

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH, AT NEW DELHI
PRESENT: SHRI R. VARADHARAJAN, MEMBER (JUDICIAL)
SMT. DEEPA KRISHAN, MEMBER (TECHNICAL)**

**Company Application (CAA) No. 33(PB) 2017
(1st Motion)**

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

AND

**IN THE MATTER OF SCHEME OF AMALGAMATION
OF**

**NEC Technologies India Private Limited
(TRANSFEROR COMPANY/APPLICANT COMPANY NO.1)**

WITH

**NEC India Private Limited
(TRANSFeree COMPANY/APPLICANT COMPANY NO.2)**

WITH

Their respective Shareholders and Creditors

MEMO OF PARTIES

MEMO OF PARTIES

NEC Technologies India Private Limited

(CIN – U74899DL2005PTC142239),

Having its registered office at

Unit No. 1, 2nd Floor, TDI Centre Commercial Plot No. 7,

Jasola, New Delhi-110025

Through its authorized signatory: Mr. Anil Gupta, CEO and Managing Director

.....Applicant Company No.1/ Transferor Company

WITH

NEC India Private Limited

(CIN – U72300dl2006FTC151472),

Having its registered office at

Unit No. 1, 2nd Floor, TDI Centre Commercial Plot No. 7,

Jasola, New Delhi-110025.

Through its authorized signatory: Mr. Takayuki Inaba, Managing Director

.....Applicant Company No.2 / Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS & CREDITORS

 COUNSEL FOR THE APPLICANT: Mr. Mahesh Agarwal

ORDER

1) This is an application jointly filed by the applicant companies herein, namely NEC Technologies India Private Limited (for brevity “Transferor Company/Applicant Company No.1”) and NEC India Private Limited (for brevity “Transferee Company/Applicant Company No.2”) under Section 230 to 232 and other applicable provisions of the Companies Act, 2013(for brevity ‘The Act’) read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016(for brevity ‘The Rules’) in relation to the Scheme of Amalgamation (hereinafter referred to as the “SCHEME”) proposed between the applicants and the said Scheme is also annexed as Annexure “1” to the application. The applicants have preferred the instant joint application for the following purpose as is evident from the reliefs sought in the Application, namely: -

- i) *Dispensing with requirement for convening the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and also to dispense with the requirement of issue and publication of notices for the same;*
- ii) *Dispensing with requirement for convening the meeting of the Equity Shareholders and Unsecured Creditors of the Transferee Company and also to dispense with the requirement of issue and publication of notices for the same;*
- iii) *Issuing direction for permitting the filing of application, petition, other documents as may be required, for the purpose of sanctioning the proposed Scheme of Amalgamation between NEC Technologies India*

Private Limited and NEC India Private Limited and their respective Shareholders and Creditors;

iv) Passing such other and further orders as are deemed necessary in the facts and circumstances of the case.

- 2) An Affidavit in support of the above joint application has been sworn in for Transferor Company/Applicant Company No.1 by one Mr. Anil Gupta, and for Transferee Company/ Applicant Company No.2 by Mr. Mr. Takayuki Inaba, Managing Director, all being the Directors of the respective Companies. The affidavits have been placed on record along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with.
- 3) Learned Counsel for the applicants represents that the 'Scheme does' not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application as filed by the applicants are maintainable in view of Rule 3(2) of the 'Rules' and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within the domain of Registrar of Companies, NCT, New Delhi.
- 4) In relation to NEC Technologies India Private Limited being the Transferor Company/ Applicant Company No.1 in the Scheme marked as Annexure – "1", Learned Counsel represents that the Transferor Company/ Applicant Company No.1 is having four Equity Shareholders as on 31.12.2016 . It is further represented by the counsel for Applicants that the Applicant No. 1/ Transferor Company has 1 (one) Secured Creditor having outstanding balance of Rs. 1,51,47,712 (Rupees One crore fifty-one lakh forty seven thousand seven hundred and twelve) as per provisional Balance Sheet of the Transferor Company on December 31, 2016 and 228 (Two hundred and twenty-eight)

Unsecured Creditors having outstanding balance of Rs. 12,02,03,966/- (Rupees Twelve crores two lakhs three thousand nine hundred and sixty-six) as per provisional Balance Sheet of the Transferor Company as at December 31, 2016. Out of the above list of 228 Unsecured Creditors as on December 31, 2016, the Transferor Company has paid respective balances outstanding as of December 31, 2016 of 214 Unsecured Creditors till February 17, 2017. 12 Unsecured Creditors out of the balance 14 Unsecured Creditors outstanding as on December 31, 2016 constituting 99.54% in value and 85.71% in number have given their consent to the Scheme. Out of the above list of 228 Unsecured Creditors of the Transferor Company as on December 31, 2016, list of the Unsecured Creditors that have been paid or which remain unpaid as on February 17, 2017 has been filed along with the Chartered Accountant certificate as Annexure-14 to the application. In relation to Equity Shareholders and Secured Creditor since consent from all of them have been obtained for the proposed Scheme, a prayer has been made for dispensing with holding of various meetings. In relation to the Unsecured Creditors, consent since consent from the Unsecured Creditors holding more than 99% in value have been obtained for the proposed Scheme, a prayer has been made for dispensing with holding of their meetings.

- 5) In relation to the Applicant Company No.2 / Transferee Company is concerned, learned counsel for the applicants represent that the company is incorporated as a private limited company. It has two Equity shareholders as on December 31, 2016. It is further represented that Applicant Company No.2 / Transferee Company is having no Secured Creditors and 37 (Thirty-Seven) Unsecured Creditors having outstanding balance of Rs. 2,64,54,18,164 (Rupees Two Hundred and Sixty-Four Crores Fifty-Four Lakhs Eighteen Thousand One Hundred and Sixty-Four Only) as per provisional Balance Sheet of the Transferee

Company at December 31, 2016. 20 Unsecured Creditors out of 37 Unsecured Creditors outstanding as on December 31, 2016 constituting 91.90% in value and 54.50% in number have given their consents to the Scheme. In relation to Equity Shareholders, since consent from all of them have been obtained for the proposed Scheme, a prayer has been made for dispensing with holding of various meetings. In relation to the Unsecured Creditors consent since consent from the Unsecured Creditors who owns more than 90% in value have been obtained for the proposed Scheme, a prayer has been made for dispensing with holding of various meetings. In relation to the Secured Creditors, there is no requirement of holding the meetings as there are no Secured Creditors.

- 6) Learned Counsel for the Applicants also represents that the provisions of Section 233 of the Act will not apply. The above joint application has been filed, as evident from the endorsement made by the Registry of this Tribunal on 21.03.2017 and therefore this Tribunal proceeds to entertain the above joint application filed under the 2013 Act. Further, the registered office of both the applicants is situated in New Delhi and subject to the Jurisdiction of Registrar of Companies, NCT, and New Delhi and hence amenable to the territorial jurisdiction of this Tribunal.
- 7) We have perused the joint application and the connected documents/papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.
- 8) From the certificate of incorporation filed, it is evident that the Transferor Company / Applicant Company No.1 was initially incorporated under the name and style of NEC Technologies India Private Limited (hereinafter referred to "Applicant-1/Transferor Company") was originally incorporated on the 31st day of October, 2005 as a public limited company in the name of "NEC HCL System Technologies Limited". The name of the Transferor Company was changed from

“NEC HCL System Technologies Limited” to “NEC Technologies India Limited” with effect from 21st day of May, 2013. Subsequently, Transferor Company was converted into a private limited company and the name was changed to “NEC Technologies India Private Limited” with effect from 18th day of February, 2015.

9) The authorized capital of the Transferor Company/ Applicant Company No.1, as on 31.03.2016 is Rs. 25,00,00,000/- divided into 2,50,00,000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs.22,00,00,000/-(twenty two crore) divided into 2,20,00,000/-(two crore twenty lakh) equity shares of Rs. 10/- each.

10) The main objects of the Transferor Company/ Applicant Company No.1 as stated in the application are:

i) To carry on the business of providing offshore centric software engineering services and solutions by undertaking the designing and development of systems and applications software either for its own use or for sale in India or for export outside India and to design and develop such systems and application software for or on behalf of manufactures, owners and users of computer systems and/or digital/electronic equipment in India or elsewhere in the world either by itself or through any third party vendor;

ii) To establish and carry on in India and abroad the business of software development and services in all its forms, including electronic business and commerce, to create, implement and support various Enterprise Resource Planning solutions and to sell, license, lease or otherwise deal with or in all software products and services, through electronic, electric, mechanical, telecommunication or any other media in vogue.

iii) To design, develop, integrate, deploy and implement embedded test technology in India or abroad to test integrated circuits which provide

access management, timing management, test signal generation, analysis and external control and for the purpose of developing highly integrated software products for test implementation that automatically analyses the structure of complex circuits to determine for at-speed testing and diagnostics and design every other kind of embedded design verification technologies.

- iv) To carry on all forms of electronic business and commerce and develop and implement all forms of business strategies and information technology products for Indian and foreign clients, to act as consultants and experts in all aspects of electronic business and commerce, to create electronic business opportunities by setting up and providing Internet portal gateways, to provide internet services and to acquire, sell, license or otherwise deal in or with any products and services through Internet and Intranet, print, video, CD-ROM, electronic telecommunications and digital media, fax modems, video conferencing, electronic mail, voice mail, voice response systems, multiplexes, hubs, V-SATs, cable, wireless network and satellite communications.*
- v) To render as principals, agents, contractors or otherwise, technical know-how and consultancy services, quality assurance and testing, information technology management and information services, in the fields of software development, electronic commerce, web search and personalisation, internet software infrastructure, content delivery and web-based communities, to provide Management Consultancy, Information Technology Consultancy and software development and evaluation, design and implementation and training services to*



customers together with all activities which are incidental or conducive to any of the foregoing.

vi) To establish, run or give license to third parties, for establishing as franchiser, institutes, colleges or schools, coaching classes where languages, general, Information technology, scientific, commercial, engineering or any type of education in computers and electronics, software, internet and e-commerce applications which may be imparted to the students orally or through post, on such terms and conditions, and subject to such regulations as may be laid down by the appropriate authority from time to time. To carry on the business in all or any of the fields of electronics, electrical and telecommunications, as manufacturers, dealers, distributors, representatives, agents, hirers, repairers, of all kinds of computers, computer accessories, computer peripherals, digital products, electronic aids, appliances, components, spares, assemblies, sub-assemblies and other devices or instruments, precision tools, moulds and all kinds of hardware and software designs/products and other related or ancillary equipments.”

11) From the certificate of incorporation filed, it is evident that the Transferee Company / Applicant Company No.2 was initially incorporated under the name and style of NEC India Private Limited (hereinafter referred to as “Applicant-2/Transferee Company”) was incorporated on the 1st day of August, 2006 as a private company limited by shares.

12) The authorized capital of the Transferee company/ Applicant Company No.2 as on 31.03.2016 is Rs. 1,50,00,00,000/- divided into 15,00,00,000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 1,45,69,93,380 /- divided into 14,56,99,338/- shares of Rs. 10/- each.

13) The following are the main objects to be pursued by the Transferee Company/ Applicant Company No.2 are as under:

“To carry on business pertaining to or connected with any or all of the following:

- i) Computer systems integration and network solutions services;*
- ii) Design, manufacture, processing, assembly, transportation, conversion, repair, sale, installation, distribution, consultation, training, servicing and maintenance of telecommunication infrastructure equipment, and accessories and components thereof;*
- iii) Wholesale of office machines and equipment (including accessories);*
- iv) Wholesale of telecom, networking and office apparatus, computers and accessories.*
- v) To carry on the business as importers and exporters of goods, services or merchandise of any description as referred in sub-clauses (1) to (4) above.*
- vi) To provide internet related services, systems, technology, information and software development services and products, including hardware, to any persons by any available means, in India or abroad including value added services such as interactive, television, internet, e-mail, V-Sat, telephony, video shopping, entertainment, infotainment, teleshopping, e-commerce, games, data transmission, computer networking, video conferencing etc. and to establish links via satellite uplink and downlink through available reception systems.”*

14) A copy of the Scheme of Amalgamation as stated supra as Annexure – 1 has been placed on record and the salient features of the Scheme have been brought out by the applicants in the application amongst others which is stated to be that of consolidation of the businesses presently being carried on by the

Transferor and Transferee Companies thereby benefitting all the stakeholders and creating better synergies and optimal utilization of resources. The proposed Scheme will result in formation of a larger Company enabling further growth and development of the businesses of the said Amalgamated Company. The proposed Scheme will result in reduction of overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, transaction cost, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity. It is further claimed that by effecting the Scheme better administration and cost reduction and significant growth potential can be achieved.

- 15) The appointed date as specified in the Scheme is 01.04.2017 subject to the directions of this Tribunal. Upon the coming into effect of the Scheme and with effect from the Appointed Date, the entire business and whole of the Undertaking of the Transferor Company shall, pursuant to the provisions of Section 230 to 232 of the Act, and other applicable provisions of the law for time being in force and sanction of this Scheme by NCLT, New Delhi Bench, without any further act or deed, stand transferred to and vested in or deemed to have been transferred to and vested in the Transferee Company on the Appointed Date, on a going concern, so as to become as from the Appointed Date the assets and liabilities of the Transferee Company and to vest in the Transferee Company all the rights, title, interest or obligations of the Transferor Company therein. All the employees of the Transferor Company in service on the date immediately preceding the Effective Date shall, on and from the Effective Date, become the employees of the Transferee Company on the same terms and conditions on which they are engaged by the Transferor Company without



treating it as a break, discontinuance or interruption in service by reason of the transfer of the Undertaking of the Transferor Company.

- 16) Upon the Scheme coming into effect and in consideration of the amalgamation of the Transferor Company into the Transferee Company pursuant to this Scheme, the Transferee Company shall, without any further act or deed and without any further consideration (cash or non-cash), issue and allot equity shares of Rs. 10/- each, as fully paid-up (hereinafter referred to as the "New Equity Shares"), at par to each shareholder of the Transferor Company whose name is recorded in the register of shareholders of the Transferor Company as on the Record Date, in the ratio of 5 (five) Equity Shares of Rs. 10 each fully paid-up of the Transferee Company to be issued for every 1 (one) Equity Share of Rs. 10 each fully paid-up of the Transferor Company, held by the shareholder ("Share Exchange Ratio").
- 17) The Board of Directors of the Transferor company and the Transferee company vide separate meetings held on December 23, 2016 have unanimously approved the proposed Scheme of Amalgamation and copies of resolutions passed thereat, have been placed on record by the companies.
- 18) All the companies have submitted that no investigation proceedings are pending against them either under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013. Further, the applicants have also submitted that the Scheme is not otherwise opposed to Public Policy or interests of the members of the respective applicant companies.

19) Taking into consideration the application filed jointly by the Transferor company and the Transferee company and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

A) In relation to the Transferor Company/ Applicant Company No.1:

(i) With respect to Equity shareholders:

Meeting of the Equity Shareholders of the Transferor Company/ Applicant Company is dispensed with as there are only two Equity Shareholders whose consents have been placed on record.

(ii) With respect to Secured Creditors:

The meeting of Secured Creditors is also dispensed with because there are only two Secured Creditor, whose consent has been placed on record.

(iii) With respect to Unsecured Creditors:

The meeting of Unsecured Creditors is also dispensed with as the consent of Unsecured Creditors who are owed more than 99 % in value by the Transferor Company has been placed on record.

B) In relation to the Transferee Company/ Applicant Company No.2:-

(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only two equity shareholders and consent letters of both the shareholders have been placed on record.

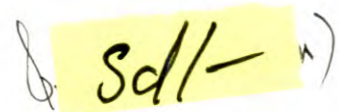
(ii) With respect to Secured Creditors:

The meeting of Secured Creditors is also dispensed with as there is no Secured Creditor in transferee Company.

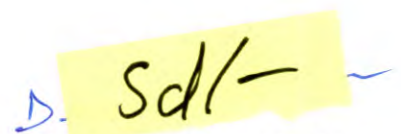
(iii) With respect to Unsecured Creditors:

The meeting of Unsecured Creditors is also dispensed with as the consent of Unsecured Creditors who are owe more than 91 % in value has been placed on record.

20. The application stands allowed in the aforesaid terms.



**(SHRI R.VARADHARAJAN,
MEMBER (JUDICIAL)**



**SMT. DEEPA KRISHAN,
MEMBER (TECHNICAL)**