

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD**

C. A. (CAA) No.80/230/HDB/2017  
U/s 230 & 232 of Companies Act, 2013

In the matter of

Portware India Private Limited  
Having Registered Office at  
404, 4<sup>th</sup> Floor, Building No. 14,  
Survey No. 64, Mindspace Cyberabad Project,  
Hitech City, Madhapur,  
Hyderabad, Telangana - 500081

... Applicant/  
Transferor Company

**Versus**



1. The Regional Director  
South East Region  
3<sup>rd</sup> Floor, Corporate Bhawan  
Bandlaguda, Nagole, Tattiannaram  
Hayat Nagar Mandal  
Hyderabad - 500068

2. The Official Liquidator  
High Court of Judicature at Hyderabad  
For the State of Telangana & State of Andhra Pradesh  
1<sup>st</sup> Floor, Corporate Bhawan  
Bandlaguda, Nagole, Tattiannaram  
Hayat Nagar Mandal Hyderabad - 500068

3. The Commissioner of Income Tax (Judicial)  
8<sup>th</sup> Floor, D Block, IT Towers  
AC Guards, Masab Tank  
Hyderabad - 500004

... Respondents

**Date of order: 03.11.2017**

**Coram:**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

**Parties /Counsels**

For the Petitioner : Shri V.B. Raju, Advocate

Per: Rajeswara Rao Vittalana, Member (J)

### ORDER



1. The present Company Application bearing CA No. 80/230/HYD/2017 is filed by M/s Portware India Private Limited (Applicant/Transferor Company herein), by inter-alia, seeking directions to dispense with the meetings of the equity shareholders and Unsecured creditors of the Applicant / Transferor Company.
2. Brief facts, leading to filing of the present Company Application, are as follows:-
  - i. M/s. Portware India Private Limited (Applicant/Transferor Company) was incorporated as a private limited company in the then State of Andhra Pradesh on 25<sup>th</sup> day of September, 2009. Its Registered Office is situated at 404, 4<sup>th</sup> Floor, Building No. 14, Survey No. 64, Miindspace' Cyberabad Project, Hitech City, Madhapur, Hyderabad - 500081, Telangana, India. The main objects of the Transferor Company as set out in the Memorandum of Association are to carry on the business of manufacturing, developing all kinds of software mainly for export and also for sale in India and to undertake research, design, product development, project management, systems integration, implementation, processing, testing and training, characterization, offering and providing consultancy and turnkey solutions, back office support, data processing, data mining, remote maintenance services in all the areas of information technology and Information technology enabled services. At present,

the Transferor Company is engaged in the business of IT and IT enables services.

- ii. The authorised, issued, subscribed and paid-up share capital of the Transferor Company as on 31<sup>st</sup> March, 2017 was as under:

PARTICULARS	AMOUNT (INR)
<b>Authorized Share Capital:</b>	
600,000 equity shares of INR 10 each	6,000,000
<b>TOTAL</b>	<b>6,000,000</b>
<b>Issued, Subscribed and Paid-up Capital:</b>	
5,89,207 equity shares of INR 10 each	58,92,070
<b>TOTAL</b>	<b>58,92,070</b>

- iii. The Transferor Company closes its financial every year on 31<sup>st</sup> March. The audited financial statement of the Transferor Company as on 31 March 2016 is as under:

PARTICULARS	AMOUNT (INR)
<b>EQUITY AND LIABILITIES</b>	
<b>Shareholder's Funds</b>	
Share Capital	58,92,070
Reserves and Surplus	10,15,93,211
	<b>10,74,85,281</b>
<b>Non-Current Liabilities</b>	
Long-term provisions	2,96,764
	<b>2,96,764</b>
<b>Current Liabilities</b>	
Other current liabilities	40,90,958
Short-Term Provisions	1,98,40,796
	<b>2,39,31,754</b>







PARTICULARS	AMOUNT (INR)
<b>Total:</b>	<b>13,17,13,799</b>
<b>ASSETS</b>	
<b>Non-current assets</b>	
Fixed assets	
Tangible assets	14,50,761
Intangible assets	4,81,493
Long term loans and advances	1,51,34,473
	<b>1,70,66,727</b>
<b>Current Assets</b>	
Trade receivables	6,20,36,603
Cash and bank balance	2,73,49,176
Short term loans and advances	2,07,81,466
Other current assets	44,79,827
	<b>11,46,47,072</b>
<b>Total</b>	<b>13,17,13,799</b>

- iv. M/s. FactSet Systems India Private Limited (Transferee Company) was registered as a private limited company on 11<sup>th</sup> day of October, 2007, having its registered office in the State of Telangana. The main objects of the Transferee Company are set out in the Memorandum of Association which is briefly to carry on the business of collecting, storing and analyzing financial and economic information and data of entities in India and abroad, devising systems including software programs and systems for collating and analyzing data and information. At present, the Transferee Company is engaged in the business of IT and IT enables services

- v. The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on 31<sup>st</sup> March 2017 is as under:

PARTICULARS	AMOUNT (INR)
<b>Authorized Share Capital:</b>	
50,000 equity shares of INR 10 each	5,00,000
<b>TOTAL</b>	<b>5,00,000</b>
<b>Issued, Subscribed and Paid-up Capital:</b>	
10,000 equity shares of INR 10 each	100,000
<b>TOTAL</b>	<b>100,000</b>



- vi. The Transferee Company closes its financial every year on 31 March. The audited financial statement of the Transferee Company as on 31 March 2016 is as under:

PARTICULARS	AMOUNT (INR)
<b>EQUITY AND LIABILITIES</b>	
<b>Shareholder's Funds</b>	
Share Capital	1,00,000
Reserves and Surplus	97,04,87,080
	<b>97,05,87,080</b>
<b>Non-Current Liabilities</b>	
Long-term borrowings	72,33,00,000
Deferred tax Liability (net)	90,16,810
Other Non-current liabilities	1,68,62,491
	<b>74,91,79,301</b>
<b>Current Liabilities</b>	
Trade payables	11,04,43,907
Other current liabilities	117,86,31,913
Short-Term Provisions	2,26,16,900
	<b>131,16,92,720</b>





PARTICULARS	AMOUNT (INR)
<b>Total:</b>	<b>303,14,59,101</b>
<b>ASSETS</b>	
<b>Non-current assets</b>	
Fixed assets	
Tangible assets	32,20,27,070
Long term loans and advances	7,37,69,587
Other non-current asset	85,38,894
	<b>40,43,35,551</b>
<b>Current Assets</b>	
Trade receivables	52,01,46,212
Cash and bank balance	197,75,23,816
Short term loans and advances	1,05,18,496
Other current assets	11,89,35,026
	<b>262,71,23,550</b>
<b>Total</b>	<b>303,14,59,101</b>

A copy of the Balance Sheet as at 31<sup>st</sup> March, 2016 along with provisional financial statements as on 31 March 2017.

### 3. RATIONALE FOR THE PROPOSED SCHEME

- The Transferor Company and the Transferee Company are into similar business that of IT/ ITES services, thereby, amalgamation will expand and increase its presence in the business thereby streamlining of management focus and pruning the operational and administration costs.
- The Transferor Company and the Transferee Company both are 100% owned by their ultimate parent company, FactSet Research Systems Inc., US. A consolidation of the Transferor Company with the

Transferee Company by way of amalgamation would therefore lead to a more efficient utilization of capital and create a stronger base for future growth of the amalgamated entity.

- (c) It is expected that such consolidation of entities will provide operational synergies, which in turn will eliminate inefficiencies and streamline corporate structures and cash flows. A single operating entity would also result in better centralized management and oversight, cost efficiencies and supporting the group's competitive growth.
  - (d) The proposed amalgamation will rationalize and optimize the group legal entity structure to ensure greater alignment of the businesses by reducing the number of legal entities and also reduce statutory compliances.
4. In view of the aforesaid advantages, the Board of Directors of the Transferee Company vide its meeting dated 1<sup>st</sup> day of March, 2017 approved the Scheme of Amalgamation of M/s Portware India Private Limited with M/s. FactSet Systems India Private Limited.
  5. The following are brief terms of the proposed scheme:-
    - (a) The Appointed date for the purpose of this scheme is 01.04.2017.
    - (b) Upon the Scheme becoming effective, all properties and liabilities, etc of Transferor Company with effect from the appointed date, becomes the properties of the Transferee Company by virtue of Amalgamation.
    - (c) After the appointed date, any proceedings taken against the Transferor Company, the same shall be defended by and at the cost of Transferee Company.
    - (d) Upon the Scheme becoming effective, all staff, workmen and employees of the Transferor Company in



service as at the end of the Transition period shall be deemed to have become staff, workmen and employees of the Transferee Company on such date, without any break or interruption in their service, and the terms and conditions of their employment with the Transferee Company not less favourable than those subsisting with reference to the Transferor Company as on the said date.

- (e) Upon the coming into effect of this Scheme and in consideration the transfer and vesting of the Transferor Company into the Transferee Company, pursuant to the Scheme, the Transferee Company shall without any further application, act, instrument or deed, issue and allot Equity Shares ('New Equity Shares') to the members of the Transferor Company whose names appear in the register of members of the Transferor Company as on the Record Date in the following manner.

"for every 2,174 (Two Thousand one hundred and seventy four) fully paid up equity shares of the Transferor Company having face value of Rs. 10 each and held by the members of the Transferor Company as on record date, 1 (one) Equity shares of the Transferee Company having a face value of Rs. 10 each, credited as fully paid up shall be issued to the members of the Transferor Company.

- (f) The Transferee Company shall record the assets and liabilities of the Transferor Company transferred to Transferee Company pursuant to this Scheme at their respective book values thereof as appearing in the books of account of the Transferor Company, on the close of business on 31.03.2017 and account for the amalgamation of the Transferor Company pursuant to







the Scheme in accordance with the "Pooling of interest method" as prescribed under the Accounting Standard 14 notified by the Companies (Accounting Standards) Rules, 2006 read with General Circular 15/2013 dated 13.09.2013 of the MCA in respect of Section 133 of the Companies Act, 2013. In case of any difference in accounting Policy between either of the Transferor Company and the Transferee Company, the impact of the same till the Appointed Date will be quantified and adjusted in the accumulated balance of Profit and Loss statement of the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policy. The difference between the net assets (assets less liabilities) and reserves of the Transfer Company transferred to the Transferee Company, after making the adjustments as mentioned above, shall be adjusted in the reserves and surplus.

- (g) On the Scheme becoming effective, the Transferor Companies shall stand dissolved, without going through the process of winding up.
6. No investigation or proceedings have been instituted or pending against the Applicant/Transferor Company and Transferee Company.
7. There are only 2 (two) Shareholders in the Applicant/Transferor Company as per details given below:-

S.No.	Name of Equity Shareholder	Total paid up value	% of share-holding
1	Portware LLC	58,92,060	99.99%
2	Portware International LLC	10	0.01%
	Total Equity Shares	58,92,070	100%

Mr. Maurizio Nicoletti, Director for both the above companies has given consent to the proposed scheme of Amalgamation by means of affidavits dated 01.06.2017. It is further submitted that there are no secured creditors. However, there are Unsecured/Trade creditors in the Applicant / Transferor Company to the value of Rs. 10,71,791.54. All have given their consent by way of affidavits.

8. It is further submitted that a similar application is being filed by the Transferor Company seeking dispensation of the meeting of Equity Shareholders and Unsecured Creditors before the Tribunal.
9. The case was listed for hearing on 12.09.2017, 16.10.2017 and 03.11.2017.
10. Heard Shri V.B. Raju, Learned Counsel for the Applicant Company. As per the directions of the Tribunal on 12.09.2017, the Learned Counsel for the Applicant Company issued notice to the Regional Director, Registrar of Companies, Official Liquidator and Income Tax Department vide letters dated 13.09.2017.
11. We have considered pleadings of the Learned Counsel for the Applicant Company and all the material papers in support of the application and satisfied that the Company is stated to be following all provisions of Company Act, 2013, and rules made there under and the scheme in question prima facie satisfies fundamental requirements for its sanction, however subject to approval of its shareholders, secured/unsecured creditors, all stake holders and finally NCLT. Therefore, the Company is entitled for dispensation of meeting of its Shareholders as they have already given their consent by way of sworn affidavits.



12. In the result, the Company Application bearing CA (CAA) No.80/230/HDB/2017, is disposed of with the following directions:-

(a) Hereby dispensed with conducting of the meeting of the Equity Shareholders and Unsecured Creditors of the Applicant Company / Transferee Company.



Sd/-

RAVIKUMAR DURAISAMY  
MEMBER (TECHNICAL)

Sd/-

RAJESWARA RAO VITTANALA  
MEMBER (JUDICIAL)

  
Dy. Regr./Asst. Regr./Court Officer/  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रतिलिपि  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER...CALCAND/No.80/230/HDB/2017  
निर्णय का तारीख  
DATE OF JUDGEMENT...3...11.2017  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON...14.12.2017