be presumed that the concerned Income Tax Authority has no objection to the Scheme of Amalgamation as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.
17. The Applicant Company undertakes to file an Affidavit providing service of notice on equity shareholders of the Applicant Company, Central Government through the Regional Director, Registrar of Companies, the Official Liquidator, High Court of Bombay, concerned Income Tax Authority and publication of notice in newspapers, not less than seven (7) days before the date fixed for the holding of the meetings.

Sd/-

V. Nallasenapthy
Member (Technical)

Sd/-

B.S.V. Prakash Kumar
Member (Judicial)