

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

CA (CAA) NO. 10/Chd/CHD/2017

Date of Order: 03.05.2017

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

In the matter of:

Socomo Technologies Private Limited, having its registered office at Plot No. 1, Timber Market, Sector – 26, Chandigarh – 160019.

...Applicant No. 1/Transferor Company

AND

Click Labs Private Limited, having its registered office at Plot No. 1, Timber Market, Sector – 26, Chandigarh – 160019.

... Applicant No. 2 /Transferee Company

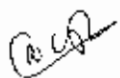
Application under Section 230 to 232 of the Companies Act, 2013
read with the Companies (Compromises, Arrangements and
Amalgamations) Rules, 2016.

Present: Mr. Karanveer Jindal, Advocate along with Mr. Prabhjit Gill,
Advocate, Mr. Rahul Singh, Advocate and Mr. Madan Gopal
Jindal, PCS for the Applicant-Companies.

ORDER

R.P. Nagrath, J., Member (Judicial) (ORAL):

This is the joint application filed by Socomo Technologies Private Limited, Applicant No. 1/Transferor Company (for brevity A-1) and Click Labs Private Limited, Applicant No. 2/Transferee Company (for brevity A-2) under Sections 230 to 232 of the Companies Act, 2013 (to be referred as the 'Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules') in connection with the proposed Scheme of Amalgamation being Annexure A-1 (to be referred in brief as the 'Scheme').



2. It is represented by counsel for the Applicants that as per the Memorandum of Association (Annexure A-3), the objects of A-1 Company are to carry on the business of technology enabled services, IT research, providing of computer related services, development of software(s), hardware(s), internet services in all fields. Further, as per the Memorandum of Association (Annexure A-11), A-2 Company is also engaged in the similar business activity i.e. primarily engaged in the business of acting as franchise agent for electronic information technology development, upgradation, manufacturing processing of computer hardware and software and providing of consultancy services related to running and maintaining internet marketing campaigns, search engine optimization etc.

3. The address of registered offices of both the Companies is the same and located in Chandigarh and therefore, the matter falls within the jurisdiction of Chandigarh Bench of the Tribunal. It is further represented that both the Applicant Companies are private limited companies.

4. As per certificate of incorporation of the A-1 Company at page 51 (Annexure A-3), A-1 Company was incorporated on 18.12.2012 having its registered office at 1730, Sector 33, Chandigarh - 160022. It is represented by the learned counsel that subsequently, the registered office was changed to the present address as mentioned in the Memo of Parties and intimation of change was made to the Registrar of Companies, Chandigarh as reflected in the master data of the A-1 Company filed on record by the learned counsel. Further, as

per certificate of incorporation of the A-2 Company at page 216 (Annexure A-11), A-2 Company was incorporated on 07.02.2011 with its registered office in the State of Punjab. The registered office of the A-2 Company was thereafter changed to the Union Territory of Chandigarh vide certificate dated 21.10.2015 of the Registrar of Companies, Chandigarh. It is represented by the learned counsel that the registered office of A-2 was again changed to the present address as mentioned in the Memo of Parties and the intimation was duly made to the Registrar of Companies, Chandigarh as reflected in the master data of the A-2 Company placed on record by the learned counsel when the matter was fixed for 01.05.2017.

5. It is further represented by the learned counsel for the Applicants that vide Board resolution dated 17.03.2017 (Annexure A-2), A-1 Company approved the Scheme subject to sanctioning of the same by this Tribunal. Samar Singla and Chinmay Agarwal, both whole-time Directors of the A-1 Company have been authorised under this resolution to jointly and/or severally to file application/petition in the Tribunal and to do such acts and deeds as are necessary and incidental with regards to the Scheme. Vide Board resolution dated 23.02.2017 (Annexure A-10), A-2 Company also approved the Scheme subject to sanctioning the same by the Tribunal and authorized Samar Singla and Saral Maghan, both Directors of the A-2 Company to jointly and/or severally to file application/petition in the Tribunal and to do all such acts and deeds necessary and incidental with regards to the Scheme. The affidavits of Mr. Saral Maghan for A-2 Company and Mr.



Chinmay Agarwal for A-1 Company have been filed in support of the joint application.

6. This joint application has been filed, *inter alia*, with the prayers for dispensing with the requirement of convening the meetings of the secured and unsecured creditors of both the Applicant-Companies and for convening of meetings of equity shareholders and preference shareholders of the A-1 Company and equity shareholders of the A-2 Company in accordance with the Act and rules made thereunder.

7. Learned counsel for the applicants represents that as per the averments made in the joint application and the affidavits Annexure A-23 (Colly) of the aforesaid Directors of the Applicant-Companies it is stated that in terms of Section 230 (2) of the Act, the 'Scheme' does not envisage reduction in share capital of the Applicant-Companies nor does it provide for corporate debt restructuring.

8. It is further represented that the A-1 Company has filed its audited financial statements as at 31.03.2016 (Annexure A-4) and provisional financial statements as on 31.01.2017 (Annexure A-5), whereas A-2 Company has filed its audited financial statements for the year ending 31.03.2016 as per Annexure A-12 and provisional financial statements as on 31.01.2017 Annexure A-13. It is submitted that these financial statements are authenticated by the Chartered Accountant and attested by both authorised Directors of Applicant-Companies.

9. Further, it is represented that certificates of statutory auditors of both the Applicant-Companies has been filed at Annexure A-21 (Colly) stating that the accounting treatment as per the Scheme is in accordance with the requirements of Section 133 of the Act.

10. The rationale for entering into the Scheme as mentioned therein is reproduced as follows:

- (i) *The proposed amalgamation will result in consolidation of the business of the Transferor-Company with the business of the Transferee-Company in the field of information technology.*
- (ii) *The amalgamated entity will provide strategic and competitive advantage due to its increased size and integration of the businesses and will enable better research and development.*
- (iii) *The Amalgamated entity will result in economies of scale;*
- (iv) *The Amalgamation will result in better utilization of skilled manpower and their services can be optimally utilized thereby reducing costs; and*
- (v) *The amalgamation will result in reduction of overall administrative and over-head cost.*

11. The 'Scheme' also takes care of the interest of staff/workers and employees of the A-1 Company. It is provided as under:-

On the 'Scheme' becoming effective entire staff, workmen and employees of Transferor-Company shall be deemed to

have become the employees of Transferee-Company without any break or interruption in their services, on not less favourable terms and conditions on which they are engaged as on the Effective date. The Transferee-Company further agrees that for the purpose of payment of any retirement benefit/compensation, such Immediate uninterrupted past services with the Transferor-Company, shall also be taken into account. The Transferee-Company undertakes to continue to abide by the terms of agreement/settlement entered into by the Transferor-Company, with employees or Associations of the Transferor-Company.

12. It is represented by the learned counsel that The '**Scheme**' envisages that with effect from the Appointed Date i.e. 1st February, 2017, A-1 Company shall merge in A-2 Company and all the assets and liabilities of A-1 Company shall also be transferred to and vested in and assumed by A-2 Company. The '**Scheme**' thus states that it shall be effective from the Appointed Date but shall be operative from the Effective Date as defined in the '**Scheme**'.

13. The share exchange ratio has been determined in accordance with the recommendations of Pankaj Tandon & Associates, Chartered Accountants, which has been accepted by Board of Directors of the respective Companies and the same has been annexed at Annexure A-20 of this application. It is, thus, represented by learned counsel for the Applicants that based upon the above valuation report (Annexure A-19 Coily), the share swap ratio is as follows:-

"8.7 fully paid equity shares / preference shares of face value INR 10 (Rupees Ten) each of Click Labs Private Limited for every 100 fully paid equity shares / preference shares of INR 1 (Rupees One) each held in Socomo Technologies Private Limited."

14. Learned counsel for the applicants has further represented that in relation to secured creditors of the A-1 Company, a certificate of the Statutory auditors of the A-1 Company (Annexure A-7) has been filed stating that there was no secured creditor as on 31.01.2017 in the said Company. It is submitted that there were 4 unsecured creditors of the A-1 Company as on 31.01.2017 and the amount outstanding was to ₹1,36,536/-. The list of the unsecured creditors is annexed as Annexure A-8. It is represented that all the unsecured creditors i.e. 100% in respect of A-1 Company have given their affidavits in terms of Section 230(9) of the Act having no objection to the Scheme. The affidavits are Annexure A-9 (Colly). As regards secured creditors of A-2 Company is concerned, it is represented that there was only 1 secured creditor as on 31.01.2017 namely, HDFC Bank Limited for an outstanding sum of ₹3,544.44 which has since been paid in full. The document of closure of loan account is annexed as Annexure A-16 having stamp of the Bank. Further, there was only 1 unsecured creditor of A-2 Company as on 31.01.2017 as per list annexed at Annexure A-17, namely, Click Labs Technologies Pvt. Ltd., Singapore amounting to ₹82,05,719.25. The learned counsel represents that there is the affidavit dated 17.04.2017 furnished by

Samar Singla, Director of the aforesaid un-secured creditor to that effect that this Company has no objection to the proposed Scheme. It is stated in the affidavit that Samar Singla is competent to swear on behalf of the Company. The affidavit is at Annexure A-18. In view of the above and the prayer made by the Applicant-Companies, convening of the meetings of the secured and unsecured creditors of applicant companies is hereby dispensed with.

15. As regards shareholders of A-1 Company, it is represented that there are 9 equity shareholders holding 1,38,220 equity shares of ₹1/- each and 35 preference shareholders holding 87,610 preference shares of ₹1/- each as on 31.01.2017 as per list attached at Annexure A-6 (Colly). In A-2 Company, there are 7 equity shareholders holding 22,136 equity shares of ₹10 each as on 31.01.2017 as per list Annexure A-14. In terms of the prayer made by the Applicant-Companies, the meetings of equity shareholders and preference shareholders of A-1 Company and equity shareholders of the A-2 company have to be convened in terms of the Act and rules made thereunder. The learned counsel for the Applicant-Companies has also recorded his statement furnishing the addresses of certain Statutory Authorities to whom the notices of meetings are to be sent.

16. Having perused the joint application of the Applicant-Companies and hearing the learned counsel, it is directed that convening of the meeting of the equity shareholders and preference shareholders of A-1 Company and equity shareholders of the A-2 company be convened as under:-

- (i) The notice for the meetings shall be issued by the Transferor-Company and Transferee Company as follows:

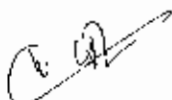
In relation to Transferee-Company

- (a) Meeting of equity shareholders be convened on 24.06.2017 at 11.00 am at Plot no. 5, CDCL Building, Sector 28-B, Madhya Marg, Chandigarh - 160028, subject to notice of meeting being issued.
- (b) Meeting of preference shareholders be convened on 24.06.2017 at 12:30 pm at Plot no. 5, CDCL Building, Sector 28-B, Madhya Marg, Chandigarh - 160028 subject to notice of meeting being issued.

In relation to Transferor-Company

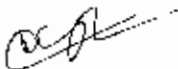
- a) Meeting of equity shareholders be convened on 24.06.2017 at 3:00 PM at Plot no. 5, CDCL Building, Sector 28-B, Madhya Marg, Chandigarh - 160028 subject to notice of meeting being issued.

- (ii) The quorum of the meeting of the equity shareholders of Transferor-Company shall be 5 in number, whereas, quorum of meeting of preference shareholders of Transferor-Company shall be 15 in number. For Transferee-Company, the quorum of meeting of the equity shareholders shall be 4 in number.
- (iii) In case the quorum, as noted above is not present, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to



constitute the quorum. For the purpose of constituting the quorum, the valid proxies shall also be considered if the proxy is in prescribed form, duly signed by the person entitled to attend the vote at the meeting, filed with the registered office at least 48 hours before the meeting.

- (iv) Mr. Pradeep Nauharia, Advocate, Mobile No.9814010915, Address: 2541, Sector 19-C, Chandigarh-160019 is appointed as the Chairperson for the meetings to be called under this Order. He shall be paid a lump sum fee of ₹75,000/- for his services as the Chairperson.
- (v) Mr. Gaurav Mankotia, Advocate, Mobile No.9780715725, Address: 3404, FF, Sector 71, Mohali is appointed as the Alternate Chairperson for the meetings to be called under this Order. He shall be paid a lump sum fee of ₹50,000/- for his services as the Alternate Chairperson.
- (vi) Mr. Mast Ram Chechi, Mobile No.9417264876, Address: 3443/2, Sector 45-D, Chandigarh, the Company Secretary is appointed as the Scrutiniser for the meetings to be called under this Order. He shall be paid a lump sum fee of ₹50,000/- for his services as the Scrutiniser.
- (vii) The fee of the Chairperson, Alternate Chairperson and Scrutinizer shall be borne by the Transferee-Company. The travelling expenses, boarding and lodging for them shall also be borne by the Transferee-Company.

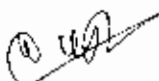


(viii) It is further directed that individual notices of the said meetings shall be sent by the Applicant-Companies to all the members/shareholders as per list filed along with the joint application through registered post or speed post or through courier or through email at least 30 days in advance before the scheduled date of meeting indicating the date, time and venue of the meeting together with copy of the '**Scheme**', Explanatory Statement required to be sent under the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 along with proxy forms and other documents as prescribed under the Act and Rules. The Scrutinizer appointed for the aforesaid meetings shall verify that the proxy registers are properly maintained. **It is further directed that the members/shareholders having 1000 shares or above be sent individual notices by Registered Post or Speed Post together with notices by email to them if their email address is available/registered with the Companies.**

(ix) The Applicant-Companies shall jointly publish an advertisement in "Indian Express" (English) (Chandigarh Edition) and "Dainik Tribune" (Hindi) (Chandigarh Edition) at least 30 clear days in advance before the meetings in the form prescribed under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. It be

stated in the advertisements that copies of the '**Scheme**' of amalgamation, the Explanatory Statement required to be published pursuant to Sections 230 to 232 of the Act and the forms of proxy shall be provided free of charge at the registered office of the Applicant-Companies. The Applicant-Companies shall also publish the notice on their respective websites, if any.

- (x) Voting shall be allowed in person or by proxy and the same will be considered for the purpose of counting or quorum of the aforesaid meetings, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting or by his authorised representative is filed with the registered office of the Applicant-Companies. The Chairperson shall file a report regarding the result of the meeting in Form No, CAA 4, as per Rule 14 of the Rules within 3 working days of the conclusion of the meeting. The Chairperson shall be fully assisted by the authorised Company Secretary of each Company and the Scrutinizer. They will also assist the Chairperson and Alternate Chairperson in performing and finalising the report to the extent required.
- (xi) The Petitioner/Applicants shall be individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No.



CAA 3 along with a copy of the '**Scheme**', the explanatory statement and the disclosures mentioned in Rule 6 of the Rules to a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, Paryavaran Bhawan, CGO Complex, 2nd Floor, New Delhi, b) Registrar of Companies (Punjab and Chandigarh), Corporate Bhawan, Plot No.4, First Floor, Sector 27-B, Chandigarh, c) Official Liquidator, Corporate Bhawan, Plot No.4, Second Floor, Sector 27-B, Chandigarh, d) Chief Commissioner of Income Tax, Income Tax Bhawan, Sector 17, Chandigarh, e) Reserve Bank of India through Regional Director, Reserve Bank of India, Central Vista, Opposite GPO, Sector 17 Chandigarh Branch, Chandigarh, f) Director, Software Technology Park of India, Department of Electronic & Information Technology, Ministry of Communication & IT, Government of India, Plot No.B-99, Phase VIII, Industrial Area, SAS Nagar, Mohali (Punjab) and to such other Regulators having significant bearing on the operation of Petitioners/ Applicant-Companies stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned Companies, failing which it shall be




presumed that they have no objection to the proposed
'Scheme'.

- (xii) The Applicant-Companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by any members/shareholders entitled to attend the meetings as aforesaid.
- (xiii) The authorised representatives of the Applicant-Companies shall furnish affidavit of service of notices to members and publication of advertisement in newspapers at least 7 days before the date of the meeting.
- (xiv) It is directed that both the Applicant-Companies shall not change the share structure or make any change/addition in the share capital till the **'Scheme'** is approved.
- (xv) All the directions shall be complied in accordance with the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the format prescribed thereunder.

17. The application stands allowed in the aforesaid terms. It is directed that the learned counsel/authorised representative of the Applicant-Companies shall deliver the copy of this order to the Chairperson, Alternate Chairperson and Scrutinizer Immediately. A copy of the order be supplied to the counsel for the Applicant-Companies forthwith.

May 03, 2017
arora


(Justice R.P. Nagrath)
Member (Judicial)