

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

C.P. (CAA) NO. 88/(ND)2022
IN
C.A. (CAA) NO. 9/ND/2022

Under Sections 230 to 232 of the Companies Act, 2013 read with Companies (Compromise, Arrangements ad Amalgamation Rules, 2016)

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

ACL Mobile Private Limited
... Transferor Company No. 1/Petitioner Company No.1

AND

ACL Technologies Private Limited
...Transferor Company No. 2/Petitioner Company No.2

AND

Sinch Cloud Communication Services India Private Limited
...Transferee Company/Non-Petitioner Company

Hereinafter the Transferor Company No.1/Petitioner Company No. 1 and Transferor Company No. 2/ Petitioner Company No. 2 are collectively referred to as 'the Transferor Companies/Petitioner Companies')

Order Delivered on: 25.04.2024

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)

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

PRESENT:

For the Applicant : Mr. Tine Abraham, Ms. Shivani Rawat,
Mr. Shashwat Sharma, Mr. Pallav P. Verma,
Mr. Shourya Bari, Advs.

For the RD : Ms. Shankari Mishra, Ms. Jyoti Khurana, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This second motion petition has been jointly filed by the petitioner companies herein namely M/s ACL Mobile Private Limited (Petitioner Company No. 1/Transferor Company No. 1) and M/s ACL Technologies Private Limited (Petitioner Company No. 2/Transferor Company No. 2) under section 230-232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016, (“Rules”) and the National Company Law Tribunal Rules, 2016, in relation to the Scheme of Amalgamation (hereinafter referred to as the “SCHEME”) proposed between M/s ACL Mobile Private Limited (Petitioner Company No. 1/Transferor Company No. 1) and M/s ACL Technologies Private Limited (Petitioner Company No. 2/Transferor Company No. 2) with M/s Sinch Cloud Communication Services India Private Limited (Non-Petitioner/Transferee Company) for the purpose of the sanction of the proposed Scheme of Amalgamation of the Transferor Companies with Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the (“Scheme”), has been placed on record.
2. The Petitioner Company No. 1/Transferor Company No. 1 i.e., M/s ACL Mobile Private Limited was incorporated under the provisions of Companies Act, 1956 on 28.04.2000 vide CIN: U0000DL2000PTC105516 having its registered office at 104-107, Hemkunt Tower 98, Nehru Place, New Delhi-110019. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital

of the Transferor Company No. 1 is Rs. 7,00,00,000/- divided into 70,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 2,67,25,450/- divided into 26,72,545 Equity Shares of Rs. 10/- each.

3. The Petitioner Company No. 2/Transferor Company No. 2 i.e., M/s ACL Technologies Private Limited was incorporated under the provisions of Companies Act, 1956 on 11.04.2000 vide CIN: U72900DL2000PTC105180 having its registered office at 104-107, Hemkunt Tower 98, Nehru Place, New Delhi-110019. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company No. 2 is Rs. 50,00,000/- divided into 5,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 1,00,700/- divided into 10,070 Equity Shares of Rs. 10/- each.
4. The Scheme of Amalgamation also involves M/s Sinch Cloud Communication Services India Private Limited (Non-Petitioner Company/Transferee Company) whose Registered office is situated in Mumbai, Maharashtra and a separate joint petition for sanction of the said Scheme has been filed before the NCLT Mumbai Bench.
5. The Petitioner Companies submit that the rationale for the scheme of amalgamation between the Transferor Companies and Transferee Company would have the following benefits: -
 - i. The Petitioner/Transferee Company had acquired the shares of the Transferor Company 1 in two tranches: (i) 80.75% of the shares on 1st September 2020; and (ii) 13.93% of the shares on

2nd November 2020. Pursuant to a buyback of the balance 5.31% of the shares of the Transferor Company 1 on 15th December 2020, the Transferor Company 1 became a wholly owned subsidiary of the Petitioner/Transferee Company. The Transferor Company 2 is a wholly owned subsidiary of the Transferor Company 1, which in turn is a wholly owned subsidiary of the Petitioner/Transferee Company. Further, the Petitioner/Transferee Company and the Transferor Companies are engaged in similar businesses.

- ii. Accordingly, the amalgamation of the Transferor Companies with the Petitioner/Transferee Company would inter-alia have the following benefits:
- iii. The Scheme will lead to simplification of group structure, thereby resulting in reduction of multiplicity of legal and regulatory compliances reduction of costs and optimal utilization of common resources.
- iv. The Scheme will lead to consolidation of business(es) to ensure more focused operational efforts and synergies, efficient functioning and reduced overhead expenses.
- v. The scheme will provide for greater integration and financial strength and will improve the competitive position of the combined entity.

A consolidation of the Transferor Companies with the Transferee Company by way of an amalgamation would lead to more efficient

utilization of capital and create a stronger base for the future growth of the amalgamated entity.

6. The Appointed Date as fixed for the proposed scheme of Amalgamation is 1st September, 2020 or such other date as may be directed by the National Company Law Tribunal.
7. From the record, it is seen that the First Motion joint application seeking direction for dispensation/convening the meeting of Shareholders, Secured Creditors and Unsecured Creditors was filed before this bench vide CA(CAA)09(ND)OF2023 and based on such application moved under Section 230-232 of the Companies Act, 2013, this Tribunal vide order dated 19.05.2022 (pronounced order) has passed the following directions: -
 - i. The meeting of Equity Shareholders, Secured Creditors of all the Companies and the meeting of unsecured creditors of Transferor Company No. 2 and Transferee Company is dispensed with.
 - ii. The meeting of the Unsecured Creditors of the Transferor Company No. 1/Petitioner Company No. 1 was directed to be convened on 30.06.2022 at 10 A.M. at the registered office of the Transferor Company No. 1/Petitioner Company No. 1.
8. The Chairperson of the meeting of Unsecured Creditors of the Transferor Company No. 1 had placed on record Chairperson's report dated 12.07.2022. As per their report, majority of person unanimously approved the scheme of amalgamation.
9. In the present second motion petition, vide order dated 30.09.2022 passed by this Tribunal, the Tribunal directed the Petitioners to issue

notices to the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana; (c) the Commissioner of Income Tax, New Delhi; (d) Official Liquidator; and (e) Telecom Regulatory Authority of India.

10. In compliance with the order dated 30.09.2022, the petitioners have filed an affidavit of service dated 17.11.2022 affirming and disclosing that notices were served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Income Tax Department, Official Liquidator, Registrar of Companies and Telecom Regulatory Authority of India. The applicants have effected publication in “Business Standard” (English, Delhi Edition) and “Jansatta” in (Hindi Delhi Edition) both dated on 15.10.2022.
11. Pursuant to the notice issued, the Regional Director, and the Official Liquidator have filed their response/reply in the matter.
12. The Regional Director (RD) in its report affidavit dated 24.07.2023 has made certain observations regarding the proposed scheme of Amalgamation among the Petitioner Companies. In response to the same, the Petitioner Companies had filed reply dated 14.09.2023 wherein the Petitioner Companies gave clarification to the observations made by the Regional Director, the details of the same are given below:

Observation	Observation by the Regional Director in its report dated 24.07.2023	Reply by Petitioner Companies dated 14.09.2023
1.	As per petition the appointed date is 01.09.2020, whereas	In this regard the Petitioners/ Transferor Companies humbly

	<p>General Circular No. 09/2019 dated 21.08.2019 issued by Ministry of Corporate Affairs states that when 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.</p>	<p>submit that while the date of filing of the Scheme was 24 December 2021, 1st September 2020 was chosen as the 'Appointed Date' of the Scheme as it is on this date that the Transferee Company acquired 80.75% of the shares of the Transferor Company 1, and thereby, acquired control over both the Transferor Companies (since Transferor Company 2 is a wholly owned subsidiary of Transferor Company 1), and that the proposed amalgamation pursuant to the Scheme is part of this acquisition process. In view of the same, the Transferee and Transferor Companies wish to implement the Scheme from 1 September 2020. Further, the creditors and equity shareholders of the Transferor Companies and the Transferee Company have given their consent to the Scheme without any objection, and there is no adverse impact on any stakeholders due to the Appointed Date being 1st September, 2020. In view of the foregoing, the Appointed Date is not against public interest.</p>
2.	<p>In the Auditors Report for year ended 31.03.2021 of Transferor Company no. 1, auditor has qualified by stating as follows: "According to the information and explanations given to us and based on our audit, the following material weakness has been identified in the company's internal financial controls over financial reporting as at March 31, 2021:</p>	<p>In this regard the Petitioner No. 1/ Transferor Company 1 submits that the financial year 2020-2021 was an abnormal year for many companies, including that of the Petitioner No. 1/ Transferor Company 1 due to the impact of the outbreak of Covid-19 pandemic in 2020, which disrupted its business operations (including internal financial controls). The Petitioner No. 1/ Transferor</p>

	<p>a) The company did not have adequate controls over review and provisioning of long outstanding trade receivables, which could potentially result in material misstatement in the company's trade receivables."</p>	<p>Company 1 proactively took suitable measures in the financial year 2021-2022 to streamline its operations and financial controls by rectifying the identified weaknesses and received a clean report from its statutory auditors for the financial year ending 31 March 2022. In fact, the audit report for the financial year ending 31 March 2022, includes an opinion from the statutory auditor that <i>"In our opinion, to the best of our information and according to the explanations given to us, the Company has, in all material respects, an adequate internal financials controls system over financials reporting and such internal financial controls over financial reporting were operating effectively as at March 31, 2022, based on the criteria for internal financial control over financial reporting established by the Company considering the essential components of internal control stated in the Guidance Note."</i> Copy of the audited report of the Petitioner Company No. 1 for financial year ending 31 March 2022 has been annexed as Annexure 1.</p>
<p>3.</p>	<p>In the Auditors Report for year ended 31.03.2021 of Transferor company no. 1, Auditor has stated that: "According to the information and explanations given to us immovable properties of building whose title deed have been pledged as security of loan with bank and hence we are unable to verify the original deed of immovable property held in the name of</p>	<p>In this regard, the Petitioner No. 1/ Transferor Company 1 humbly submits that no non-compliance has been highlighted by the statutory auditors regarding this issue. Significantly, this is a common qualification included by statutory auditors in their reports as it is standard practice to secure borrowing facilities availed from a bank/financial institution by</p>

	<p>the company. In respect of immovable properties of buildings that have been taken on lease and disclosed as fixed assets in the financial statements, the lease agreement has been pledged as security for loan with bank and hence we are unable to verify the original agreement of immovable property held in the name of the company, where the company is the lessee in the agreement."</p>	<p>creating a charge over the borrower's immovable properties, and placing the documents relating to title of such charged immovable properties in the custody of the concerned bank/financial institution. Further these documents are released only upon due repayment of the loan.</p>
4.	<p>In the Auditors Report for year ended 31.03.2021 of Transferor company no. 2, the auditor has made Emphasis of Matter as under: "We draw attention to Note No. 21 in the Standalone Financial Statements which indicate the company has accumulated losses and its net worth has been fully eroded. Company's liabilities exceed its current assets as on the date of the Balance Sheet. These conditions indicate about significant doubt regarding the company's ability to continue as a going concern. However, the financial statements have been prepared on a going concern basis for the reasons stated in the said Note."</p>	<p>In this regard the Petitioner No. 2/ Transferor Company 2 humbly submits that the statutory auditors have themselves clarified in their report that the financial statements of this company have been prepared on a going concern basis in view of "<i>business, diversification and merger plans formulated</i>", i.e., the Petitioner No. 2/ Transferor Company 2 has been treated as a going concern on account of the proposal to merge the Petitioner No. 2/ Transferor Company 2 into Transferee Company pursuant to the Scheme. Further, it is humbly submitted that the Petitioner No. 2/ Transferor Company 2 having accumulated losses, and liabilities which exceed its current assets is not a ground under applicable laws to object to, or deny sanction of, the Scheme. To the contrary it is pertinent to note that the rationale behind the Scheme is to provide for greater integration and financial strength to improve the competitive position of the combined entity and to reduce</p>

		the cost and overhead expenses which would boost profitability and the net worth of the combined entity.
5.	On perusal of MGT-7 of Transferor company no. 1, which is a wholly owned subsidiary of Transferee company, no form MGT-6 has been filed to reveal the beneficial ownership in shares as per section 89 of the companies Act, 2013.	In this regard the Petitioner No. 1/ Transferor Company 1 submits that the Form MGT-6 was duly filed by the Petitioner No. 1/ Transferor Company 1 with the Registrar of Companies on 10 February 2023. Copy of the Form MGT-6 filed by the Petitioner No. 1/ Transferor Company 1 along with the challan has been annexed herewith as Annexure 2 (Colly) .
6.	On perusal of MGT-7 of Transferor company no. 2, which is a wholly owned subsidiary of Transferor company no. 1, no form MGT-6 has been filed to reveal the beneficial ownership in shares as per section 89 of the companies Act, 2013.	In this regard the Petitioner No. 2/ Transferor Company 2 submits that the Form MGT-6 was duly filed by the Petitioner No. 2/ Transferor Company 2 with the Registrar of Companies on 6 September 2023. Copy of the Form MGT-6 filed by the Petitioner No. 2/ Transferor Company 2 along with the challan has been annexed herewith as Annexure 3 (Colly) .

13. Thus, the Petitioner Companies vide reply affidavit dated 06.01.2023 duly replied to queries raised by the Regional Director and the Regional Director has not made any adverse remarks or observations.

14. The Official Liquidator have filed its report dated 16.10.2023 wherein it is stated that on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner

prejudicial to the interest of its members or to public interest in terms of the provisions of the Companies Act, 2013.

15. It is noticed that despite several opportunities, no comments were received from the Income Tax Department with respect to any of the Petitioner Companies. However, vide order dated 31.10.2023, the income tax department stands proceeded ex-parte.
16. Certificates of Statutory auditor of the petitioner companies, have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation 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.
17. It is affirmed in the petition that no investigation proceedings against the Petitioner Companies/Transferor Companies is pending under the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013.
18. The shareholders of the petitioner companies are the best judges of their interest, being fully conversant with market trends. Therefore, their decisions are not supposed to be interfered with by the Tribunal for the reason that it is not proper on the part of the judicial function of the Tribunal to examine and evaluate entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal

evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will do not ordinarily go into the merits of the corporate decisions of companies as approved by their respective shareholders and creditors.

19. It has also been affirmed in the petition that no one will be prejudiced if the proposed Scheme of Amalgamation is sanctioned and the sanction of the said Scheme will benefit all and is in the interest of the Petitioner Companies including their Shareholders, Creditors, Employees and all concerned. In view of the foregoing and upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, there appears to be no impediments to sanctioning the proposed scheme.

20. 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 always remain bound to comply with the statutory requirements in accordance with law.
- ii. Notwithstanding the sanction, 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.

21. This Tribunal further directs with respect to both the Transferor Companies and the Transferee Company that: -

- i. Upon the sanction becoming effective from the appointed date i.e., 01.09.2020, 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 Companies, 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 favorable than those on which they are engaged by the Transferor Company, 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 affected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

22. 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.

23. In compliance with the requirement of Section 232 (7) of the Act, the Transferee Company shall until the full implementation of the Scheme of Amalgamation 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.

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

25. Let copy of the order be served to the parties.

Sd/-

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

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**