

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

**Company Petition No. 118/CAA/2017**

[Connected with CA No. 632 of 2016]

**In the matter of Sections 391 to 394 of the Companies Act, 1956 and the  
Corresponding Sections 230 to 232 of the Companies Act, 2013**

**And**

**In the matter of Scheme of Amalgamation of**

M/s. Atheros Communications India Private Limited  
(First Transferor Company)

**And**

M/s. CSR India Private Limited  
(Second Transferor Company)

**And**

M/s. CSR Technology (India) Private Limited  
(Third Transferor Company)

**And**

M/s. Ikanos Communications (India) Private Limited  
(Fourth Transferor Company)

**With**

M/s. Qualcomm India Private Limited  
(Transferee Company)

**Order delivered on: 07.11.2017**

Represented by: Counsel P. Giridharan, Advocate

**CORAM**

**CH.MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

**S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

**ORDER**

**Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL): ORAL** 

1. Under consideration is Company Petition No. 118/CAA/2017. It is on record that the Hon'ble Madras High Court, vide its Order dated 11.08.2016 in CA No. 632 of 2016 has ordered to dispense with convening, holding and conducting a meeting of equity shareholders of the 1<sup>st</sup> Transferor Company. There is no secured creditor in the 1<sup>st</sup> Transferor Company. The Transferor Companies and the Transferee Company through their respective Board of Directors, decided to amend the Scheme and filed a Company Application No. 951 of 2016 before the Hon'ble Madras High Court. The Hon'ble Madras High Court, vide Order dated 24.10.2016 ordered notice in CA No. 951 of 2016. The Hon'ble Madras High Court called for objections on 01.11.2016. Accordingly, the Official Liquidator has made an objection to the proposed modification as prayed for in CA No. 951 of 2016 and submitted that no modification has to be made in the Scheme, because the fourth Transferor Company is situated at the jurisdiction of the Hon'ble High Court of Karnataka. Therefore, CA No. 951 of 2016 was withdrawn with liberty to approach the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka vide order dated 29.11.2016 permitted the Transferor Company No. 4 to amend the Scheme. Accordingly, the Scheme stood amended. Now, the matter has been transferred to this Bench. The Transferor Company No.1 that falls within the jurisdiction of this Bench has complied with the statutory requirements. The Petitioner Company has prayed for granting sanction

to the Scheme of Amalgamation (hereinafter referred to as '**Scheme**') of merger of M/s Atheros Communications India Private Limited (hereinafter referred to as '**Petitioner/Transferor Company No.1**') having its registered office at No.141, TVH Agnitio Park, Kandanchavadi, OMR, Chennai-600096, with M/s. Qualcomm India Private limited (hereinafter referred to as '**Transferee Company**'), having its registered office at Unit No 201, 2nd Floor, Tolstoy House 15 Tolstoy Marg, New Delhi -110001 as a going concern. M/s. CSR India Private Limited (hereinafter referred to as '**Transferor Company No. 2**'), M/s. CSR Technology (India) Private Limited (hereinafter referred to as '**Transferor Company No. 3**') and M/s. Ikanos Communications (India) Private Limited (hereinafter referred to as '**Transferor Company No. 4**') are having their registered offices at Karnataka State, which are falling within the jurisdiction of the NCLT, Bangalore.

2. The details of the share capital, secured and unsecured creditors of the 1<sup>st</sup> Transferor Company are as under

<b>Particulars</b>	<b>Authorized Capital</b>	<b>Issued &amp; paid-up Capital</b>	<b>Secured Creditors</b>	<b>Unsecured Creditors</b>
Transferor Company 1	Rs. 10,00,000	Rs. 10,00,000	Nil	Nil

3. The Learned Counsel for the 1<sup>st</sup> Transferor Company submits that 1<sup>st</sup> Transferor Company is presently engaged in the business of developing,



designing, testing and verifying hardware and software for communication applications and all related applications and support services thereof etc. and the Transferee Company to carry on all or any of the business of manufacturing, designing, developing, installing, servicing, marketing and providing technical support for specialized proprietary systems including but not limited to digital wireless communications and providing technical services/ supports etc.

4. The learned Counsel for 1<sup>st</sup> Transferor Company further submits that rationale of the said Scheme is to integrate and consolidate the business of the Transferor Companies and the Transferee Company in a single entity. The proposed amalgamation will enable better and efficient management, control and running of the business to attain operational efficiencies, cost competitiveness, create synergies and will be beneficial for capitalising on the growth opportunities to the fullest extent; and the amalgamation is in the interest of the shareholders, creditors, employees and other stakeholders of the Transferor Companies and the transferee company, as it would enable a focused business approach for the maximization of all benefits to all stakeholders; and improve organizational capability and leadership, arising from the pooling of human capital and focus the devise skills, talent and vast experience in specialised fields to compete successfully in an increasingly competitive industry; and cost saving through rationalisation and standardisation of support teams, elimination

of intra-group truncation, vendor or contracts consolidation etc in the Petition page no. 30 & 31.

5. In response to the notices issued in this Company Petition, the Regional Director, Southern Region in his affidavit dated 25.09.2017 has submitted before the Hon'ble High Court of Madras on 04.08.2016 in CA No. 632 of 2016 that the 1<sup>st</sup> Transferor Company has no Secured Creditor and Clause 3.2.6 of the Scheme provides protection to the employees of 1<sup>st</sup> Transferor Company. The 1<sup>st</sup> Transferor Company has been filing statutory returns regularly. No prosecution filed, no complaints pending and no inspection or investigation has been conducted in respect of the 1<sup>st</sup> Transferor Company and also given no objection and submitted that the said Company Petition may be disposed of on its merits.
6. The Official Liquidator( for short, **OL**) in his report dated 20<sup>th</sup> September, 2017 submitted that M/s Sundarajan & Co, Chartered Accountants appointed by the Hon'ble Madras High Court has examined the certified Balance Sheet, Profit and Loss Account and other relevant statutory books and records of 1<sup>st</sup> Transferor Company as required under the Companies Act, 2013 upto 31.03.2016. The accounts of the 1<sup>st</sup> Transferor Company has been certified by M/s. Price Waterhouse, Chartered Accountants LLP, Chennai for the period from 01.04.2014 to 31.03.2016 and they have not qualified anything adverse against the 1<sup>st</sup> Transferor Company during the period. The resolutions passed in the meeting of Directors has been

reviewed. Further, it is reported by M/s. Sundarajan & Co, Chartered Accountants that all the statutory books of accounts, records and other registers maintained by the 1<sup>st</sup> Transferor Company were also scrutinized and found that they have maintained books of accounts as per requirements of the Companies Act, 2013.

7. It has further been submitted that under clause 3.26(a) of Part-III of the proposed Scheme, the interest of all the employees who are in the service of the Transferor Companies are safeguarded. As per Clause 4.1.1(a) of Part-IV of the said Scheme, the Transferee Company shall, without any further application, act, payment, consent, instrument or deed, allot and issue; to each equity shareholders of the 1<sup>st</sup> Transferor Company , whose name is recorded in the register of members holding equity shares on the record date, in accordance with the terms of the Scheme as Rs.1,359/- (Rupees One Thousand Three Hundred and Fifty Nine Only) fully paid up equity shares of the Transferee Company of Rs.10/- each credited as fully paid up for every Rs.1000/- ( Rupees One Thousand Only) fully paid up equity shares of Rs.10/- each held by such shareholders or his/her/ its heirs, executors, administrators or successors in the 1<sup>st</sup> Transferor Company. The valuation of shares of the 1<sup>st</sup> Transferor Company and the Transferee Company have been done by M/s Delotte Touche Tohmatsu India LLP, Bangalore vide their report dated 03.06.2016. Further, it is observed that M/s Sundarajan & Co., Chartered Accountants, Chennai appointed by the



Official Liquidator, High Court, Madras have not made any observations as regarding to the shares exchange ratio of the 1<sup>st</sup> Transferor Company and the Transferee Company. However, OL submits that M/s. Sundarajan & Co, Chartered Accountants have concluded that the business of 1<sup>st</sup> Transferor Company have not been carried out with an intent to defraud the creditors of the company or other persons and there is nothing to attract the provisions of Section 542 of the Companies Act, 1956.

8. We have heard the Counsel for the Petitioner and have perused the said Scheme along with the records placed on the file. Clause 4.1.1(a) of the said Scheme gives details about the Share Exchange Ratio and accounting treatment which seems to be in conformity with the well-established accounting standards. There is no apprehension that any creditors would suffer loss or be prejudiced if the proposed Scheme is sanctioned. The said Scheme of amalgamation will not cost any additional burden on the shareholders of any of the companies involved in the said Scheme and also it will not prejudicially affect the interests of any classes of the creditors in any manner. The Appointed date of the said Scheme is 1<sup>st</sup> April, 2016.
9. We do not feel that any modification is required in the said Scheme of amalgamation as the same appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. Since all the statutory compliances have been fulfilled, the Company Petition is allowed and the Scheme of Amalgamation is hereby sanctioned which shall

be binding on the 1<sup>st</sup> Transferor Company and the Transferee Company, and secured & unsecured creditors both. However, upon becoming the Scheme effective, the 1<sup>st</sup> Transferor Company viz M/s. Atheros Communications India Private Limited be dissolved without winding up. However, this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law. The Petitioner Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

10. The Petitioner Company to file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
11. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 as has been notified on 14<sup>th</sup> December, 2016.
12. Accordingly, the CP No. 118/CAA/2017 stands disposed of.

  
**S.VIJAYARAGHAVAN**  
MEMBER (TECHNICAL)

  
**CH.MOHD SHARIEF TARIQ**  
MEMBER (JUDICIAL)