

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

19. C.A.(CAA)/84(MB)2024

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 08.07.2024**

NAME OF THE PARTIES:- Arcalis Technologies Private Limited

Section: 230(1) of Companies Act, 2013

ORDER

C.A.(CAA)84(MB)2024

For the Petitioner (VC) : Adv. Shyam Kapadia a/w Aaysh Gandhi and
Gaurang Samel

Heard, Counsel for the Applicant for a considerable time. Detail order will follow vide
separate sheet.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

ANKIT

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI – COURT-II

COMPANY SCHEME APPLICATION NO.84 OF 2024

In the matter of Section 230 to 232
read with Section 66 of the
Companies Act, 2013

And

In the matter of Scheme of
Arrangement and Amalgamation
between Arcalis Technologies
Private Limited (Transferor)

And

Nihilent Limited (Transferee)
and their respective shareholders

Arcalis Technologies Private Limited

[CIN: U72900PN2023PTC217747] ... Applicant No.1/
Transferor

Nihilent Limited

[CIN: U72900PN2000PLC014934] ... Applicant No.2/
Transferee

Order delivered on 08.07.2024

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearances:

For the Applicant Companies : Mr. Shyam Kapadia, Counsel a/w
Aayesh Gandhi and Mr. Gaurang Samel i/b Wadia Ghandy & Co.

ORDER

Per: Coram

1. The Learned Counsel for the Applicants states that the present Scheme is a Composite Scheme of amalgamation and reduction of capital between Arcalis Technologies Private Limited (“**Transferor Company**”) and Nihilent Limited (“**Transferee Company**”) and their respective shareholders under the provisions of Sections 230 to 232 read with Section 66 of the Companies Act, 2013 (“**Scheme**”).
2. The Learned Counsel for the Applicants states that resolutions approving the Scheme were passed by the Board of Directors of the Transferor Company and the Transferee Company at their respective meetings held on March 4, 2024. The Appointed Date fixed under the Scheme is April 1, 2024.
3. The Learned Counsel for the Applicants states and submits that the main business of Transferor Company is to carry *inter alia* the business of software development, ITES, Data analytics, modelling,

mining and management consultancy. As regards Transferee Company, the main business is rendering software services, business consulting in the area of enterprise transformation and change management and providing related information technology services.

4. The Learned Counsel for the Applicants submits that the restructuring, consolidation and streamlining pursuant to this Scheme shall achieve the following key objectives/ benefits:
 - a. Streamlining operations, efforts, employees, costs and enable better and more efficient management, control and day to day operations and reducing overheads, administrative, and other expenditure and achieving operational rationalization, organizational efficiency and optimal utilization of resources which will be in the interest of shareholders, employees, creditors and other stakeholders, post the implementation of the Scheme.
 - b. Consolidating the Transferor and the Transferee (a subsidiary of the Transferor) and as a result of such consolidation reducing the layer of entities, post the implementation of the Scheme.
 - c. Eliminating multiple accounting, multiple compliances and multiple auditing, i.e. at the level of both the Transferor Company and the Transferee Company, resulting in reduction of costs, post the implementation of the Scheme;

- d. Pooling in administrative synergies and know-how of Transferor Company within and into Transferee Company, post the implementation of the Scheme;
 - e. Attracting and facilitating investors, strategic partners and other stakeholders who may be interested in investing in the consolidated business as a whole and overall offering a better investment opportunity to potential investors resulting in a greater market for Transferee Company, post the implementation of the Scheme;
 - f. Simplifying the decision making in respect of the Transferor Company and the Transferee Company at one consolidated level, post the implementation of the Scheme.
5. The Learned Counsel for the Applicants states and submits that the authorised, issued, subscribed and paid-up share capital of the Applicant companies, as on December 31, 2023, are as under: -

a. **Transferor Company:**

| Particulars | Amount in INR |
|---|----------------------|
| <u>Authorised share capital</u> 50,000 equity shares of INR 10 each | 5,00,000 |
| TOTAL | 5,00,000 |
| <u>Subscribed and fully paid-up share capital</u> | 10,000 |

| | |
|-------------------------------------|---------------|
| 1,000 equity shares of INR 10 each; | |
| TOTAL | 10,000 |

b. Transferee Company:

| Particulars | Amount in INR |
|--|----------------------|
| <u>Authorised share capital</u> 73,000,000 equity shares of INR 10 each | 7,30,000,000 |
| TOTAL | 7,30,000,000 |
| <u>Subscribed and fully paid-up share capital</u> 19,965,800 equity shares of INR 10 each | 199,658,000/- |
| TOTAL | 199,658,000/- |

6. The Learned Counsel for the Applicants submits that there are 2 (two) Equity Shareholders of Transferor Company. All 2 (two) Equity Shareholders have provided Consent Affidavits, respectively, confirming that they have no objection if the Scheme is sanctioned by this Tribunal. The Consent Affidavits of the Equity Shareholders of the Transferor Company have been annexed to the Company Scheme Application as *Exhibit U Colly*. The Learned Counsel, therefore, submits that the meetings of the Equity Shareholders of the Transferor Company be dispensed with in view of the fact that all equity shareholders of the Transferor Company have given their consent for the said Scheme.

Accordingly, the meeting of the Equity Shareholders of the Transferor Company is dispensed with.

7. The Learned Counsel for the Applicants submits that there are 65 (sixty-five) equity shareholders of Transferee Company. The equity shareholders holding more than 90% of the shares in the Transferee Company have provided their Consent Affidavits confirming that they have no objection if the Scheme is sanctioned by this Tribunal. The Consent Affidavits of such Equity Shareholders of the Transferee Company have been annexed to the Company Scheme Application as *Exhibit BB Colly*. The Learned Counsel, therefore, submits that the meetings of the Equity Shareholders of the Transferee Company be dispensed with in view of the fact that the majority equity shareholders of the Transferee Company have given their consent for the said Scheme. Accordingly, the meeting of the Equity Shareholders of the Transferee Company is dispensed with.
8. The Learned Counsel for the Applicants submits that there are no preference shareholders, as on March 12, 2024, of both, the Transferor Company and the Transferee Company.
9. The Learned Counsel for the Applicants submit that there is no compromise or arrangement with any creditors and no sacrifice of any amounts due to the creditors is called for. The creditors will be paid off in due course. Thus, the rights of the creditors will not be prejudicially affected by the Scheme.

10. The Learned Counsel for the Applicants submits that there are 2 (two) secured creditors of the Transferor Company and the aggregate amount due and payable to such secured creditors is in the sum of INR 3,347,797,765/- as on March 12, 2024. A debenture trustee, acting as a trustee on behalf of the said two [2] secured creditors, has provided a Consent Affidavit confirming that the secured creditors have no objection if the Scheme is sanctioned by this Hon'ble Tribunal. The Consent Affidavit of the secured creditors of the Transferor Company has been annexed to the Company Scheme Application as *Exhibit X*. The Learned Counsel, therefore, submits that the meetings of the secured creditors of the Transferor Company be dispensed with in view of the fact that 100% of the secured creditors of the Transferor Company have given their consent for the said amalgamation. Accordingly, the meeting of the secured creditors of the Transferor Company is hereby dispensed with.
11. The Learned Counsel for the Applicants submits that there are no secured creditors, as on March 12, 2024, of the Transferee Company. The question of convening the meeting of the secured creditors of the Transferee Company does not arise.
12. The Learned Counsel for the Applicants submits that there are no unsecured creditors of Transferor Company, as on March 12, 2024. The question of convening the meeting of the unsecured creditors of the Transferor Company does not arise.
13. The Learned Counsel for the Applicants submits that there are 14 (fourteen) unsecured creditors of Transferee Company. The Learned

Counsel for the Applicants further submits that the Scheme does not involve any compromise or arrangement with the creditors and that the rights of the creditors of the Transferee Company are not affected by the Scheme, and there will be no reduction in their claims on account of the Scheme. The 6 unsecured creditors, having dues for an amount aggregating to INR 1,44,09,062, i.e. 92.93%, in value, of the total unsecured creditors have provided their Consent Affidavits confirming that they have no objection if the Scheme is sanctioned by this Hon'ble Tribunal. The Consent Affidavits of the unsecured creditors of the Transferee Company have been annexed to the Company Scheme Application as *Exhibit FF Colly*. The Learned Counsel, therefore, submits that the meetings of the unsecured creditors of the Transferee Company be dispensed with in view of the fact that more than 90% of the unsecured creditors of the Transferee Company have given their consent for the said amalgamation. Accordingly, the meeting of the unsecured creditors of the Transferee Company is hereby dispensed with.

14. The Learned Counsel for the Applicants further submits that there are 2 (two) Debenture Holders of the Transferor Company. The Debenture Trustee, for and behalf of the Debenture Holders, has given a Consent Affidavit stating *inter alia* that the Debenture Holders have no objection if the Scheme is sanctioned by this Hon'ble Tribunal and that the meeting is dispensed with. The Consent Affidavit of the Debenture Holders of the Transferor Company has been annexed to the Company Scheme Application as *Exhibit X*. Accordingly, the meeting of the debenture holders of the Transferor Company is hereby dispensed with.

15. The Learned Counsel for the Applicants submits that there no Debenture Holders of the Transferee Company.
16. The Applicant Companies are directed to serve notices by Registered - AD/ Speed Post & Hand Delivery, also by E-mail (whose mail-Ids are available with the Applicant Companies) along with copy of Scheme upon:
 - a. Central Government through the office of Regional Director, Western region, Mumbai,
 - b. Registrar of Companies,
 - c. Income Tax Authorities within whose jurisdiction the said Applicant Companies assessments are made, viz. Circle 1(1), Pune for the Transferor Company and Circle 2, Pune for Transferee Company,
 - d. Office of the Principal Chief Commissioner (CGST & Central Excise), Mumbai Zone, under the Central Board of Indirect Taxes & Customs (CBIC).with an intimation that they may submit their representations, if any, and if no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The Transferor Company is directed to serve notice by Registered - AD/Speed Post and Hand Delivery upon the Official Liquidator, High Court, Bombay at Mumbai pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Applicant Companies shall host notices along with the copy of the Scheme on their respective websites, if any.
19. The Applicant Companies to file a joint affidavit of service within 10 working days after serving the notices to all the regulatory authorities as stated above and to report this Tribunal that the directions regarding the issue of notices have been duly complied with.
20. With the above directions, the present Application CA(CAA)/84(MB)/2024 is **allowed**.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)