

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V

COMPANY PETITION NO. (CAA)-98/230/232/ND/2022
CONNECTED WITH
COMPANY APPLICATION NO. (CAA)-133(ND)/2021

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

IN THE MATTER OF SCHEME OF AMALGAMATION:

AMONGST

1. M/s SCANBEE TECHNOLOGIES PRIVATE LIMITED

Having registered office at: 36, 2nd Floor, Gola Market,
Daryaganj, near Golcha Cinema, New Delhi-110002
CIN: U74999DL2016PTC302259
Represented by: Mrs. Shalini Panhotra

Applicant No. 1 /Transferor Company

2. M/s MPOWER SOFTCOMM PRIVATE LIMITED

Having registered office at: S-1, S/F Manish Global
Mall, LSC-1 Sector-22, Dwarka, Near Mount Karmel
School, New Delhi 110077
CIN: U72200DL2006PTC144799
Represented by: Mrs. Shalini Panhotra

Applicant No. 2/Transferee Company

Order Delivered on: 07.02.2024

CORAM

SHRI MAHENDRA KHANDELWAL, HON'BLE (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

C.P.(CAA)/98/ND/2022
With
C.A.(CAA)/133/ND/2021
Order Delivered On: 07.02.2024

PRESENT

For the Applicant : Mr. Akshay Kumar, Adv.
For the Respondent :
For the RD : Ms. Niharika Tanwar, Adv.
For the OL : Ms. Tanuja Rawat Adv.
For I.T Department : Mr. Shailendra Singh, Ms. Anuja Pethia,
Ms. Dacchita Shahi, St. Counsels with
Mr. Rishabh Jain, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

- 1) This joint Petition is preferred by the Applicant-1 Company and Applicant-2 Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for approval of the Scheme of Amalgamations in the nature of amalgamation (hereinafter referred to as the '**Scheme**' for brevity), as contemplated between the Companies, its Shareholders and Creditors. The Applicant has primarily made the following prayers:-
- i. Fix date of hearing of this Application and direct publication of notice of hearing in English and vernacular newspapers.
 - ii. Direct service of notice of this Application on RD, ROC, OL and IT Department and permit Applicant Companies to affect such service in terms of section 230(5) read with Rule 8 and 16 of the Companies (Compromises, Arrangements and Amalgamations) Rule 2016;

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- iii.** Direct RD, ROC, OL and IT Department to file their report(s)/ affidavit(s) in respect of Applicant Companies and Scheme with this Hon'ble Tribunal at the earliest;
 - iv.** That Scheme as annexed as Annexure-A with the instant Petition, may kindly be sanctioned by this Tribunal, with or without modification(s), so as to be binding on said Applicant Companies and their respective shareholders and creditors of Applicant Companies and all;
 - v.** That Transferor Company shall stand dissolved, without following the process of winding up/liquidation, on filing a certified copy of the order of this Hon'ble Tribunal with the ROC; and/or
 - vi.** Pass such and further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- 2)** Further, the copy of the Scheme has been placed on record. Details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs:-

- I.** M/s SCANBEE TECHNOLOGIES PRIVATE LIMITED having CIN U74999DL2016PTC302259 (hereinafter referred to as "Petitioner No. 1 or Transferor Company") is a private limited company incorporated on 29.06.2016 under the provisions of the Companies Act, 2013. The registered office of the Transferor is 36, 2nd Floor, Gola Market, Daryaganj, Near Golcha Cinema,

New Delhi 110002. The Authorized Share Capital of the Transferor Company as on 31.03.2020 is Rs. 1,00,000/- divided into Rs. 10,000/- Equity Shares of face value of Rs. 10/- each. The issued, subscribed and paid-up share capital of the Transferor Company as on 31.03.2021 is Rs. 1,00,000/- divided into Rs. 10,000/- Equity Shares of face value of Rs. 10/- each.

II. MPOWER SOFTCOMM PRIVATE LIMITED having CIN U21012DL1990PLC231573, (hereinafter referred to as "Petitioner No.2/ Transferee Company") is a company incorporated under the Companies Act, 1956 on 13.01.2006. It has its Registered Office at S-1, S/F, Manish Global Mall, LSC-1, Sector-22, Dwarka, Near Mount Karmel School, New Delhi-110077. The Authorized Share Capital of the Transferee Company as on 31.03.2021 is Rs. 50,00,000/- divided into Rs. 50,00,000/- Equity Shares of face value of Rs. 1/- each and Rs.4,50,00,000/- divided into Rs. 4,50,000 redeemable preference share of face value of Rs. 100/- each. The total amount of the Authorized Share Capital of the Transferee Company is 5,00,00,000/-. The issued, subscribed and paid-up share capital of the Transferee Company as on 31.03.2021 is Rs. 1,62,870/- divided into Rs. 1,62,870/- Equity

Shares of face value of Rs. 1/- each and Rs. 4,41,36,400/- divided into Rs. 4,41,364 redeemable preference share of face value of Rs. 100/- each. The total amount of issued, subscribed and paid-up share capital of the Transferee Company is 4,42,99,270/-.

III. The Transferee company and the Transferor Company together are called '**Petitioner Companies**' hereinafter. The Registered offices of all the Companies being in Delhi, the territorial jurisdiction lies with this Tribunal.

- 3)** The petitioner has further submitted that the "Appointed date" as fixed for the proposed scheme of Amalgamation is 01.04.2020 or such other date(s) as may be approved by this Adjudicating Authority.
- 4)** From the case records, it is seen that the First Motion Application seeking directions for convening/dispensing the meeting of Shareholders, Secured Creditors and Unsecured Creditors was filed before this Tribunal in C.A.(CAA)- 98/ND/2022 under Sections 230-232 of the Companies Act, 2013 and vide order dated 05.05.2020, directions were issued by this Tribunal to dispense with the requirement of the meeting of equity shareholders and secured Creditors and unsecured creditors of the Petitioner Companies.

- 5) This Tribunal vide order dated 03.11.2022 directed the petitioner company to issue individual notices to the (i) Central Government through Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) the jurisdictional Income Tax Department, (iii) Registrar of Companies, NCT of Delhi and Haryana, (iv) Official Liquidator, and to such other Objector(s), if any.
- 6) The Petitioner Companies were also directed to carry out publication in the newspapers. It is seen from the records that the petitioners Companies have filed an Affidavit dated 06.01.2023, affirming compliance and disclosing that the applicants have effected publication in "Financial Express" (English, Delhi Edition) as well as "Jansatta" (Hindi, Delhi edition), both dated on 24.12.2022. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department, Registrar of Companies, NCT of Delhi and Haryana, and to the other relevant sectoral regulators.
- 7) Pursuant to the notice, the Regional Director (hereinafter referred to as 'RD') in its report dated 11.04.2023 has made certain observations with regard to the proposed Scheme amongst the Petitioner Companies. In response to the observation made by the RD, the Petitioner Companies have filed reply dated 21.08.2023, wherein the Petitioner Companies gave clarified and undertaken to address the observations made by the 'RD'. The details of the same are summarised below:

Observation	Observation of the Regional Director (RD) vide report dated 11.04.2023	Reply of the Petitioner Companies vide affidavit dated 21.08.2023
1.	<p>The RD submitted that, as per MCA General Circular No. 9/2019 dated 21.08.2019, if the appointed date is significantly ante-dated beyond a Year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. That in this case, the appointed date is 01.04.2020. However, the justification of the same being significantly ante-dated in terms of the above Circular is not clear brought out.</p>	<p>Petitioner Companies replied that the MCA General Circular No. 9/2019 dated 21.08.2019 is a clarification with respect to Section 232(6) of the Companies Act, 2013, which deals with the 'appointed date' and 'effective date' of the amalgamation scheme. For the ease of reference, the relevant text of Section 232(6) is extracted as follows:</p> <p><i>The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to</i></p>

		<p><i>the appointed date.</i></p> <p>Further submitted that the Applicant Companies have mentioned 01.04.2020 as the appointed date in the scheme of amalgamation which the ROC had objected, citing that the appointed date being ante-date beyond a year from the date of filing and also no justification for the same has been provided in the scheme as per MCA General Circular No. 9/2019 dated 21.08.2019.</p> <p>With regard to above mentioned observation, it is submitted that due to deadly Covid-19 pandemic, the proceeding of the matter could not be concluded on time, resulting into a gap of more than one year in</p>
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		<p>appointed date from the date of filing the Scheme of Amalgamation.</p> <p>Further, it is relevant to mention here that both the Transferor Company and Transferee Company are private limited companies, therefore, the issue of hampering public interest does not arise in this case at all. Thus, appointed date should be considered as 01.04.2020 as stated in the Scheme of Amalgamation.</p> <p>It is submitted that without prejudice to the above, the NCLT has the inherent power to change the appointed date as Case it may deem fit and proper in the facts and circumstances of the present case</p>
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2.	<p>RD Submitted that, From the financial statement of the Transferor Company, for the F.Y. 2020-21, it is seen that trade payables due to the Transferee Company have been used to invest for long term in the preference shares of the Transferee Company. With the proposed merger all the transactions will be nullified</p>	<p>The Petitioner Companies admitted that the observation of the RD/ ROC is correct. In simple terms, after proposed amalgamation of the Transferor Company into Transferee Company, the Preference Shares issued by the Transferee Company will be nullified as both the Applicant Companies will be working towards a common goal in order to maximize optimum resources a efficiency in cash management.</p> <p>It is submitted that without prejudice to the above, assuming without admitting, in case if the preference share are to be redeemed before the amalgamation, then also the funds laying</p>
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		<p>with the Transferor Company will have to be transferred to the Transferee Company at the time of amalgamation.</p> <p>Thus, this transaction will only lead to blockage of cash in the hands of the Transferee Company in the interregnum. Therefore, it is better in the present case to amalgamate the Transferor Company with the Transferee Company by nullifying the preference shares issued by the Transferee Company to the Transferor Company,</p>
3.	<p>Further the RD submitted that, as per annexure A to the auditor report on financial statements for the year ending 31.03.2021 of the Transferee Company, there are undisputed statutory amount pertaining to Labour welfare fund</p>	<p>Petitioner Companies replies that at this context, it is respectively submitted that the Transferee Company has no disputed amounts payable in respect of GST, Provident Fund, Employees' State</p>

	<p>amounting Rs. 107,406/- pending more than six month.</p>	<p>Insurance, Income-Tax, Duty of Customs, Cess, and other Statutory dues as on 31 March 2022, as stated the Audited Financial Statements for the year 2021-22. In simple terms, there is no pending statutory payment with regards to Labour Welfare Fund as on 31 March 2022.</p> <p>Further submitted the without prejudice to the above and assuming without admitting, in case any statutory dues are ending against the Transferor Company, then also, there will be no impact upon Scheme of malgamation as Transferee Company will be in existence after the proposed amalgamanon and</p>
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		in terms of the scheme it will be liable to make any such payables which come to the fore after the amalgamation.
4.	RD submitted that, referring to clause 8 of the scheme, the Transferee Company may kindly be directed to the company with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital.	<p>The petitioner companies submitted that Section 232(3)(6) of the Companies Act, 2013 provides the provisions relating to setting off the fee already paid by any Transferor Company on authorized share capital against the fee payable by the Transferee Company on authorized capital subsequent to the amalgamation.</p> <p>Further, under section 232(3)(i) of the Company Act, 2013 there is no requirement of payment of fees on the revised authorized share capital of the Transferee</p>

		<p>Company. Hence, there is no requirement for the payment of fees on the revised authorised share capital of the Transferee Company under Section 232(3) of the Companies Act, 2013.</p> <p>Further, that the fee is only payable on the authorised capital by any Transferee Company, when authorised capital of the company is to be increased [after duly taking set-off under Section 232(2)(1)] for issuing new shares to the Transferor Company. In the present case, it is relevant to mention here that the Authorised Share Capital of the Transferee Company is sufficient [even without taking the benefit of set-off</p>
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		<p>provisions as mentioned under Section 232(3)(0) of the Company Act, 2013] to issue equity shares to the Transferor Company. In simple terms, no fee is payable by the Transferee Company on the authorised share capital after amalgamation.</p>
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- 8)** We have gone through the report submitted by the RD as well as response of the Petitioner Companies with respect to observation in the report. We are of the view that the response of the Petitioner Companies have clarified the observations raised by the RD in its report.
- 9)** Upon the notice, the Income Tax Department has filed its report dated 21.11.2023, wherein no specific objection has been raised against the approval of the Scheme.
- 10)** The Official Liquidator has also filed its report dated 08.05.2023, and through its counsel the Official Liquidator submitted that “they have no objection if the scheme is approved”, and the same was recorded vide order dated 06.12.2023.

- 11)** In this petition, in term of section 230(2) of the Companies Act, 2013 it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.
- 12)** Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamations is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.
- 13)** It is settled law that the share-holders of the Petitioner Companies are the best judges of their interest, being fully conversant with market trends. Therefore, this tribunal is not supposed to look into merit of their commercial decision. It is well settled that while evaluating the scheme, sanction of which is sought under section 230-232 of the Companies Act, 2013, the Tribunal ordinarily will not interfere with the corporate decision of the Petitioner Companies, as approved by their respective shareholders and creditors.

- 14)** Supreme Court in *Miheer H. Mafatial vs Mafatial Industries Ltd JT 1996 (8) 205* while considering the scope of the jurisdiction of the Company Court in respect of matters of sanction of the Scheme of Amalgamation as per the provisions of Section 91 read with Section 393 of the Companies Act, 1956, observed as under:

“It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisor and not appellate.”

- 15)** In view of the law laid down by the Supreme Court, this Tribunal is not suppose to examine the merits/benefits of the commercial wisdom of the decision of the shareholders etc.

- 16)** It has also been affirmed in the Petition that the Scheme is in the interest of all the Petitioner Companies including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon

considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the proposed Scheme.

17) Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions:: -

- (i) The Petitioners shall, however, remain bound to comply with the statutory requirements in accordance with the law.
- (ii) Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.
- (iii) While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

17. This Tribunal further directs with respect to all the Transferor companies and the Transferee company, that:

- (i) The proposed Appointed date of the scheme is 01.04.2020. However, considering the time already elapsed and accounts having already been finalised for Subsequent Financial years this Tribunal

prescribes the Appointed Date as 01.04.2023. Upon the sanction becoming effective from the appointed date as prescribed by this Tribunal i.e, 01.04.2023, the Transferor Companies shall stand dissolved without undergoing the process of winding up.

- (ii) All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- (iii) All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (iv) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the

Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

- (v) All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.
- (vi) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

18. Further, the Petitioner Companies shall within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

19. In compliance with the requirement of Section 232 (7) of the Act, the transferee company shall until the full implementation of the Scheme of Arrangement shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in

the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

20. The petition stands disposed of in the above terms.

Let copy of the order be served to the parties.

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)**

Sd/-

**(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)**