

**THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH,  
AT NEW DELHI**

**COMPANY PETITION NO. CA (CAA)-06 (PB) / 2019  
CONNECTED WITH  
CA (CAA) 36/230 (HBD)/2019**

Under Section 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the matter of

Scheme of Amalgamation

of

Rean Cloud India Private Limited ....Transferor Company

WITH

Hitachi Vantra India Private Limited .....Transferee Company

***Judgment delivered on: 10.05.2019***

**CORAM:**

**CHIEF JUSTICE (Rtd.) M.M. KUMAR, HON'BLE PRESIDENT**

**S. K. MOHAPATRA, HON'BLE MEMBER (T)**

For Applicants: Mr. Sanjeev Puri, Sr. Advocate, Ms. Vatsala Rai, Mr. Varun Lamba, and Mr. Bharat Apte, Advocates



## **ORDER**

**S.K. Mohapatra, Member**

1. The present two applications have been filed by the Transferor and the Transferee Company respectively under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of both the Applicant Companies, for seeking appropriate orders/directions for dispensing with the respective meetings of shareholders, secured creditors and unsecured creditors of the companies, in connection with the proposed Scheme of Amalgamation contemplated between the applicant companies. The said Scheme of Amalgamation (hereinafter referred to as the "Scheme") has been placed on record.

**2.** It is pertinent to mention here that CA (CAA) 36/230 (HDB)/ 2019 was initially filed by the transferor company before Hyderabad Bench of NCLT, as the registered office of the transferor company is situated at Hyderabad. Subsequently, on application of the transferor company the CA (CAA) 36/230 (HDB)/ 2019 was transferred to this Bench vide order dated 31.01.2019 passed by this Bench. Additionally, since the selfsame Scheme is involved in both the applications, it was also directed that CA (CAA) 36/230 (HDB)/ 2019 shall be heard together with CA (CAA) 06 (PB)/2019. Accordingly, the present common order is passed in both the applications.

**3.** M/s Rean Cloud India Private Limited, (applicant in CA (CAA) 36/230/(HDB)/ 2019/ transferor company) was incorporated on 19.01.2014 under the provisions of the Companies Act, 1956. The present Authorized Share Capital of the Transferor Company no.1 is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of



the Company is Rs. 77,11,660/- divided into 7,71,166 Equity Shares of Rs. 10 each. The registered office of the Transferor Company is situated at 3<sup>rd</sup> Floor, Melange Towers, Unit No. 3B Madhapur Village, Serilingapally Mandal, Hyderabad, Telangana-500081.

4. It is submitted that the Transferor Company has two Equity Shareholders and both the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of both the members have been placed on record. It is further represented that the transferor company has no secured creditor and two unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the transferor company has no secured creditor, the requirement of convening of the meeting of secured creditors does not arise. Both the unsecured creditors have given their consent affidavits in favour of the Scheme. In relation to the shareholders and



unsecured creditors, the transferor company seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and unsecured creditors of the transferor company have given consent affidavits in favour of the Scheme.

5. M/s Hitachi Vantra India Private Limited (Applicant Company in CA (CAA)-06 (PB) /2019/Transferee Company) was incorporated on 23.01.2018 as a private limited company. The present Authorized Share Capital of the Transferee Company is Rs. 5,00,000/- divided into 50,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and paid-up Share Capital of the Company is Rs.5,00,000/- divided into 50,000 Equity Shares of Rs. 10/- each. The registered office of the Transferee Company is situated at Unit No. 6A, and Unit No.7, 12<sup>th</sup> Floor, Eros Corporate Towers, Nehru Place, New Delhi-110019.
6. It is submitted that the Transferee Company has two Equity Shareholders and both the equity shareholders of the company have given their consent affidavits to the



Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the Transferee Company has no secured creditor and nine unsecured creditors. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since the Transferee Company has no secured creditor, the requirement of convening of the meeting of secured creditors does not arise. Six unsecured creditors out of nine unsecured creditors of the transferee company have given their consent affidavits in favour of the Scheme constituting 98.88% in value of the unsecured debt of transferee company. In respect of equity shareholders and unsecured creditors, the transferee company seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and unsecured creditors holding 98.88% in value of the unsecured debt of the company have given consent affidavits in favour of the Scheme.



7. It is pertinent to state here that under Section 230 (9) of the Companies Act, 2013 the requirement of convening of meeting of the creditors can be dispensed with only if creditors having atleast 90% in value have given their consent affidavits in favour of the Scheme. In the present case since unsecured creditors with more than 90% in value have given their consent affidavits in favour of the Scheme in compliance of sub-section 9 of Section 230 of the Companies Act, 2013; the requirement of convening the meeting of unsecured creditors can be dispensed with.
8. We have perused the joint application and the connected documents / papers filed herewith including the Scheme of Amalgamation contemplated between the Applicant companies.
9. It is seen that the board of directors of both the applicant companies vide separate meetings, held on 06.12.2018 respectively have unanimously approved the proposed Scheme of Amalgamation. Copies of such board



resolutions passed thereat have been placed on record by the applicant companies.

**10.** Both the applicant companies have filed their respective Memorandum and Articles of Associations. The applicants have also filed their respective un-audited financial statements for the period ending 31.12.2018.

**11.** It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013, and the same if sanctioned by this Tribunal the appointed date as provided in the Scheme shall be 23.10.2018.

**12.** Both the companies have submitted that no investigation proceeding has been instituted nor pending under Sections 210-226 of the Companies Act, 2013 or under Sections 235-251 of the Companies Act, 1956 against applicant companies.

**13.** Further, it has been stated in the applications that the Scheme will be beneficial to both the applicant companies





and their respective shareholders, employees, creditors and other stake holders.

**14.** The certificates of statutory auditors of both the applicant companies have been placed on record confirming that the accounting treatment in the scheme is in conformity with the Accounting Standard notified by the Central Government under Section 2(2) and Section 133 of the Companies Act, 2013.

**15.** Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued: -

**A. In relation to the Transferor Company:**

- *The meeting of Equity Shareholders is dispensed with as there are only 2 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- *The meeting of secured creditors is also dispensed with because there is no secured*



*creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*

- *The meeting of unsecured creditors is also dispensed with because there are only 2 unsecured creditors in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*

**B. In relation to the Transferee Company: -**

- *The meeting of Equity Shareholders is dispensed with as there are only 2 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- *The meeting of secured creditors is also dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*



- *The meeting of unsecured creditors is dispensed with because there are 9 unsecured creditors in the company out of which 6 unsecured creditors constituting 98.88% in value have given their consent affidavits in favour of the Scheme.*

**16.** In view of the above both the applications stand allowed by dispensing with the meetings of shareholders and creditors of both the applicant companies.

**17.** The applicants are directed to serve notice of the proposed Scheme on the Regional Director (both for Northern Region and Southern Region), Registrar of Companies (NCT of Delhi & Haryana), Registrar of Companies of Andhra Pradesh & Telangana; the Official Liquidator (High Court for the State of Telangana) and the office of the Income Tax Department, Income Tax Officer, Ward-7(4), Central Revenue Building, IP Estate, New Delhi, and Office of the Income Tax Department, Income Tax



Officer, Additional Commissioner of Income Tax, Special Range-4, Central Revenue Building, IP Estate, New Delhi-110 002 and office of the Income Tax Department at Signature Towers, Gachibowli - Miyapur Rd, Kondapur, Hyderabad, Telangana 500084. The notices to Income Tax authorities shall disclose sufficient details like PAN card numbers, ward numbers and assessing officers so that proper reply may be filed.

Let copy of the order be served to the parties.

  
10.05.2019  
**(M.M. KUMAR)**  
**PRESIDENT**

  
**(S. K. MOHAPATRA)**  
**MEMBER (T)**

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