

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH,
AT MUMBAI

CSP NO. 1079 OF 2017

In the matter of Sections 230 to 232 of
the Companies Act, 2013;

In the matter of Scheme of
Amalgamation of Apache Design
Solutions Private Limited and
Sequence Design (India) Private
Limited and Computational
Engineering India Private Limited
with Ansys Software Private Limited
and their respective shareholders and
creditors;

Apache Design Solutions Private Limited

...First Transferor /Petitioner Company

Sequence Design (India) Private Limited

...Second Transferor /Petitioner Company

Computational Engineering India Private Limited

...Third Transferor /Petitioner Company

Ansys Software Private Limited

...Transferee /Petitioner Company

Order delivered on: February 7, 2018

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

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioners: Mr. Ashish Parwani, i/b Rajani Associates,
Advocate for the Petitioner Companies

For the Regional Director: Mrs. P Sheela, Joint Director-Legal in the
office of Regional Director

For the Registrar of Companies: Mr. Parvez Naikwadi, Assistant

Per: V. Nallasenapathy, Member (T)

ORDER:

1. Heard learned counsel for parties, none appears before this Tribunal to oppose the Scheme and nor any party has controverted any averments made in the Company Scheme Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of Apache Design Solutions Private Limited ("First Transferor Company") and Sequence Design (India) Private Limited ("Second Transferor Company") and Computational Engineering India Private Limited ("Third Transferor Company") with Ansys Software Private Limited ("Transferee Company") and their respective shareholders and creditors.
3. The learned Advocate for the Petitioner Companies states that the entire issued, paid-up and subscribed share capital of the First Transferor Company, the Second Transferor Company, the Third

Transferor Company and the Transferee Company is directly or indirectly held by ANSYS, Inc., a corporation incorporated under the laws of the State of Delaware, having registered office at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, United States of America ("*Ansys Inc.*").

4. The learned Advocate for the Petitioner Companies states the First Transferor Company inter-alia carries on the business of software development and technical support for ANSYS® range of products (being the products of the Ansys Inc.); the Second Transferor Company provides software development and software support services to Ansys Inc. through its personnel; the Third Transferor Company provides software development services to Computational Engineering International Inc., USA, a wholly owned subsidiary of Ansys Inc., engaged in the business of import and sale of computer software and technical enhancements; and the Transferee Company is engaged in the business of import and sale of computer software and technical enhancements and provision of technical support marketing services for computer software products. The Transferee Company is also engaged in software development, software testing and documentation and such activities for Ansys Inc..
5. The learned Advocate for Petitioner Companies further states that the entire business and undertaking of the Transferor Companies shall stand transferred to and vested in, as a going concern, in the Transferee Company. This Scheme will establish good operational synergies, centralization, simplification, streamlining and optimization of the corporate structure of the group, facilitating efficient administration. The amalgamation will result in value creation for the shareholders of the Petitioner Companies

as the companies are engaged in similar business activities. The amalgamation would result in consolidation of the activities of all companies and will facilitate effective management of investments with benefits of synergy.

6. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.
7. The Learned Advocate for the Petitioner Companies states that the Company Scheme Petition has been filed in consonance with the order passed in the Company Scheme Application.
8. The Learned Advocate appearing on behalf of the Petitioner Companies states that they have complied with all the requirements as per directions of this Hon'ble Tribunal and they have filed necessary Affidavits of compliance in the proceedings. Moreover, the Petitioner Companies undertakes to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.
9. The Regional Director has filed his Affidavit stating therein that save and except as stated in paragraphs IV (a) to (f) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs IV (a) to (f) 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 (IND AS-8)** etc.

- (b) In accordance to proviso to **Section 232(3)** of the Companies Act, 2013, the Petitioners may be directed to file a **Certificate from the Company's Auditors** to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.
- (c) As regards **two different Appointed Dates i.e. 04-04-2017 for first & Second Transferor Companies and 01-08-2017 for third Transferor Company** regarding their merger with the Transferee Company, the Petitioners may be directed to furnish justified reasons for different appointed dates.
- (d) 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 Companies on its **Authorised Share Capital** in accordance to the provisions of **Section 232(3)(i)** of the Companies Act, 2013.
- (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 Tribunal may not deter the Income Tax Authority to scrutinize the Tax Returns filled by the Transferee Company after giving effect to the Scheme. The decision of the **Income Tax Authority** is binding on the Petitioner Company.

(f) *Since the Transferor Companies have Foreign Companies as shareholders, it is subject to the compliance of the FEMA Regulations/RBI Guidelines, if any by the Transferee Company."*

10. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (a) of their Affidavit, 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 shall 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.
11. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (b) of their Affidavit, the Learned Advocate for the Petitioner Companies submits that a Certificate issued by Prashant V .Deo, the auditor of the First Transferor Company, the Second Transferor Company and the Transferee Company, dated August 23, 2017 confirming that the accounting treatment provided in the books of the Transferee Company under the Scheme is in accordance with Section 133 of the Companies Act, 2013 is annexed as '**Exhibit X**' to the Company Scheme Application No. 881 of 2017 (Page 465) connected to this petition. The Petitioner Companies again served a copy of the Certificate to the office of Regional Director on January 16, 2018.
12. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (c) of their Affidavit, the Learned Advocate for the Petitioner Companies submits that the

Third Transferor Company is a wholly owned subsidiary of Computational Engineering International Inc. USA, a North Carolina Corporation based in United States of America ("CEI, USA"). The entire issued, paid-up and subscribed share capital of CEI, USA has been acquired by Ansys Inc. (holding company of First Transferor Company, Second Transferor Company and the Transferee Company) in July 2017 after the (first) Appointed Date of 1st April, 2017 (i.e. appointed date in relation to the First Transferor Company and Second Transferor Company) and consequently, the Third Transferor Company came under the ambit of Ansys Group after 1st day of April, 2017. Therefore, the Appointed Date of the Third Transferor Company is fixed as 1st August, 2017, pursuant to aforesaid acquisition by Ansys Inc. The said contention made by the Learned Advocate for the Petitioner Companies is accepted.

13. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (d) of their Affidavit, the Learned Advocate for the Petitioner Companies states that the existing Para 13.3 of the Scheme already provides that the fees paid by the Transferor Companies on the authorised share capital of the Transferor Companies shall, without any act or deed, be available as a set off to the Transferee Company in terms of Section 232(3)(i) of the Act. The said contention made by the Learned Advocate for the Petitioner Companies is taken on record.
14. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (e) of their Affidavit, the Learned Advocate for the Petitioner Companies states that Scheme shall be subject to the final decision of the Income Tax Authority and the approval of the same by this Tribunal, may not

deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the amalgamation. However, the Transferee Company shall have the 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 Advocate undertakes to comply with all the provisions of the Income Tax Act, 1961. The said undertaking is accepted.

15. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (f) of their Affidavit, the Learned Advocate for the Petitioner Companies submits that the existing Clause 7.5 of the Scheme of Amalgamation already provides that in the event, New Shares are required to be issued and allotted to the shareholders of the Transferor Company, being non-resident, the issue of such shares shall be in accordance with the provisions of the Foreign Exchange Management Act, 1999 and the applicable rules and regulations made thereunder (for the time being in force, including, any statutory modifications, re-enactments or amendments made thereto from time to time). The Petitioner Companies through their Advocate further undertakes that any such issue of shares by the Transferee Company to any foreign body corporate shareholders of the Transferor Companies shall be according to the applicable provisions of Foreign Exchange Management Act, 1999/ RBI and rules and regulations made thereunder. The said undertaking is accepted.
16. 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 in above Paras 10 to 15 of this Order through their Advocate with respect to observations made by the Regional Director in his Report. In view thereof, the said undertakings given by the Petitioner Companies are accepted.

17. The Official Liquidator has filed his affidavit wherein he has stated that the affairs of the Petitioner/ Transferor Companies have been conducted in a proper manner.
18. 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.
19. Since all the requisite statutory compliances have been fulfilled, the joint Company Scheme Petition No.1079 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clauses 13.1.1 to 13.1.8.
20. The Petitioners 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 along with the Scheme by the Registry.
21. The Petitioner Companies to lodge a copy of this Order along with the Scheme of Amalgamation duly authenticated/certified by the Deputy Director or the Assistant Registrar, 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 certified Order along with the Scheme of Amalgamation from the

Registry.

22. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Companies to pay costs of Rs.25,000/- each to the Official Liquidator. Costs to be paid within four weeks from the date of the receipt of the duly certified copy of this order.
23. All authorities concerned to act on a copy of this Order along with the Scheme of Amalgamation duly authenticated/certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy,
Member (Technical)

Sd/-

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