

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CSP 955/230-232/NCLT/MB/MAH/2017

CSP 963/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Morgan Stanley Solutions India Private  
Limited

.....Petitioner in CSP 955/2017  
(Transferor Company)

M/s. Morgan Stanley Advantage Services  
Private Limited

.....Petitioner in CSP 963/2017  
(Transferee Company)

Order delivered on : 12.01.2018

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Mr. Tapan Deshpande, Advocate a/w. Ms. Priya Patwa, Advocate – i/b. Cyril Amarchand  
Mangaldas – Advocates for the Petitioners.

**For the Regional Director :**

Mr. Ramesh Gholap – Dy. Registrar (WR).

*Per : Bhaskara Pantula Mohan, Member (J)*

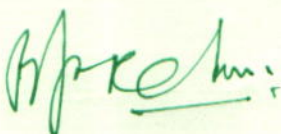
**COMMON ORDER**

1. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Merger by Absorption (hereinafter as **Scheme**) of M/s. Morgan Stanley Solutions India Private Limited (Transferor Company) with M/s. Morgan Stanley Advantage Services Private Limited (Transferee Company) and their respective shareholders.
2. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.





3. Both, the Transferor Company and the Transferee Company are engaged in the business of providing Information Technology Enabled Services and software development enabled services to the group companies of Morgan Stanley.
4. Since the Transferor Company and the Transferee Company are part of the same group of companies and carry on business in the same sector, the proposed Merger by absorption will allow the Morgan Stanley Group to streamline its holding in India and conduct the business of providing information technology enabled services, presently, through the Transferor Company and the Transferee Company in the most efficient manner. Additionally, the Scheme will also facilitate simplification of management structure, leading to better administration and a reduction in costs from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses. The Boards of Directors of the Transferor Company and the Transferee Company, have approved the Scheme by passing their respective board resolutions which are annexed to the Company Scheme Petitions.
5. The Authorized Share Capital of the Transferor Company is ₹ 30,00,00,000/- divided into 3,00,00,000 equity shares of ₹ 10/- each whereas the Issued, Subscribed and Paid-up Share Capital is ₹ 1,00,50,000/- divided into 10,05,000 equity shares of ₹ 10/- each.
6. The Authorized Share Capital of the Transferee Company is Rs.1,25,00,000/- divided into 12,50,000 equity shares of ₹ 10/- each whereas the Issued, Subscribed and Paid-up Share Capital is ₹ 1,00,00,000/- divided into 10,00,000 equity shares of ₹ 10/- each.
7. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioners are:
  - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
  - b) The Regional Director has filed his Report dated 8<sup>th</sup> January, 2018 stating therein that save and except the observations stated in paragraph IV (a) to (d) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:





IV. The observations of the Regional Director 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 Petitioner Companies 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) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the company vide letter dated 24.08.2017 has served a copy of company scheme application No. 688 & 699 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 20.10.2017 to IT Department.

(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 Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

(d) Petitioner Companies have not submitted a copy of the admitted petition, Minutes of order and Chairman's Report. In this regard, the Petitioner has to undertake to submit the same for the record of Regional Director.

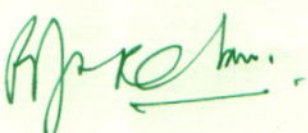
(e) It is observed that the Petitioner Companies has foreign/non-resident shareholders. The Transferee Company must observe the FEMA guidelines for allotment of shares to the shareholder of the Transferor Company in Transferee Company.

(f) As regards Para No. 13 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, Subsequent to the Amalgamation for setting-off fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013.

(g) ROC Mumbai vide report/ letter No. R.O.C/V.T.S./ ROC/STA(BDS)/140982/230 to 232/1015 dated 04.12.2017 has mentioned that there are no complaints, no prosecution, no technical scrutiny pending. He has inter alia mentioned as follows:

- Both the Transferor and Transferee are registered with Department of Telecommunication. Hence, notice u/s. 230 (5) of the Companies Act, is required to be given by the both companies.

- Para 1 Definition I (o) & w(ii) and 4 (9) the transferee company has as another service provide



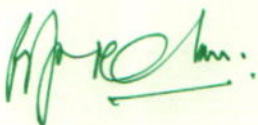


*registration for setting up International OSP Centres which is non-transferrable. Hence, the Transferor Company has to surrender the same to Department of Telecommunication.*

- *Para 13 (f) (i) & (ii) of the Scheme provides combination of Authorised Share capital of both companies and re-organization of the share capital by making subdivision of the capital.*

*In this regard, the Transferee Company has to file requisite e-forms SH-7 & MGT-14 with Registrar also comply with provisions of section 232(3) (i) of Companies Act, 2013 read with applicable rules."*

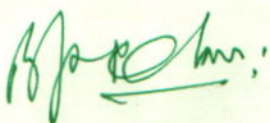
- c) Apropos the observation in paragraph IV (a) of the said Report is concerned, it is submitted that the Petitioner Companies undertake to pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) and all the Accounting Standards, as are applicable under law, with the addition to compliance with AS-14 (IND AS-103).
- d) Apropos the observation in paragraph IV (b) of the said Report is concerned, it is stated that the notices of the hearing of the Petitions have been given to the Income Tax Authorities and requisite affidavits proving service of the notices have been filed before this Tribunal.
- e) Apropos the observation in paragraph IV (c) of the said Report is concerned, it is stated that that the Scheme is in compliance with the provisions of the Income Tax Act, 1961. The tax implication, if any, arising out of the Scheme shall, in any event, be subject to the final decision of the Income Tax Authority and the final orders, if any, in any appeals that may be preferred therein. It is further submitted that sanction to the Scheme by this Tribunal will not limit the powers of the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies.
- f) Apropos the observation in paragraph IV (d) of the said Report is concerned, it is stated vide a letter dated 05.01.2018 of the Advocate for the Petitioners, copies of the Company Scheme Petition Nos. 955 and 963 of 2017 including the Chairman's Report therein and the respective minutes of order of admission of the said Petitions have already been submitted to the office of the Regional Director for its record.
- g) Apropos the observation in paragraph IV (e) of the said Report is concerned, it is submitted that the Petitioner Companies undertake to comply with FEMA





guidelines, if any, for allotment of shares of the Transferee Company to the foreign/non-resident shareholders of the Transferor Company, as applicable.

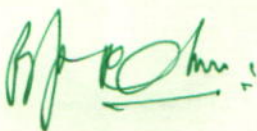
- h) Apropos the observation in paragraph IV (f) of the said Report is concerned, it is stated that the Transferee Company be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Merger by absorption for setting off fees paid by the Transferor Company on its Authorized Share Capital in accordance with provisions of Section 232 (3) (i) of the Companies Act.
  - i) Apropos the observation in paragraph IV (g) first point, of the said Report is concerned, it is stated that notices under section 230 (5) of the Companies Act, 2013 have been given to the Department of Telecommunications at its two offices located at Mumbai and Bengaluru and requisite affidavit proving service of the notices have been filed before this Tribunal.
  - j) Apropos the observation in paragraph IV (g) second point, of the said Report is concerned, it is stated that since the Transferor Company, upon sanction to the Scheme will be dissolved without winding up, the Transferor Company undertakes to surrender the requisite service provider registration for setting up International OSP Centre to the Department of Telecommunications.
  - k) Apropos the observation in paragraph IV (g) third point, of the said Report is concerned, the Transferee Company undertakes to file requisite e-forms SH-7 & MGT-14 with the Registrar of Companies, as applicable and also comply with the provisions set out in Section 232(3) (i) of Companies Act, 2013 read with applicable rules.
  - l) It is further submitted that, no objector has approached, neither to the Petitioner nor before the Tribunal, to oppose this Scheme.
  - m) The Official Liquidator has filed his report inter alia stating therein that, the affairs of the Transferor Company have been conducted in proper manner and further that the Transferor Company may be ordered to dissolve without winding up.
8. 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. And hereby this bench, to the Petitioner Companies, **do Order that:**





8. 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. And hereby this bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of the consideration of the Scheme the Transferee Company shall issue and allot **10** Class A equity shares of ₹ 10/- each (credited as fully paid up) for every **56** equity shares of the face value of ₹ 10/- each (credited as fully paid up) held by the MSL Incorporated.
- d) Further, the Transferee Company shall issue and allot **10** Class B Equity Shares of ₹ 10/- each (credited as fully paid up) of the Transferee Company for every **56** equity shares of ₹ 10/- each (credited as fully paid up) held by the Morgan Stanley Mauritius Company Limited.
- e) The Transferor Company shall be dissolved without winding-up.
- f) Further, during the course of hearing it is noticed that, the said Scheme is not a Scheme of Amalgamation as titled but contrary it is a Scheme of Merger by Absorption hence, a liberty is granted to the Petitioners to amend the Scheme appropriately.
- g) The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, of the 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 order.
- h) Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically,





along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.

- i) The Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of receipt of this order.
- j) The Transferor Company (i.e. Petitioner in CSP 955/2017) to pay cost of ₹ 25,000/- to Official Liquidator, Mumbai. Costs to be paid within four weeks from the date of receipt of this order.
- k) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- l) Any person interested is at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- m) Any concerned Authority is at liberty to approach this Bench for any further clarification/direction under this Scheme.
- n) The Scheme is sanctioned hereby on above terms and directions. Further, the appointed date of the Scheme is fixed as 1<sup>st</sup> April, 2017.

9. Ordered accordingly. To be consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated: 12.01.2018**