

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH, AT MUMBAI**

**CSP NO. 1061 OF 2017
IN
CSA NO. 681 OF 2017**

In the matter of the Companies Act,
2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 of
the Companies Act, 2013 and other
relevant provisions of the Companies
Act, 2013;

AND

In the matter of the Scheme of
Amalgamation of Arpeo Data Research
Private Limited ('the First Petitioner
Company/ Transferor Company')
with White Crow Research Private Limited
('the Second Petitioner Company /
Transferee Company') and their
respective Shareholders and Creditors.

Arpeo Data Research Private Limited	...First Petitioner / Transferor Company
White Crow Research Private Limited	...Second Petitioner / Transferee Company

Order delivered on February 7TH, 2018

Coram:

Hon'ble B. S. V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner:

Mr. Rahul R. Mahajan a/w Mr. Amit Surve, i/b M/s. Fortitude Law
Associates, Advocates for the Applicant Companies.

Mrs. P. Sheela, Joint Director in the Office of RD

Mr. ParvezNaiwadi, Assistant ROC

Mr. Santosh Dalvi, Assistant in the office of OL

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard the Learned Counsel for parties. No objection has come before the Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme of Amalgamation of Arpeo Data Research Private Limited ('the First Petitioner Company/ Transferor Company') with White Crow Research Private Limited ('the Second Petitioner Company/ Transferee Company') and their respective Shareholders and Creditors.
2. The sanction of the Tribunal is sought under Section 230 to 232 of Companies Act, 2013 to the Scheme of Amalgamation of Arpeo Data Research Private Limited ('the First Petitioner Company/ Transferor Company') with White Crow Research Private Limited ('the Second Petitioner Company / Transferee Company') and their respective Shareholders and Creditors.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions, which are annexed to the Scheme Petition.
4. The Learned Counsel appearing on behalf of the Petitioner Companies state that the Petition has been filed in consonance with the order passed in Company Scheme Application No. 681 of 2017 of the National Company Law Tribunal.
5. The Learned Counsel on behalf of the Petitioner Companies further state that the Petitioner Companies have complied with all requirements as per the directions of the National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirement if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioner Companies state that the Transferor Company is engaged in the business of computer data processing research and global recruitment process outsourcing and allied processes and the Transferee

Company is engaged in the business of computer data processing research and global recruitment process outsourcing and allied processes.

7. The Learned counsel for the Petitioner Companies state that amalgamation of the Transferor Company with the Transferee Company would have benefits of strengthening and consolidating the financial position of the Transferor Company and the Transferee Company to develop and concentrate on the core competency, strong financial and operational structure capable of resource mobilization and financial consolidation necessary to withstand the new competitive environment, benefit of stability of operations and economies of scale through efficient utilization of financial resources as the companies concerned would be able to combine their resources, expand their activities, rationalize and streamline their management, business and finances as well as eliminate duplication of work in areas like accounts, company law and tax assessments, common administrative services, reduction in regulatory/procedural compliances and accordingly lead to synchronization of efforts to achieve uniform corporate policy and ease in decision making at the group level to enhance the share value for the benefit of the shareholders and will be beneficial to the companies concerned, their shareholders and all other concerned as mentioned in paragraph 14 of the Petition.
8. The proposed Scheme of Amalgamation of the Transferor Company and the Transferee Company is between the companies having common business objectives and whose shareholding is closely held. Hence, the proposed Scheme of Amalgamation shall not prejudicially or adversely affect the interest of any person or the public at large.
9. The Regional Director has filed a Report on 18th December, 2017 stating therein, save and except as stated in paragraph IV of the said Report, the Regional Director has stated that:

"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 in clause 15.h has inter alia mentioned that transferee company may alter or modify the accounting treatment provided in the clause 15a to g subject to clause 19 of the scheme, and in consultation with their auditors as they may deem fit and consider necessary to settle any question / difficulties arising out of the scheme, to comply with the relevant laws and applicable accounting standards.

In this regard it is submitted that petitioner undertakes to comply with only the accounting treatment proposed in the scheme and may not modify the accounting treatment proposed without the prior approval of the Hon'ble NCLT.

3. As per the reply of the Company, present paid up capital is Rs. 233100/- where as in the scheme it is mentioned as 219100/- as on 31.3.2017. Roc in their report has stated that master data details on the authorized share capital and paid up share capital is not matching with the data given in the scheme which is to be clarified.

4. It is submitted that the Petitioner Companies have to submit the proof of serving notice upon the

Income Tax Authorities as per the provision of the Section 230 (5) of the Act, 2013.

5. Petitioner companies not submitted admitted copy of the Petition, Minutes of the order of the Hon'ble NCLT, Chairman's Report of the meeting. In this regard petitioner to undertake to submit the same for the record of Regional Director.

6. Petitioner Companies have to undertake to comply with provisions of section 232 (3)(i) of the Companies Act, 2013, in the respect of increase in authorized share capital under the scheme."

10. In so far as observation made in paragraph IV (1) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Transferee Company undertakes to comply with all the applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law, after giving effect to the scheme.

11. In so far as observation made in paragraph IV (2) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Transferee Company undertakes to comply only the accounting treatment proposed in the scheme and may not modify the accounting treatment proposed without the prior approval of the Hon'ble NCLT.

12. In so far as observation made in paragraph IV (3) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the authorized paid up capital mentioned in the Petition, Scheme, Balance Sheet and Master data are all same and there is no discrepancy as far as the scheme is concerned.

13. In so far as observation made in paragraph IV (4) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies have submitted an Affidavit of Service which is marked as 'Exhibit M' in the Company Scheme Petition No. 1061 of 2017 and in the affidavit of service it is cited as 'Exhibit D1&D2' as the copy of the Letter dated 2nd August, 2017 of the First Petitioner Company and Second Petitioner Company served upon the Income Tax Authority.
14. In so far as observation made in paragraph IV (5) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies have already served the copy of the Petition, Minutes of the order of the Hon'ble NCLT on December 21, 2017 and Chairman's Report which annexed in the Company Scheme Petition No. 1061 of 2017 as Exhibit 'N' in the said Petition. However, the Petitioner Companies undertaketo submit once again the admitted copy of the Petition, Minutes of the order of the Hon'ble NCLT and Chairman's Report of the meeting for the record of Regional Director.
15. In so far as observation made in paragraph IV (6) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that theTransferee Company undertakes to comply with provisions of section 232 (3)(i) of the Companies Act, 2013, in the respect of increase in authorised share capital under the scheme.
16. The observations made by the Regional Director have been explained by the Petitioner Company in Paragraph 10 to 15 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
17. The Chartered Accountant has filed his report to the Official Liquidator on August 10, 2017stating therein that the affairs of the Transferor Company have been conducted in a proper

manner and the Transferor Company may be ordered to be dissolved without winding up.

18. From the material on record, the Scheme appears to be fair and reasonable and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
19. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 1061 of 2017 is made absolute in terms of prayer clause (a).
20. The Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench with the concerned Superintendents of Stamps, for the purpose of adjudication of stamp duty, if any, payable within 60 days from the date of receipt of the order.
21. The Petitioner Company are directed to file the certified copy of the 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 Registry.
22. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Transferee Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Mumbai. Cost to be paid within four weeks from the date of receipt of the order.
23. All concerned regulatory authorities to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

Sd/-

V. Nallasenapathy Member (T) B.S.V. Prakash Kumar, Member (J)