

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH, AT MUMBAI

CSA NO 978 OF 2017

In the matter of the Companies Act, 2013

AND

In the matter of Sections 230 to Section 232 of the  
Companies Act, 2013 and other applicable  
provisions of the Companies Act, 2013

AND

In the matter of Scheme of Amalgamation between  
Curam Software International Private Limited  
having CIN U72200KA2005PTC035721  
(Transferor Company I) and Emptoris  
Technologies India Private Limited having CIN  
U72200PN2000PTC015064 (Transferor Company  
II), and Rational Software Corporation (India)  
Private Limited having CIN  
U72900KA1993PTC015068 (Transferor  
Company III) and Sterling Commerce Solutions  
India Private Limited having CIN  
U72200KA2000PTC028101 (Transferee  
Company) and their respective Shareholders

**EMPTORIS TECHNOLOGIES INDIA )**  
**PRIVATE LIMITED, a company )**  
incorporated under the provisions of the )  
Companies Act, 1956 and having its )  
registered office at Office No. 101, 1<sup>st</sup> )  
Level, Building No. 6, Commerzone S No. )  
144/145, Yerwada, Samrat Ashok Path, )  
Pune 411006 )  
CIN: U72200PN2000PTC015064 )

)..... Applicant Company  
(Transferor Company II)

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant Company  
Judgment/Order delivered on 21<sup>st</sup> November, 2017

Coram:

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

Hon'ble **Bhaskara Pantula Mohan**, Member (J)

For the Applicant (s): Mr. Hemant Sethi i/b Hemant Sethi & Co

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

**Order**

1. The Counsel for the Applicant submits that the present Scheme is a Scheme for Amalgamation of Curam Software International Private Limited ('Transferor Company I') and Emptoris Technologies India Private Limited ('Transferor Company II'), and



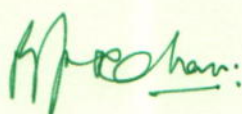
Rational Software Corporation (India) Private Limited ('Transferor Company III') and Sterling Commerce Solutions India Private Limited ('Transferee Company') and their respective shareholders under sections 230 to 232 of the Companies Act, 2013. This Scheme provides for merger of Curam Software International Private Limited, Emptoris Technologies India Private Limited and Rational Software Corporation (India) Private Limited with Sterling Commerce Solutions India Private Limited.

2. The Counsel for the Applicant further submits that the Companies believes that the amalgamation involving the Transferor Companies and the Transferee Company would have the following benefits:
  - a) Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.
  - b) Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.
  - c) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, usage of common resource pool like human resource, administration, finance, accounts, legal, technology and other related functions, leading to elimination of duplication and rationalization of administrative expenses.
3. The meeting of the Equity Shareholders of the Applicant Company be convened and held at The IL&FS Center, 4th Floor, Plot C-22, "G" Block, Bandra Kurla Complex, Bandra (West), Mumbai 400051, India on 9<sup>th</sup> day of January, 2018 at 11:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of Curam Software International Private Limited ('Transferor Company I') and Emptoris Technologies India Private Limited ('Transferor Company II' or "Applicant Company"), and Rational Software Corporation (India) Private Limited ('Transferor Company III') and Sterling Commerce Solutions India Private Limited ('Transferee Company') and their respective shareholders.
4. That atleast one month before the said Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement

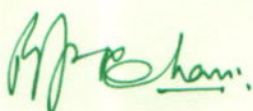
*Approach:*

disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14<sup>th</sup> December 2016 and the prescribed Form of Proxy, shall be sent by Hand delivery / Courier / Registered Post / Speed Post or through Email (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 Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

5. That atleast one month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme 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) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s. Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400 071.
6. That the Notice of the Meeting of the Equity Shareholders shall be advertised in two local newspapers viz. in “Indian Express” in English and “Loksatta” in Marathi, both circulated in Pune, not less than 30 days before the date fixed for the meeting.
7. That Mr. Sujoy Majumdar, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Applicant to be held at The IL&FS Center, 4th Floor, Plot C-22, “G” Block, Bandra Kurla Complex, Bandra (West), Mumbai 400 051, India, on 9<sup>th</sup> January, 2018 at 11:00 A.M. or any adjournment or adjournments thereof.
8. That the Chairman appointed for the aforesaid meeting of the Equity Shareholders to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 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 resolution, if any, proposed at the meeting by any person(s).



9. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
10. 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, are filed with the Applicant Company at its Registered Office at Office No. 101, 1<sup>st</sup> Level, Building No. 6, Commerzone S No. 144/145, Yerwada, Samrat Ashok Path, Pune 411006, India not later than 48 hours before the aforesaid meeting.
11. That the value and number of the shares of each Equity Shareholders shall be in accordance with the books / register of the Applicant Company or depository records and where the entries 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.
12. That Mr. Nagarjunn Y G, a Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Company to be held at The IL&FS Center, 4th Floor, Plot C-22, "G" Block, Bandra Kurla Complex, Bandra (West), Mumbai 400 051, India on 9<sup>th</sup> day of January, 2018 at 11:00 a.m. or any adjournment or adjournments thereof.
13. That Counsel for the Applicant submits that there are no Secured Creditors in the Applicant Company y therefore the question of convening meeting of Secured Creditors does not arise. That Counsel for the Applicant Company submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors, if any, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
14. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings of the Equity Shareholders and do report to this Tribunal



that the direction regarding the issue of notices and the advertisement have been duly complied with.

15. That the Chairman of the meeting of the Equity Shareholders to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meeting.
16. The Applicant Company is directed to serve notices along with copy of scheme upon:-
  - (i) concerned Income Tax Authority with in whose jurisdiction the Company's assessments is made (Assistant Commissioner of Income-tax – Circle 1(2) Pune, Area Code PNE, AO type C Range Code 52, Circle 1(2) Pune, at PMT Building, Swargate , Pune- 411042, PAN NO. AABCC3721G (ii) the Central Government through the office of Regional Director, Western region, Mumbai and (iii) the Registrar of Companies, Mumbai with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
17. The Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013. M/s S.U. Buch, Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the Transferor Company for the last 5 years. The Applicant Company to pay fees of Rs. 1,30,000/- for the services. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
18. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, creditors, publication of notices in newspapers, to the regulatory authorities as stated in clauses 16 & 17 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

**BHASKARA PANTULA MOHAN**  
MEMBER (JUDICIAL)

21.11.2017

Sd/-

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