

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH,
AT MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO.278 OF 2017
(HIGH COURT COMPANY SCHEME PETITION NO.798 OF 2016)
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.681
OF 2016

Adhikaar Datapro Systems Private Limited

...Petitioner Company/ Transferor Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO.277 OF 2017
(HIGH COURT COMPANY SCHEME PETITION NO.797 OF 2016)
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.682
OF 2016

Smart Chip Private Limited

...Petitioner Company /Transferee Company

In the matter of the Companies Act, 1956
and the Companies Act, 2013;

And

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

And

In the matter of Scheme of Amalgamation of
Adhikaar Datapro Systems Private Limited
("*ADSPL*" or "*Transferor Company*") with
Smart Chip Private Limited ("*SCPL*" or
"*Transferee Company*")

And
their respective shareholders and creditors.

Called for Hearing

Mr. Ashish Parwani, i/b Rajani Associates, Advocate for the Petitioner Company

Mr. S. Ramakantha, Joint Director from the office of Regional Director

CORAM: Shri. M. K. Shrawat, Member (Judicial)

Shri. V. Nallasenapathy, Member (Technical)

DATE: 13th April, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. None appears before the Tribunal to oppose the Scheme and nor any party has controverted any averments made in the Company Scheme Petitions.
2. The sanction of this Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of Adhikaar Datapro Systems Private Limited (Petitioner/Transferor Company) with Smart Chip Private Limited (Petitioner/Transferee Company)
3. The Learned Advocate for the Petitioner Companies states that the Transferor Company is *inter-alia* engaged in business of providing data processing solutions, equipment and methods, whether onsite or offsite and deal in related software and hardware and has established a manufacturing facility at NSEZ,

Noida for manufacture of Biometric Terminals, Iris Scanner, Finger Print Scanner and other authentication and data handling devices and equipment. The Transferee Company is engaged in the business of Smart Cards primarily catering to the Indian ID Market along with providing IT Enabled services and trading, solutions and selling a range of biometrics and X-ray products including biometric identification systems, automated fingerprint identification systems, other security authentication systems and related technical, maintenance support and other validation services to various customers including banks.

4. The Learned Advocate for Petitioner Companies states that the entire business and undertaking of the Transferor Company shall stand transferred to and vested in, as a going concern, in the Manufacturing Division of the Transferee Company which is involved in the activity of personalization of Smart Cards. The proposed amalgamation would result in consolidation of the activities (including the manufacturing activities) of both the said companies and facilitate effective management of investments with benefits of synergy. Presently, the Transferee Company sells the biometric devices (being manufactured by the Transferor Company) which in turn are purchased from The Transferor Company. The amalgamation will increase the market share of the Transferee Company, and will result in creation of an entity with substantial asset base and net worth and thus increased ability for promotion of business activities for enhancement of future business.
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolution which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed by the Hon'ble High Court of Bombay in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction by the Hon'ble High Court of Bombay.
7. The Learned Advocate appearing on behalf of the Petitioner Companies has stated that they have complied with all the requirements as per directions of the Hon'ble High Court of Bombay and this Tribunal and they have filed necessary Affidavits of compliance in both the proceedings. Moreover, the Petitioner Companies undertakes to comply with all the statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed his Affidavit on March 27, 2017 stating therein that save and except as stated in paragraphs IV (a) to (e) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs IV (a) to (e) of the said 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 (INDAS-8) etc.,*
 - b. *regarding **Clause 9 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 any other Reserve Account of the Transferee Company.

- c. *As per **Part – II Definitions & Share Capital 4.1.4** of the **Scheme "The Appointed Date"** means **1st April 2016** or such other date as applicable Adjudicating Bodies may direct or fix, for the purpose of this Scheme. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be **1st April, 2016**;*
- d. *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 05.12.2016 has served a copy company petition CSP No. 797 & 798/2016 along with relevant orders etc., to IT Department. Further, this office has also issued remainder letter dated 20.03.2017 to the concerned Income Tax authorities;*
- e. *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.*

- 9. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (a) of his Affidavit is concerned in relation to the accounting entries, the Learned Advocate for the Petitioner Companies submits that the Transferee Company

undertakes that in addition to compliance of AS-14 corresponding (IND AS-103) accounting treatment, the Transferee Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.

10. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (b) of his Affidavit is concerned, the Learned Advocate for the Petitioner Companies submits that the Petitioner Companies undertake that the surplus, if any, arising out of the Scheme shall be credited to the Capital Reserve and deficit, if any, arising out of the same shall be debited to Goodwill Account and will not be adjusted against any other Reserve Account of the Transferee Company.
11. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (c) of his Affidavit is concerned, the Learned Advocate for the Petitioner Companies submits that the Appointed date in terms of provisions of Section 232(6) of the Companies Act, 2013 will be 1st day of April, 2016.
12. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (d) and (e) of his Affidavit in relation to any tax issue arising out of the Scheme of Amalgamation, the Learned Advocate for the Transferor Company and the Transferee Company have submitted the copy of the Company Scheme Petitions to the relevant Income Tax Authorities on December 9, 2016 and December 6, 2016, respectively. The Learned Counsel for the Petitioner Companies also submits that the Scheme shall be subject to the final decision of Income Tax Authority and the approval of the same by this Hon'ble Tribunal may not deter the Income Tax Authority to

scrutinize the tax returns filed by the Transferee Company after giving effect to the arrangement. However, the Transferee Company shall have liberty to exercise all its legal rights under applicable laws including, under Income Tax Act, 1961 and/or under equity in the event the Transferee Company is not satisfied with the order/adjudication done by the Income Tax Authority (ies) in the aforesaid matter. The Petitioner Companies through their Counsel undertakes to comply with all the provisions of the Income Tax Act, 1961.

13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 12 above. The representative of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submissions made by the Petitioner Companies through their Advocate. In view thereof, the said undertakings given by the Petitioner Companies are accepted.
14. The Official Liquidator has filed his affidavit on April 7, 2017 wherein he has stated that the affairs of the Petitioner/ Transferor Company have been conducted in a proper manner. Therefore, the Petitioner/ Transferor Company may kindly be ordered to be dissolved by this Tribunal.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, the Transferred Company Scheme Petition No.278 of 2017 filed by the Transferor Company are made absolute in terms of prayer clauses (a) to (g) and the Transferred Company Scheme Petition No.277 of 2017 filed by the Transferee Company are made

absolute in terms of prayer clauses (a) to (f).

17. The Petitioner Companies are directed to file 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, within 30 days from the date of issuance of the certified Order by the Registry.
18. The Petitioner Companies to lodge a copy of this Order along with the Scheme of Amalgamation 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 authenticated Order along with the Scheme of Amalgamation from the Registry.
19. The Petitioner Companies in both Company Scheme Petitions to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner/Transferor Company to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
20. All authorities concerned to act on a copy of this Order along with the Scheme of Amalgamation duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-
V. Nallasenapathy Member (T)

Sd/-
M. K. Shrawat (J) 13/11/17