

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, AT MUMBAI

COMPANY SCHEME PETITION NO. 1027 OF 2017

IN

COMPANY SCHEME APPLICATION NO. 753 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to of the Companies Act, 2013;

AND

In the matter of Capgemini Solutions Private Limited, a company incorporated under the provisions of the Companies Act, 1956, bearing Corporate Identification Number (CIN) - U72200MH2005PTC296502 and having its registered office at Akruti Softech Park, 4th Floor, MIDC, Cross Road No.21, MIDC, Andheri (East), Mumbai – 400093, Maharashtra, India.

AND

In the matter of Capgemini Technology Services India Limited, a company incorporated under the provisions of the Companies Act, 1956 bearing corporate identification number (CIN) – U85110PN1993PLC145950 having its registered office at No 14, Rajiv Gandhi Infotech Park, Hinjawadi, Phase – III, MIDC-SEZ, Village Man, Taluka Mulshi, Pune – 411057, Maharashtra, India

AND

In the matter of Scheme of Amalgamation of Capgemini Solutions Private Limited with Capgemini Technology Services India Limited and their respective Shareholders.

Capgemini Solutions Private Limited

**....First Petitioner Company/
Transferor Company**

Capgemini Technology Services India Limited

**....Second Petitioner Company/
Transferee Company**

(The First Petitioner Company and the Second Petitioner Company are collectively referred to as Petitioner Companies)

Order delivered on 24th January 2018

CORAM: Hon'ble B. S. V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For Petitioner Companies: Adv. Mr. Harsh Buch and Adv. Ms. Manali Kshirsagar i/b ALMT Legal on behalf of the First Petitioner Company and Second Petitioner Company.

Ms. P. Sheela, Joint Director for the Regional Director

Mr. Santosh Dalvi, representative from the office of the Official Liquidator

ORDER

Per: V. Nallasenapathy, Member (T)

1. Heard learned counsel for the parties. No objections have come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Company Scheme Petition filed for the Amalgamation of Capgemini Solutions Private Limited, the Transferor Company with Capgemini Technology Services India Limited, the Transferee Company and their respective shareholders.
2. The sanction of the Tribunal is sought under this present Company Scheme Petition under Sections 230 to 232 of the Companies Act, 2013, read with rule 15(1) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 and other applicable provisions of Companies Act, 2013 for a Scheme of Amalgamation of Capgemini Solutions Private Limited, the Transferor Company with Capgemini Technology Services India Limited, the Transferee Company and their respective shareholders.
3. The Learned Advocate appearing on behalf of the Petitioner Companies states that the respective boards of directors of the Petitioner Companies have

approved the said Scheme of Amalgamation by passing board resolutions which are annexed to the present Company Scheme Petition.

4. The Learned Advocate appearing on behalf of the Petitioner Companies further states that the present Company Scheme Petition has been filed in consonance with the order dated 20th July 2017 passed in the Company Scheme Application No. 753 of 2017 of this Tribunal.

5. The Learned Advocate appearing on behalf of Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal. Moreover, Petitioner companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.

6. The Learned Advocate for the Petitioner Companies states that, the main objects of the Transferor Company is carrying out all types of Information Technology services, promoting, encouraging, establishing, developing, organizing, operating, conducting and running in India and abroad Network, software development, testing and other allied activities for all sorts of services relating to computers, their maintenance, repairs, programmes and operations and as on the Appointed Date the Transferor Company is engaged in the business of Information Technology and Information Technology Enabled Services, services comprising of remote systems, administration, data processing and general consulting services in the field of software, production of computer programmes and export of software programmes. Whereas, the main objects of the Transferee Company *inter alia* are development, designing of software programmes and products, training personnel in connection with the software programmes, dealing with electric and electromechanical products and rendering technical and associated services and as on the Appointed Date the Transferee Company was engaged in the business of Information Technology and Information Technology Enabled Services.

7. The rationale and the benefits from the proposed Scheme of Amalgamation are stated hereunder:
- a) The Transferor Company and the Transferee Company are two Capgemini Group companies operating in India and providing similar services. Since no useful purpose is being served in continuing with two different legal entities, in keeping with the Capgemini Group global entity reduction program, the managements of the Transferor Company and the Transferee Company have decided to amalgamate these two entities in India with effect from 1st April 2017 i.e. the Appointed Date (*as defined in the Scheme*) such that the businesses of the Transferor Company and Transferee Company can be combined conveniently and carried out in conjunction more advantageously to achieve operational efficiency and cost minimization.
 - b) Combining the business of the Transferor Company with the Transferee Company is expected to result in integration of the processes, thereby resulting in synergies of operations. The Scheme is intended to rationalize the business operations and activities of the Transferor Company and the Transferee Company, to utilize the potential for growth and diversification, optimization of costs and resources within the Capgemini Group.
 - c) The amalgamation is expected to increase the financial strength of the combined company by creating a healthy combined balance sheet which will enhance the ability of the Transferee Company to undertake projects, thereby contributing to enhancement of the future business potential.
 - d) The amalgamation is expected to enable pooling of resources of the Transferor Company and the Transferee Company to their common advantage, resulting in more productive utilization of the said resources, cost and operational efficiencies which would be beneficial for all stakeholders.

- e) The amalgamation is expected to bring greater management focus, integration, enhanced greater financial strength, and economies of scale.
 - f) Upon amalgamation, the creditors of both the companies would be better placed in the sense that they will have larger asset cover available in the form of the merged entity. The creditors, either of the Transferor Company or of the Transferee Company, would not be prejudiced in any manner as a result of the Scheme.
 - g) Accordingly, to achieve the above objectives, the managements of the Transferor Company and the Transferee Company respectively have decided to make this joint Company Scheme Petition before the Tribunal under sections 230 to 232 of the Companies Act 2013 and the other applicable provisions, for the sanction of the Scheme.
8. The official liquidator filed his report on 25th October 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved.
 9. The Regional Director in his report dated 11th December 2017 has stated that save and except as stated in Paragraphs IV (1) to (2) of the said report (*as given below*), the Scheme is not prejudicial to the interest of the shareholders and public.
 10. In paragraphs IV (1) to (2) of the said report dated 11th December 2017 of the Regional Director, the Regional Director has stated:

IV. The observations of the Regional Director on the proposed Scheme to be considered are as under:-

1. *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.

2. Petitioner Companies in the clause 15 of the scheme inter alia mentioned that combination of Authorised Capital. In this regard Hon'ble NCLT may direct Transferee Company to comply with provisions of Section 232 3(i) of the Companies Act, 2013, if applicable.

11. As far as the observations made in paragraph IV (1) of the said report of the Regional Director is concerned, the Transferee Company undertakes to comply with all applicable provisions of Income Tax Act 1961.
12. As far as the observations made in paragraph IV(2) of the said report of the Regional Director is concerned, the Petitioner Companies undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013, if applicable.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 10 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted and since the Transferor Company would be dissolved on and from the Effective Date, pursuant to section 232(3) (i) of the Companies Act, 2013 and the applicable provisions of the Scheme, it is hereby directed that the fee, if any, paid by the Transferor Company on its authorised capital shall be set-off against any fees payable by the Transferee Company on its authorised capital subsequent to the amalgamation pursuant to the Scheme.
14. 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.

15. Since all the requisite statutory compliances have been fulfilled, this Company Scheme Petition No. 1027 of 2017 of National Company Law Tribunal, Mumbai Bench is made absolute in terms of prayers stated in the said Company Scheme Petition.
16. The Petitioner Companies are directed to file a certified / authenticated copy of this order and the Scheme with the concerned Superintendent of Stamps, within 60 working days from the date of the receipt of certified true copy of this order, for the purpose of adjudication of stamp duty payable, if any, on the same.
17. The Petitioner Companies are directed to file a certified copy of this order and the Scheme upon the receipt of the certified copy of the order from the National Company Law Tribunal, Mumbai Bench with the concerned Registrar of Companies, electronically in e-form INC-28 as per the relevant provisions of the Companies Act, 2013.
18. The Petitioner Companies to pay costs of Rs. 25,000 each to the Regional Director, Western Region, Mumbai and Transferor Company to pay costs of Rs. 25,000 to the Official Liquidator, High Court, Bombay. The costs to be paid within 4 weeks from the date of receipt of the certified true copy of this order.
19. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
B. S. V. Prakash Kumar
Member (Judicial)