

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CA (CAA)/71/MB-IV/2024

*In the matter of the Companies
Act, 2013;*

AND

In the matter of

*Sections 230 to Section 232 of the
Companies Act, 2013 and other
applicable provisions of the
Companies Act, 2013*

read with Companies

*(Compromises, Arrangements and
Amalgamation) Rules, 2016;*

AND

*In the matter of
The Scheme of Amalgamation
of*

***Nomura Fin Services (India)
Private Limited***

("Transferor Company")

and

***Nomura Services India Private
Limited***

("Transferee Company")

*And their respective
Shareholders and Creditors.*

Nomura Fin Services (India)
Private Limited

[CIN: U74920MH2006FTC160872] ... First Applicant Company/

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Nomura Services India
Private Limited ... Second Applicant Company/
[CIN: U72200MH2004PTC147813]

Order delivered on **02.07.2024**

Coram:

Smt. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances :

For the Applicant(s) : Ms. Shruti Kelji-Pednekar,
Advocate.

ORDER

1. Heard Ld. Counsel for the Applicant Companies.
2. The Counsel for the Applicant Companies state that the present Scheme is Scheme of Amalgamation of Nomura Fin Services (India) Private Limited (Transferor Company) with Nomura Services India Private Limited (Transferee Company) and their respective shareholders.
3. The Counsel for the Applicant Companies submit that the Applicant Company No.1 is non-operational company and the Applicant Company No. 2 is engaged in the business of information technology enabled services and software development services affiliates of the company in India and abroad.
4. Ld. Counsel for the Applicant further stated that both Applicant Companies are situated in Mumbai. The Applicant Companies are group companies.

5. The Learned Counsel further submits that **Board of Directors** of the Applicant Companies have approved the Scheme with Appointed Date as Effective Date **vide Board Resolution dated 23rd February, 2024**. The Appointed Date is **1st April, 2024**.
6. The **Rationale** of the scheme is as under:
 - a. The Transferor and Transferee Companies are controlled by same group. In order to make the group structure leaner and to ensure that the business operations are more efficient, it is proposed to Amalgamate the Transferor Company with the Transferee Company.
 - b. Consolidation of the Transferor Company and Transferee Company by way of Amalgamation would lead to a more efficient utilization of resources and create a stronger base for future growth of Amalgamated entity.
 - c. Cost savings are expected to flow from more focused operational efforts, rationalization and standardization of administrative expenses.
 - d. In view of the reasons above, the rights of the creditors will remain unaffected by the Amalgamation.
7. Ld. Counsel for the Applicant Companies state that the Share Exchange Ratio of the Applicant Companies is as follows:

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“1 (One only) Equity share(s) of the Transferee Company of Rs.10/- each fully paid up for every 4,99,999 (four lakhs ninety-nine thousand nine hundred ninety-nine only) equity share(s) held in Transferor Company of Rs.10/- each fully paid up.”

8. The Capital structure and financial position of the Applicant Company No. 1 as on 31st December, 2023 is as under:

Particulars	Amount (INR)
Authorized Share Capital	
22,50,000 equity shares of Rs.10 each	2,25,00,000
Total	2,25,00,000
Issued, subscribed and fully Paid up share capital	
4,99,999 equity shares of Rs.10 each fully paid up	49,99,990
Total	49,99,990

9. The Capital structure and financial position of the Applicant Company No. 2 as on 31st December, 2023 is as under:

Particulars	Amount (INR)
Authorized Share Capital	
11,00,00,000 Equity Shares of Rs.10/- each	1,10,00,00,000
Total	1,10,00,00,000
Issued, Subscribed and Fully Paid-Up Share Capital	
8,95,28,647 Equity Shares of Rs.10/- each fully paid up	89,52,86,470
Total	89,52,86,470

10. Ld. Counsel for the Applicant submits that there are **2 (Two) common Equity Shareholders** in both the Applicant

Companies and both the Equity Shareholders have given their consent affidavits. Accordingly, the meeting of the Equity Shareholders of the **Applicant Company No. 1 and 2 is dispensed with** in view of the consent affidavits given by the Equity Shareholders.

11. Ld. Counsel for the Applicant Companies submit that there are **NIL Secured Creditors** in the **Applicant Companies**. The Applicant Companies have given certificates issued by M/s. Kiran Mehta & Co., Chartered Accountants, having firm registration no. 105188W, to that effect, which are annexed to the Company Scheme Application. Therefore, convening and holding meeting of Secured Creditors does not arise of the Applicant Companies.
12. Ld. Counsel for the Applicant submits that there is **1 (ONE) Unsecured Creditor** in the **Applicant Company No. 1** amounting to Rs.6,16,72,953/- (Rupees Six Crores Sixteen Lakhs Seventy-Two Thousand Nine Hundred Fifty-Three Only) who has given its consent affidavit which is annexed to the Company Scheme Application. Accordingly, the meeting of the Unsecured Creditor of the **Applicant Company No.1 is dispensed with** in view of the consent given by its sole Unsecured Creditor.
13. Ld. Counsel for the Applicant submits that there are **42 (Forty-Two) Unsecured Creditors** in the **Applicant Company No. 2** amounting to Rs.43,04,60,695/- (Rupees Forty-Three Crore Four Lakhs Sixty Thousand Six Hundred Ninety Five Only), out of the same, **12 (Twelve) Unsecured**

Creditors amounting to Rs. 39,67,94,873/- (Rupees Thirty Nine Crores Sixty Seven Lacs Ninety Four Thousand and Eight Hundred Seventy Three Only) i.e. **92.18%** of the total outstanding amount have given their consent affidavits which are annexed to the Company Scheme Application and to the Additional affidavit dated 16th April, 2024. In view of the above, the Applicant Company No. 2 has obtained consent affidavits from 92.18%, which is more than 90%, of the total outstanding debt which is in the compliance with the Section 230(9) of the Companies Act, 2013. The Applicant further undertakes that they will served the **notice to remaining Unsecured Creditors**. Therefore, the necessity of convening and holding of the meeting of the Unsecured Creditors of the **Applicant Company No. 2 is hereby dispensed with.**

14. The Applicant Companies are directed to serve notices along with a copy of the Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, upon the –
- i. Central Government through Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai;
 - ii. Registrar of Companies, Mumbai;
 - iii. Income Tax Authority within whose jurisdiction the Applicant Companies assessments are made, clearly indicating the PAN of the Company concerned Applicant Company No. 1 (PAN: AABCL1776G) and Applicant

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Company No. 2 (PAN: AABCL0053C); and The Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e., Pr. CCIT, Mumbai and Pr. CCIT, Pune;

- iv. Goods and Service Tax (GST) within whose jurisdiction the Applicant Companies' GSIN is registered, clearly indicating the GSTIN of the Company concerned, Applicant Company No. 1 (GSTIN: 27AABCL1776G1ZH) and Applicant Company No. 2 (GSTIN: 27AABCL0053C1Z5);
 - v. Ministry of Corporate Affairs; and
 - vi. Any other Sectoral/ Regulatory Authorities relevant to the Applicant Companies or their business.
15. The Transferor Company is also directed to serve the copy of the Scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. The Notice shall be served through by Registered Post-AD/Speed Post and through email along with copy of scheme and state that *"If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme"*. It is clarified that notice service through courier

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shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the notice.

17. The Applicant Companies will submit –

- i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;
- ii. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme;
- iii. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.

18. The Applicant Companies to file Affidavits of Service, with the Registry proving service upon the regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

19. With above direction, the present Company Application is **allowed** and disposed of.

Sd/-
Anu Jagmohan Singh
Member (Technical)

/Dubey/

Sd/-
Kishore Vemulapalli
Member (Judicial)