

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CP No.02/2017  
RT CP (CAA) No.125/Chd/Hry/2017**

**Under Sections 391 to 394 of  
the Companies Act, 1956.**

**In the matter of:**

**Scheme of amalgamation of:**

Quadrant Infosoft Private Limited  
having its registered office at  
SCO NO.43, Sector 15, Old  
Judicial Complex, Gurgaon,  
Haryana-121001.

PAN No.AAACQ2624D ... Petitioner No.1-Transferor Company

WITH

Mediaagility India Private Limited  
having its registered office at  
SCO NO.43, Sector 15 A, Old  
Judicial Complex, Gurgaon,  
Haryana-121001.

PAN No.AAGCM9049L ...Petitioner No.2-Transferee Company

**Order delivered on: 15.01.2018**

**Coram: Hon'ble Mr. Justice R.P.Nagrath, Member (Judicial).**

For the petitioners: Mr. Praveen Gupta, Advocate.

For the Regional Director,  
Northern Region, Ministry  
of Corporate Affairs and  
Official Liquidator:

Mr. Deepankur Sharma, Advocate.

**ORDER(Oral)**

This is a joint Second Motion Petition filed by Quadrant Infosoft Private Limited (for brevity P-1 Company) with Mediaagility India Private Limited (for brevity, P-2 Company) in respect of 'Scheme' of Amalgamation (for brevity, 'Scheme'). The joint petition is maintainable in terms of sub-rule (2) of Rule 3 of Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016 for short to be referred hereinafter as the 'Rules'.

2. The First Motion Petition, bearing the Company Petition No.154 of 2016, was disposed of by the Hon'ble Punjab and Haryana High Court vide order dated 06.09.2016 dispensing with meetings of shareholders and creditors of the Petitioner-Companies. It was observed that the equity shareholders of both the companies have given their consents and approved the 'Scheme' of Amalgamation. It was further observed that there are no secured or unsecured creditors of Transferor-Company and no secured creditors of Transferee-Company. Further that there were 35 unsecured creditors of Transferee-Company out of which 24 representing 68.5% in number and 99.80% in value approved the 'Scheme'.

3. Thereafter, the instant Second Motion Petition was filed under Sections 391 to 394 of the Companies Act, 1956 corresponding to Sections 230 to 232 of the Companies Act, 2013 for sanction of the 'Scheme'.

4. While the instant joint petition was still pending in the Hon'ble Punjab and Haryana High Court, it was transferred to this Tribunal as per Section 3 of Companies (Transfer of Pending Proceedings) Rules, 2016 in view of coming into force of the Companies(Compromises, Arrangements and Amalgamations) Rules, 2016 which came into force w.e.f. 15.12.2016.

5. The main objects of Transferor-Company are to carry on the business of computer and act as adviser and consultants in respect of all matters relating to computer hardware, software, ERP Software, computer allied programmers, their production, storage, processing, marketing, service and maintenance thereof and to carry on the business of buying, selling, computer time, provision of computer services, processing of jobs for markets and management consultancy in the field of computer, micro processors VLSI design and micro processor based intelligent systems, their software and in any other filed etc. Copy of Memorandum and Articles of Association is at Annexure P-2.

6. Transferor-Company was incorporated on 11.10.2011 vide Certificate of Incorporation and allotted CIN No. U72200DL2011PTC226067 in the name and style of Quadrant Infosoft Private Limited with the Registrar of Companies, NCT of Delhi and Haryana. Its registered office was changed from the State of Delhi to Haryana vide order dated 13.08.2015 passed by the Regional Director, Northern Region.

7. The authorized, issued, subscribed and paid-up capital of the Transferor-Company as on date of filing this petition is as follows:-

<b>Particulars</b>	<b>Amount in Rupees</b>
<b>Authorized Capital</b>	
11,10,000 (Eleven lac ten thousand) equity shares of ₹10/-	₹1,11,00,000/- (Rupees one crore eleven lac only)

(Rupees ten only) each.	
<b>Issued, Subscribed and Paid-up</b>	
10,65,830 (Ten lac sixty five thousand eight hundred and thirty) equity shares of ₹10/- (Rupees ten only) each.	₹1,06,58,300/- (Rupees one crore six lac fifty eight thousand three hundred only)

8. The main objects of the Transferee-Company are to carry on the business of brand agility – product for social media brand monitoring to scan multiple data sources based on keywords and to carry on the business of cell agility – mobile platform to deliver mobile optimized websites, mobile application development services for iphone, ipad, android, blackberry and Nokia platforms etc. Memorandum and Articles of Association of the Transferee-Company are at Annexure P-4.

9. The Transferee-Company was incorporated on 16.11.2010 vide Certificate of Incorporation and allotted CIN No. U72200HR2010PTC041548 in the name and style of Mediaagility India Private Limited with the Registrar of Companies, NCT of Delhi and Haryana. Its registered office was shifted from the State of Delhi to Haryana.

10. The authorized, issued, subscribed and paid-up capital of the Transferee-Company as on date of filing this petition is as follows:-

<b>Particulars</b>	<b>Amount in Rupees</b>
<b>Authorized Capital</b>	

6,50,000 (Six lac fifty thousand) equity shares of ₹10/- (Rupees ten only) each.	₹65,00,000/- (Rupees sixty five lac only)
<b>Issued, Subscribed and Paid-up</b>	
6,50,000 (Six lac fifty thousand) equity shares of ₹10/- (Rupees ten only) each.	65,00,000/- (Rupees sixty five lac only)

11. The Audited Financial Statements of the Petitioner-Companies as on 31.12.2015 are at Annexures P-3 and P-5.

12. It is also stated that there has not been any changes/additions in the authorized, issued, subscribed and paid-up share capital, subsequent to the date of approval by the Board of Directors of both the Petitioner-Companies.

13. When the matter was listed on 18.04.2017, it was ordered as follows:-

“(i) *The date of hearing of the Joint Petition filed by the Petitioners for the approval of the Scheme is fixed on 30<sup>th</sup> May, 2017.*

(ii) *Notice of the hearing shall be advertised in the English Daily namely, ‘The Business Standard’ and Hindi Daily ‘Jansatta’ not less than 10 days before the date fixed for hearing.*

(iii) *In addition to the above public notice, the Petitioners shall serve the notice of the Petition on the following*

*Authorities namely, (a) the Central Government through the office of the Regional Director, Northern Region, New Delhi, Ministry of Corporate Affairs,*

*(b) Registrar of Companies, NCT of Delhi and Haryana, (c) the Income Tax Department having jurisdiction over the respective files of the Petitioner Companies and to such other Sectoral Regulatory Authorities which may govern the working of the respective Companies involved in the Scheme at least 30 days before the date fixed for hearing of the above Petition.*

- (iv) Further, notice shall also be served with complete Paper Book to Objector(s) or to their representatives as contemplated under Sub-Section (4) of Section 230 of the Act who may make or have made a representation and who have desired to be heard in their representation therewith at least 15 days before the date fixed for hearing.*
- (v) Both the Petitioners shall file at least 7 days before the date of hearing of the Petition an affidavit of service in relation to paper publication effected as well as service of notices on the Authorities specified above including the Sectoral Regulator as well as Objectors, if any.*
- (vi) Objections, if any, to the Scheme contemplated by the Authorities to whom notice has been given shall be filed on or before the date of hearing fixed herein, failing which it will be considered that there is no objection to the sanction of the Scheme by this Tribunal, subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.*

- (vii) The Petitioner Companies shall individually comply with proviso to sub-section (7) of Section 230 or proviso to sub-section (7) of Section 232, as may be applicable under the circumstances before the date fixed for hearing by filing the certificate of Company's Auditor.*
- (viii) The next date of hearing of the Petition shall be on 30<sup>th</sup> May, 2017 for consideration of sanction of the Scheme of Arrangements as contemplated between the Petitioner Companies."*

14. Affidavit of compliance was filed on 23.05.2017 wherein it was stated that notice was published in the Chandigarh Edition of "Business Standard" (English Daily) and in "Jansatta" (Hindi Daily) both dated 04.05.2017. It was stated in the affidavit that Jansatta (Hindi Daily) was published in the principal language of the State of Haryana. Copies of newspaper publications are annexed as Annexure-1 (colly) with the affidavit. Notice was also delivered dasti to the Registrar of Companies, NCT of Delhi and Haryana on 26.04.2017 and to the Regional Director on 27.04.2017. Notice to the Income Tax Authorities and Official Liquidator was sent on 26.04.2017. Copies of the above mentioned notices are annexed as Annexure-2 (colly). With the affidavit the petitioners have annexed copies of postal receipts showing that notice was sent to the Official Liquidator and the Income Tax Department by Speed Post on 26.04.2017. With the affidavit dated 12.07.2017 of the authorized representative of the Transferor-Company the copies of postal receipts aforesaid were again attached alongwith the tracking reports of the Postal Department showing

delivery of the notice to the Official Liquidator on 01.05.2017 and to the Income Tax Department on 27.04.2017.

15. The report of the Regional Director, Northern Region, Ministry of Corporate Affairs by way of affidavit dated 15.06.2017 was filed. In the report of the Official Liquidator dated 20.07.2017 it was reported that a letter was sent to the transferor-company at the registered office but the same was returned as undelivered. When the matter was listed on 24.11.2017 the official liquidator filed the envelope sent to the transferor-company which was returned with the report that the addressee has left the address. The same was taken on record. In view of the aforesaid fact, the Official Liquidator was directed to file his further report in the matter. Accordingly, the Official Liquidator has filed his further report with the forwarding letter No.2036 dated 18.12.2017.

16. I have heard the learned counsel for the petitioners, learned counsel representing the Official Liquidator and the Regional Director and perused the record with their assistance.

17. The 'Scheme' (Annexure P-1) was approved by the Board of Directors of both the Petitioner-Companies vide resolution dated 31.01.2016. Copies of the resolutions of Transferor-Company and of Transferee-Company are at Annexures P-6(colly) and P-7 (colly) respectively.

18. The salient features of the proposed 'Scheme' are as under:-

*"a) The appointed date under the 'Scheme' is 1<sup>st</sup> January, 2016.*



*b) The 'Scheme' provides that with effect from the Appointed Date and upon the 'Scheme' becoming effective, the Transferor-Company shall stand transferred to and vest in the Transferee-Company.*

*c) The Scheme further provides that upon the 'Scheme' becoming effective; with effect from the Appointed Date:-*

*(i) All assets, rights and liabilities including Income Tax and all other statutory liabilities of the Transferor-Company will be transferred to and vest in the Transferee-Company.*

*(ii) All the employees of the Transferor-Company in service on the date immediately preceding the date on which the 'Scheme' finally takes effect, i.e. the Effective Date, shall become the employees of the Transferee-Company on such date without any break or interruption in service and upon terms and conditions not less favorable than those subsisting in the concerned Transferor-Company on the said date.*

*(iii) The Amalgamation shall take effect from 1<sup>st</sup> day of January, 2016 or such other date, as the Hon'ble High Court may approve.*

*(iv) The Transferee-Company without any further application or deed issue and allot 3 (three) fully paid equity share of the face value of ₹10/- (Rupees ten only) each of the Transferee-Company for every 1 fully paid equity shares of ₹10/- (Rupees ten only), each held by the shareholders in Transferor-*

*Company. Cross holding of shares between the Transferor and Transferee-Company on the record date, shall stand cancelled.*

*(v) With effect from Effective Date the Transferor-Company shall stand dissolved without winding up and all operations of the amalgamated entity shall be carried on only in the name of Transferee-Company i.e. Mediaagility India Private Limited.”*

19. It was also submitted that the circumstances which justify and/or necessitate the said ‘Scheme’ are, *inter alia* as follows:-

*“(a) That the Transferor-Company is holding company of Transferee-Company and the present merger is in the nature of downstream merger wherein the Holding Company shall be merged/amalgamated into its own subsidiary company. That proposed ‘Scheme’ of Amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base.*

*(b) The proposed amalgamation would enable pooling of physical, financial and human resources of these companies for the most beneficial utilization of these factors in the combined entity.*

*(c) The proposed ‘Scheme’ of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these companies to combine their managerial and operating strength, to build a wider capital and*

*financial base and to promote and secure overall growth of their businesses.*

*(d) The said 'Scheme' of Amalgamation will strengthen, consolidate and stabilize the business of these companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario.*

*(e) The proposed amalgamation would enhance the shareholder's value of the Transferor and the Transferee-Companies.*

*(f) The said 'Scheme' of Amalgamation will have beneficial impact on both Transferor and Transferee Companies, their shareholders, employees and other stake holders and all concerned.*

20. As per the 'Scheme' the appointed date is 01.01.2016 or such other date as the Hon'ble High Court may direct. In clause 9 of the 'Scheme' it is stated as under:-

*"Upon the 'Scheme' finally coming into effect and in consideration of the transfer of all the said assets and liabilities of the transferor company to the transferee company in terms of the 'Scheme'. The transferee company without any further application or deed issue and allot 3 fully paid up equity share, face value of ₹10/- (Rupees ten only) each of the Transferee-Company for every 1 fully paid up equity shares of ₹10/- (Rupees ten only) each, held by the shareholders in transferor company to the members of transferor company whose name appear in the register of members as on particular*

*date, already defined, by the Board of Directors of Transferee-Company.*

*In the following ratio: Three (3) Shares of Transferee Company to every One (1) Share of Transferor Company.”*

21. The interest of the employees of Transferor-Company has been taken care of and it is provided as under:-

*“a) All the employees of the Transferor-Company in service on the date immediately preceding the date on which the ‘Scheme’ finally takes effect, i.e., the Effective Date, shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and conditions not less favorable than those subsisting in the concerned transferor company on the said date.*

*b) Provident Fund, Gratuity Fund, Superannuation Fund and any other special fund or trusts created or existing for the benefit of the employees of the Transferor Company, if any, upon the ‘Scheme’ becoming finally effective, the Transferee-Company shall stand substituted for the Transferor-Company for all purposes and intents, whatsoever, relating to the administration or operation of such schemes or funds or in relation to the obligation to make contributions to the said funds in accordance with the provisions of such funds. It is the intent that all the rights, duties, powers and obligations of the Transferor-Company in relation to such funds shall become those of the Transferee-Company. It is clarified that the services of the employees of the Transferor-Company will be treated as having been continued for the purpose of the aforesaid funds or provisions.”*

22. When the matter was listed on 30.05.2017, the petitioner filed certificates of Chartered Accountants of both the companies to show that the accounting treatment in the proposed 'Scheme' is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 but it was observed that there was no affidavit in support of these certificates. It was directed that the affidavits of the respective authorized representatives of the companies be filed in support of the authenticity of the certificates regarding conformity to the accounting standard.

23. Affidavit dated 12.07.2017 of Ms. Kiran Duggal authorized representative of the Transferor-Company and that of Mr. Nirdesh Kumar Chahal authorized representative of the Transferee-Company have been filed alongwith the certificate from the auditors of the company stating that the accounting treatment attached with the scheme of the companies is in conformity with the accounting standards as prescribed under Section 133 of the Companies Act, 2013. In the same affidavits of these authorized representatives it was also stated that there is no other sectoral regulator of the petitioner company and it was also stated that the petitioner-companies have not received any objection to the scheme of amalgamation after the notice was published in the newspapers.

24. The Regional Director in his report stated that there is non-resident investment in both the petitioner-companies. In this regard, the Regional Director has further stated that the petitioner-companies

have sent response to the above observations undertaking that the petitioner companies would comply with the various requirements of FEMA, SEBI and RBI guidelines as may be applicable. Otherwise, the petitioner-companies have stated before the Regional Director that there are no prosecution proceedings pending against the petitioner companies and its directors for violation of Companies Act, 2013 or Companies Act, 1956, FEMA, IPC, SEBI, RBI etc. before any Court of law.

25. The Regional Director has also observed that petitioner-companies may be directed to give undertaking in relation to payment of stamp duty as may be applicable consequent upon the transfer of assets due to the amalgamation/demerger of undertaking/assets as the case may be. In this regard, Ms. Kiran Duggal authorized representative of the Transferor-Company has filed affidavit dated 23.10.2017 and Mr. Nirdesh Kumar Chahal also filed affidavit of even date stating therein that the petitioner-companies would pay stamp duty as may be applicable consequent upon the transfer. This may be taken on record. This affidavit shall form the part of the order.

26. Otherwise, the Regional Director has also considered report of the Registrar of Companies and observed that no adverse comments have been made with regard to the Scheme.

27. In the report of Official Liquidator filed on 18.12.2017 it is stated that the transferor-company has shown profit before tax in the Balance Sheet for the period ending 31.12.2015 which was more than

the profit earned during the previous year ending 31.03.2015. since no adverse comments have been made by the Official Liquidator nor it is stated that the affairs of the company are being conducted in a manner adverse to the interest of the members, creditors or the public at large.

28. With regard to the issuance of shares Regional Director has reported that the Transferee-Company shall without any further application or deed issue and allot 3 fully paid up equity share, face value of Rs.10/- each of the Transferee-Company for every 1 fully paid up equity share of Rs.10/- each held by the shareholders in Transferor-Company to the members of Transferor-Company and there is no adverse comments relating to this clause of the scheme. So far as the Income Tax Department is concerned no representation/objection to the scheme has been received.

29. In view of the above, there is no impediment in sanction of the Scheme. The Scheme (Annexure P-1) is approved. While approving the 'Scheme', as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of Scheme, the Transferor Company shall stand dissolved without being wound up resulting in increase in the share capital of the Transferee Company.

**THIS TRIBUNAL DO FURTHER ORDER**

- i) That all the property, rights and powers of the Transferor-Company be transferred without further act or deed to the Transferee-Company and accordingly the same shall pursuant to Section 230-232 of the Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor-Company but subject nevertheless to all charges now affecting the same; and
- ii) That all the liabilities and duties of the Transferor-Company be transferred without further act or deed to the Transferee-Company and accordingly the same shall pursuant to Section 230-232 of the Act, be transferred to and become the liabilities and duties of the Transferee-Company; and
- iii) That all the employees of the Transferor-Company shall be transferred to the Transferee-Company in terms of the 'Scheme'; and
- iv) That all proceedings now pending by or against the Transferor-company be continued by or against the Transferee-Company; and
- v) That the Transferee-Company do without further application allot to all the members of the Transferor-



- Company the shares in the Transferee-Company to which they are entitled under the said Scheme; and
- vi) That the fee, if any, paid by the Transferor-Company on its authorized capital shall be set off against any fees payable by the Transferee-Companies on its authorized capital subsequent to the sanction of the Scheme; and
- vii) That the Transferor-Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor-Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor-Company registered with him on the file relating to the Transferee-Company and the files relating to the Transferor and Transferee Company shall be consolidated accordingly, as the case may be; and
- viii) That the Transferee-Company shall deposit an amount of ₹40,000/- (Rupees Forty thousand only) as cost with the Pay and Accounts Officer in respect of office of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and ₹40,000/-

(Rupees forty thousand only)with the NCLT Bar Association Fund, Chandigarh within a period of five weeks from the date of receipt of certified copy of the order; and

- ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

30. As per the above directions and Form No.CAA 7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal order be issued on the petitioners on filing of the Schedule of Property i.e. (i) freehold property of the Transferor-Company; and (ii) leasehold property of the Transferor-Company by way of affidavit of Transferor Company.

Sd/-  
(Justice R.P.Nagrath)  
Member(Judicial)

January 15, 2018  
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