

**In the National Company Law Tribunal
Single Bench, Chennai**

**CP/140 & 141/CAA/2017
[CA/106 & 107/CAA/2017]**

In the matter of Scheme of Amalgamation of

Ascendas (India) Private Limited
(Transferor Company)

With

Ascendas Services (India) Private Limited
(Transferee Company)

And

Their Respective Shareholders

Order delivered on: 14.12.2017

For the Petitioner Company: Shri Pawan Jhabakh, Advocate

ORDER

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

1. Under consideration are two Company Petition nos. CP/140&141/CAA/2017 filed by the above named transferor Companies under Section 230 of the Companies Act, 2013 r/w the Companies (Compromises, arrangements and Amalgamations) Rules 2016. The purpose of the petitions is to obtain the sanction to the Scheme of Amalgamation (hereinafter referred to as '**Scheme**') by virtue of which Ascendas (India) Private Limited (hereinafter referred as '**Transferor Company**') is proposed to be amalgamated, merged and vested **with** Ascendas Services (India) Private Limited (hereinafter referred as '**Transferee Company**') and their respective shareholders as a going concern.

2. The details of Share Capitals, equity shareholders and secured & unsecured creditors of the Petitioner Companies are as under:

Particulars	Description of Shares	Authorised Capital (Rs)	Issued, S&P Capital (Rs)	No. of Equity Share-holders	No. of Secured Creditors	No. of Un-secured Creditors
Transferor Company	ES	Rs. 42,00,00,00	Rs. 30,45,00,010	2	Nil	2
	RCPS	Rs. 32,20,00,00				
Transferee Company	ES	Rs. 2,00,00,000	Rs. 60,29,400	3	Nil	8
	PS/FCNPS	Rs. 6,00,00,000	Rs. 5,60,53,800			1

3. Both the companies are Private Limited Companies having their registered office at 1st floor, International Tech Park, Ascendas IT Park, Taramani Road, Chennai- 600113 and the Board of Directors of the Transferor Company and Transferee Company vide their resolutions dated 24th April 2017 respectively approved the said scheme of Amalgamation. The main objects of the petitioner companies are set out in clause III of its Memorandum of Associations which are annexed with the company petitions.
4. This Bench vide its order dated 10.07.2017, in CA/106/CAA/2017 dispensed with the convening and holding of the meeting of the equity shareholders, Preference and unsecured creditors of the Transferor

Company whereas in CA/107/CAA/2017, dispensed with the convening and holding the meeting of equity shareholders, preference shareholder and unsecured creditors of the Transferee Company. There is one Preference shareholder in the Transferee Company who has consented to the proposed scheme of amalgamation.

5. Shri Pawan Jhabakh, the learned counsel appearing for the Companies submitted that the rational of the scheme is that the petitioner Companies would be benefited from the said scheme of Amalgamation by integration of operations, simplification of business and optimal utilization of resources and better administration and cost reduction. Further, the resources of both companies would enhance its capability to expand and improve its efficiency of operations. He further submits that no investigation proceedings are pending against the Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.
6. The learned counsel further submitted that the equity shares of the petitioner companies are not listed with any stock exchange, thus the petitioner companies do not require any compliance with the requirements of the Listing Agreement or any SEBI Rules/regulations.
7. To dispose of this petition as per the provisions of the Companies Act, 2013, the notices were issued to the statutory authorities as per the

procedure prescribed. However, there were no objection to the scheme under reference.

8. The Regional Director, Southern Region (In short, '**RD**') in its Report Affidavit (for brevity, '**Report**') dated 09.10.2017 submitted that as per records of ROC, Chennai, the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company. It is further submitted that as per Clause 6.1 of the scheme, the employees of the transferor company will become the employee of the transferee company without any break. The RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits. However, in para 8 of the RD Report, it is submitted that clause 10 of the scheme provide for the consolidation of the authorized capital of the transferor company with that of the transferee company as provided under clause (i) to sub section (3) of section 232 of the companies Act, 2013 the transferee Company has to pay the fees, if any, for the enhanced authorized capital subsequent to amalgamation after setting of the fees paid by the transferee company, therefore, the transferee company may be directed to comply with above provisions of the Act by making an application with the ROC, Chennai for payment of the balance fee as applicable under the provisions of the Act and rules frame thereunder.

9. With regard to above observations made by the RD, the learned counsel for the petitioner company submitted that the transferee company undertakes to comply with the direction as desired by the RD.
10. The Official Liquidator (In short, 'OL') in its report dated 16th October, 2017 submitted that M/s. R.Sadasivan & Co, Chartered Accountants (**Auditor**) appointed on the order of this bench vide its order dated 10.07.2017 in CA/106 & 107/CAA/2017, have scrutinized the books and accounts of the Transferor Company. The Auditor observed that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principle and policies in accordance with the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.
11. The OL further submits that under Clause 6 of Part II of the proposed scheme, the interest of all employees in the service of the Transferor Company is safeguarded. It is further submitted that the said Auditor has not made any observations as regards to the share exchange ratio of the transferor company and the transferee company. The OL submitted that the company petitions may be decided appropriately.
12. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if

the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the Scheme is 01.04.2017.

13. There does not require any modification and the said Scheme of Amalgamation appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under the Companies Act, 2013. Taking into consideration all the above, the Company Petition is allowed and the Scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on all the members, creditors and shareholders.

14. While approving the scheme as above, we further clarify that 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.

15. The Transferee Company is directed to file the amended MoA and AoA with RoC, Chennai as desired by the RD.

16. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.

17. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.
18. The Company 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.
19. The Petitioner Company do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
20. 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 14th December, 2016.
21. The scheme annexed with the petitions stands sanctioned and the Company Petition stands disposed off.


K. ANANTHA PADMANABHA SWAMY,
MEMBER (J)

JAI