



**Mindtree**

*Welcome to possible*

Registered Office Address: Mindtree Ltd.  
Global Village, RVCE Post, Mysore Road,  
Bengaluru-560059, Karnataka, India.  
Corporate Identity Number (CIN): L72200KA1999PLC025564  
E-mail: info@mindtree.com

**Ref: MT/STAT/CS/18-19/143**

**November 30, 2018**

**BSE Limited (Bombay Stock Exchange)**

Phiroze Jeejeebhoy Towers,  
Dalal Street,  
Mumbai 400 001

**National Stock Exchange of India Limited**

Exchange Plaza,  
Bandra Kurla Complex, Bandra East,  
Mumbai 400 051

Dear Sirs,

**Sub: Order approving the Scheme of Amalgamation of Magnet 360, LLC ("Transferor Company") with Mindtree Limited ("Transferee Company")**

**Ref: Our letter to NSE and BSE dated October 6, 2017 bearing reference number MT/STAT/CS/17-18/113**

With reference to the above subject, we would like to bring to your kind notice that Hon'ble National Company Law Tribunal (NCLT), Bengaluru bench vide its Order dated November 29, 2018, received by us today (November 30, 2018) has approved the Scheme of Amalgamation of Magnet 360, LLC (Transferor Company), the wholly owned Subsidiary of the Transferee Company with Mindtree Limited (Transferee Company). The Order is attached herewith for your kind perusal.

We will be filing the certified copies of the above Order with the Registrar of Companies, Karnataka.

Please take the same on records and oblige.

Thanking you,

**for Mindtree Limited**

Vedavalli S  
Company Secretary

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RVCE Post, Mysore Road  
Bengaluru - 560059

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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**CP(CAA) No.18/BB/17  
Section 230 to 232 of Companies Act, 2013**

**IN THE MATTER OF COMPANIES ACT, 2013**

**AND**

**MAGNET 360, LLC  
(‘TRANSFEROR COMPANY’)**

**AND**

**MINDTREE LIMITED  
(TRANSFeree COMPANY)**

**Order delivered on: 29<sup>th</sup> November, 2018**

**In the matter of**

M/s. Mindtree Limited  
Global Village, RVCE Post,  
Mysore Road,  
Bangalore-560059

**...Petitioner/Transferee Company**

Coram: Hon’ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
Hon’ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s): Shri NK Dilip, Shri MG Nanjappa and Shri Vivek BS  
Tatva Legal Bangalore  
4<sup>th</sup> Floor, Phoenix Pinnacle,  
46, Ulsoor Road, Bangalore-560042

**Per: Hon’ble Shri Ashok Kumar Mishra, Member (Technical)**

**ORDER**

1. This Company Petition was filed on behalf of the Petitioner/Transferee Company under Section 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangement and Amalgamation) Rules, 2016, praying to order for sanctioning of the scheme of Amalgamation whereby Magnet 360 LLC (Transferor Company) is proposed to



be merged into Mindtree Limited (Transferee Company) so as to be binding all the Shareholders and Creditors of the Petitioner/Transferee Company.

2. The averments made in the Company Petitions are briefly described hereunder:
  - i. The Petitioner Companies seek an order for sanctioning the Scheme of Amalgamation of Magnet 360 LLC (Transferor Company) is proposed to be merged into Mindtree Limited (Transferee Company). The Scheme of Amalgamation is shown as **Annexure-A**.
  - ii. The Petitioner/Transferee Company was incorporated on 5<sup>th</sup> August, 1999 under the name and style of MindTree Consulting Private Limited with the Registrar of Companies, Karnataka. Subsequently on 6<sup>th</sup> November, 2006 the name was changed to MindTree Consulting Limited. Again on 28<sup>th</sup> March, 2008 the name of the company was changed to Mindtree Limited vide CIN bearing No.L72200KA1999PLC025564. The registered office of the Petitioner/Transferee Company situated at Global Village, RVCE Post, Mysore Road, Bengaluru-560059.
  - iii. The main objects of the Petitioner/Transferee Company is to carry on the business of software development, production, sub-contracting and experts, systems engineering services and training, to carry on the business of management consulting of all types providing information management and movement services, build advisory services of all types, installations, maintenance and supply services including providing associated hardware and software products. The copies of Memorandum and Articles of Association of the Petitioner/Transferee Company is shown as **Annexure-B**.
  - iv. The authorised share capital of the Petitioner/Transferee Company as on 31<sup>st</sup> March, 2017 is Rs.8,00,00,00,000/- divided into 80,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.1,63,92,63,110/- divided into 16,39,26,311 equity shares of Rs.10/- each. The Audited Balance Sheet of the Petitioner Company/Transferee Company is **shown as Annexure-C1**.
  - v. The Transferor Company was incorporated on 25<sup>th</sup> March, 2008 under the name and style of Magnet 360 LLC under Chapter 322B of Minnesota Statutes and elected to be governed by Chapter 322C of Minnesota Statutes. The principal place of business of the Transferor Company is situated at 5757 Wayzata Boulevard Minneapolis, MN 55416.
  - vi. The main objects of the Transferor Company is to engage in the business of software and technology related services, full suite of sales force solutions such as CRM, branded sites and communities, social campaign strategy and management and marketing automation.



The copy of Articles of Organization and the Operating Agreement of the Transferor Company is shown as **Annexure-D**.

- vii. The Petitioner/Transferee Company is the sole member of the Transferor Company and owns 100% membership interest in the Transferor Company. The Transferor Company is a limited liability company and does not have any share capital.
- viii. Pursuant to Sections 332C.1001 through 322C.1005 of the Minnesota Statutes, the amalgamation of the Transferor Company with the Petitioner/Transferee Company will be characterised as a merger of a Minnesota limited liability company with and into a foreign organization under the Sections 322C.1001 through 322C.1005 and Section 322B.76 of the Minnesota Statutes, with the Transferee Company being the surviving organization (as such term is defined in Section 322C.1001, Subdivision 13 of the Minnesota Statutes).
- ix. The Board of Directors of the Petitioner/Transferee Company has approved and adopted Scheme of Amalgamation at its meeting held on 6<sup>th</sup> October, 2017 by virtue of which Magnet 360 LLC (Transferor Company) is proposed to be merged into Mindtree Limited (Petitioner/Transferee Company) subject to confirmation. A copy of the Board Resolution of Petitioner Company dated 6<sup>th</sup> October, 2017 in approving and adopting the Scheme of Amalgamation is shown as **Annexure-G**.
- x. The Petitioner/Transferee Company had filed CA(CAA) No.83/BB/17 before this Tribunal for convening meeting of Shareholders and Unsecured Creditors of Petitioner/Transferee Company and to dispense with the convening of meeting of Secured Creditors of the Petitioner/Transferee Company. This Tribunal vide separate orders dated 14<sup>th</sup> December, 2017 allowed the application and directed the meeting of Shareholders and Unsecured Creditors of Petitioner Company be held on 31<sup>st</sup> January, 2018 at 11:00 A.M and 10:00 A.M respectively and dispensed with convening of meeting of Secured Creditors of the Petitioner Company. Copy of the order passed by this Tribunal in CA(CAA) No.83/BB/17 is shown as **Annexure-K**.
- xi. The Petitioner/Transferee Company filed the petition bearing CP(CAA) No.18/BB/18 respectively before this Tribunal for approving the scheme of Amalgamation on 12<sup>th</sup> February, 2018.
3. This Tribunal vide order dated 23<sup>rd</sup> March, 2018 in CP(CAA) No.18/BB/18 in Petitioner/Transferee Company issued notice to Regional Director, Registrar of Companies,



Income Tax Department, Securities Exchange Board of India, Bombay Stock Exchange, National Stock Exchange, Competition Commission of India, Reserve Bank of India and also directed to have an advertisement be published in the "The Business Standard" and "Kannada Prabha" newspapers stating that the next date of hearing of the present petition was on 10<sup>th</sup> May, 2018.

In pursuance of the order, the authorised signatory of the Petitioner/Transferee Company has filed a compliance affidavit evidencing that the paper publications have been carried out and the notices have been served on the sectoral regulators.

4. The Registrar of Companies, Karnataka has filed letter No. ROCB/Legal/C.C(CAA)/83/BB/2018 dated 09.04.2018 submitting its report by making the following observations at para 29:

- a. There are no prosecutions, complaints, pending in this office on the Transferee Company. However technical scrutiny is pending against the transferee company in this office and it is under process.
- b. Clubbing of authorized capital of transferor company with transferee company has not been mentioned in the Scheme. If such clubbing happens, Transferee Company shall comply with Section 232(3) of Companies Act, 2013 that the Transferee Company has to pay differential fee if any after setting off the fee already paid by the transferee company on its authorized capital before the merger.
- c. Method accounting has not been mentioned in the Scheme. However, as per Clause No. 9 of the Scheme, the transferee company will follow the accounting standards specified under Section 133 of the Companies Act, 2013.
- d. As per Section 234(2) of Act 2013, prior approval of the Reserve Bank of India is necessary in this case, as the transferor company which is merging into transferee company is a foreign entity. However, transferee company has submitted to this office only a copy of application dated 11/10/2017 made to RBI for prior approval of the scheme in Annexure N attached to the petition. But prior approval from the RBI is not submitted till date.

5. The Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad represented by Registrar of Companies has filed Affidavit dated 19<sup>th</sup> April, 2018 making some observations:



- a. ROC in his report dated 9.4.2018 has stated that the prior approval of RBI was not obtained. However it is observed that the Reserve Bank of India, vide letter No.FE.Co.FID/63961/10.02.001 (57)/2017-18 dated 30.1.2018, has conveyed its no objection to the scheme of amalgamation.
  - b. ROC in his report dated 9.4.2018 at para no.30(b) has observed that the petitioner transferee company has to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013. However, as the Transferor Company is a foreign company, the question of consolidation of its capital with that of the transferee company does not arise and the same is also not proposed in the scheme.
  - c. Further, the NCLT may be informed that the Directorate does not have any objection to proposed scheme of amalgamation.
6. The Advocate for the Petitioner Company has filed a memo dated 23<sup>rd</sup> March, 2018 annexing the Letter dated 30.01.2018 received from Reserve Bank of India and letter dated 16.01.2018 received from the Office of Joint Commissioner of Income Tax.
7. The Reserve Bank of India vide letter no. FE.CO.FID/6396/10/02/001(57)/2017-18 dated 30th January, 2018 has observed that the merger between Petitioner/Transferee Company and Transferor Company shall be subject to the following conditions:
- a. Any issue or transfer of security by Mindtree Limited, the resultant company, to a person resident outside India shall be in accordance with the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2017.
  - b. Any borrowing or impending borrowing of the foreign company from overseas sources which becomes the borrowing of the resultant company or any borrowing from overseas sources entering into the books of resultant company shall conform to the External Commercial Borrowing norms or Trade Credit norms or other foreign borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations 2000, as applicable.
  - c. An office outside India of Magnet 360 LLC, pursuant to the sanctions of the Scheme of cross border merger shall be deemed to be the branch/office outside India of the resultant company in accordance with the Foreign Exchange



Management (Foreign Currency Account by a person resident in India) Regulations, 2015. Accordingly, the resultant company may undertake any transaction as permitted to a branch/office under the aforesaid Regulations.

- d. The resultant company may acquire and hold any asset outside India which an Indian company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under the Act or rules or regulations framed thereunder.
- e. Where the asset or security is not permitted to be acquired or held by the resultant company under the Act, rules or regulations, the resultant company shall sell such asset or security within a period of 180 days from the date of sanction of the Scheme of cross border merger and the sale proceeds shall be repatriated to India immediately through banking channels.
- f. The valuation of Magnet 360 LLC shall be done as per any internationally accepted pricing methodology on arm's length basis which should be duly certified by a Chartered Accountant/public accountant/merchant banker/cost accountant authorized to do so in either jurisdiction.

Further, the RBI has made the following observations:

- i. The Petitioner Company to ensure that the disinvestment by way of amalgamation shall be reported in Form ODI Part III.
- ii. The Companies involved in the cross border merger shall ensure that regulatory actions, if any, prior to merger, with respect to non-compliance, contravention, violation, as the case may be, of the Act or Rules or Regulations framed there under shall be completed.
- iii. This communication is issued from the foreign exchange angle only under the provisions of FEMA and should not be construed to convey the approval by any other statutory authority or Government under any other laws/regulations.

8. The Reserve Bank of India vide letter No. FE.CO.PCD/6721/15.05.008/2017-18 dated 6<sup>th</sup> February, 2018 and letter No. FE.CO.PCD/8834/15.05.008/2017-18 made some observations:



- a. It is duty of the Companies undergoing compromise/arrangement/amalgamation to comply with the requirements of various laws including the rules, regulations and guidelines prescribed by RBI, viz., the companies may have to comply with Foreign Exchange Management Act, 1999 and the rules made thereunder.
  - b. It is also submitted that as a regulator it will not be ethical on the part of RBI to vet individual cases, as it will preclude it from taking action on contraventions, if any, committed by such companies.
9. The Authorised Signatory of the Petitioner/Transferee Company has filed Affidavit dated 13<sup>th</sup> June, 2018 stating that the RBI has approved the scheme of amalgamation and has furnished response to the observations made by the RBI, which are as follows:
1. It is stated that Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 is not applicable to the Transferee Company as there is no issue or transfer of security by the Transferee Company to any person resident outside India as the investment made by the Transferee Company in the membership interest of the Transferor Company shall stand cancelled and no shares shall be issued by the Transferee Company to the member of the Transferor Company.
  2. It is stated that there is no borrowing in the Transferor Company hence the External Commercial Borrowing norms or Trade Credit norms or other Foreign Borrowing norms, as laid down under Foreign Exchange Management (Borrowing or lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Guarantee) regulations, 2000 are not applicable.
  3. It is stated that the Transferee Company will comply with the other conditions apart from the above mentioned, if any applicable as set out by the Reserve Bank of India in its approval dated 30<sup>th</sup> January, 2018.
  4. It is stated that the Transferee Company undertakes to comply with the applicable requirements, as reiterated by the Reserve Bank of India.
10. The Competition Commission of India has vide Letter No. NCLT/NF/41/5372 dated 8<sup>th</sup> May, 2018 has made the following observations:
- a. Under the provisions of the Competition Act, 2002 (“Act”), a notice for combination is to be mandatorily given to CCI subject to meeting of



thresholds, in terms of combined assets or combined turnover. Further, there are certain exemptions available for which notice may not normally be given to the Commission.

- b. It is informed that the Scheme is not filed with the Commission under the provisions of the Act.
- c. It is requested that before passing an appropriate order, the NCLT may seek an undertaking from the companies involved that CCI approval is not required for the said Scheme.

11. The Authorised Signatory of the Petitioner Company has filed Affidavit dated 13<sup>th</sup> June, 2018 in furnishing response to the same, which are as follows:

1. It is stated that the Transferor Company is a wholly owned subsidiary of the Transferee Company. Schedule 1(9) of the Competition Commission of India (Procedure Transaction of Business Relating to Combinations) Regulations, 2011 as

*“A merger or amalgamation of two enterprises where one of the enterprises has more than fifty per cent (50%) shares or voting rights of the other enterprise, and/or merger or amalgamation of enterprises in which more than fifty per cent (50%) shares or voting rights in each of such enterprises are held by enterprise(s) within the same group: Provided that the transaction does not result in transfer from joint control to sole control.”*

2. It is submitted that the Transferee Company complies with the requirements of the above-mentioned provision and hence it is exempted from getting any approval from the Competition Commission of India.

12. The Office of Joint Commissioner of Income Tax vide letter no. F.No. Acceptance(NOC)/Mindtree/17-18 dated 16<sup>th</sup> January, 2018 has stated the following:

*“The assessee company M/s Mindtree Ltd is assessed in this office of JCIT (OSD), Circle-1, LTU, Bengaluru. This office has no objection in the scheme of amalgamation of Magnet 360 LLC, US Company with M/s. Mindtree Limited.”*

13. The Authorised Signatory of the Petitioner Company has filed an additional Affidavit dated 7<sup>th</sup> July, 2018 stating inter alia that as per Rule 25A(2)(a) of the Companies



(Compromise, Arrangements and Amalgamations), Amendment Rules, 2017, an Indian company may merge with a foreign company incorporated in any of the jurisdiction specified in the Annexure B of the Merger Rules after obtaining prior approval of the Reserve Bank of India and complying with the provisions of Section 230 to 232 of the Companies Act, 2013 and the rules made thereunder. Annexure B specifies the jurisdiction with which a company incorporated in India may merge with a company incorporated in jurisdictions inter alia where the Securities market regulator is a signatory to the International organization of Securities Commissions (IOSCO), the country in which the Transferor Company is incorporated.

14. This Bench has ordered notice to Bombay Stock Exchange and National Stock Exchange on three occasions. Further the Petitioner has also issued notice to Bombay Stock Exchange and National Stock Exchange. There was no response from Bombay Stock Exchange and National Stock Exchange. On Repeated follow-up Bombay Stock Exchange has filed its report dated 10<sup>th</sup> July, 2018.

The Bombay Stock Exchange has vide letter ref: LC/AT/149/2018-19 dated 10<sup>th</sup> July, 2018 stating the following:

“In pursuance of Regulation 37(6) of SEBI (Listing Obligation and Disclosure Requirement) 2015, since the scheme pertains to an amalgamation of a wholly owned subsidiary with its holding company, and that the said scheme has been filed with the exchange and the same has been disseminated on the Exchange’s website. No further requirement is to be complied by the company with the Exchange.”

15. This Bench vide order dated 13<sup>th</sup> August, 2018 noted that the Tribunal was under an obligation to examine the extant provisions of law before passing appropriate orders considering RBI has left the matter to the Tribunal to adjudicate. Therefore, the Tribunal directed the Petitioner/Transferee Company to furnish compliance by way of one comprehensive affidavit enclosing copies of all relevant Rules/Regulations, as mentioned by RBI and Competition Commission of India, to examine its reply given by the Petitioner/Transferee Company in pursuant to those guidelines.
16. In pursuance of the said order of the Tribunal, the authorised signatory of the Petitioner/Transferee Company has filed a comprehensive affidavit dated 6<sup>th</sup> September,



2018 whereby the Petitioner/Transferee Company has furnished the response to the observations of the sectoral regulators inter alia as follows:

(i) **Response to RBI observations:**

- a. Transferee Company undertakes to comply with the conditions, as applicable, set out by the Reserve Bank of India in its approval Letter dated 30th January, 2018.
- b. The conditions specified in the approval letter dated January 30, 2018 are similar to the conditions specified in the Foreign Exchange Management (Cross Border Merger) Regulations, 2018.
- c. Regulation 4 of the Cross Border Regulations regulate an inbound merger. Inbound merger has been defined under the Regulations as a cross border merger where the resultant company is an Indian company. The Scheme of Amalgamation between the Transferor Company and the Petitioner/Transferee Company is considered as inbound merger.
- d. Regulation 4 (1) of the Cross Border Regulation is not applicable to the Petitioner/Transferee Company since there is no issue or transfer of security by the Petitioner/Transferee Company to any person resident outside India as the Transferor Company is a wholly owned subsidiary of the Petitioner/Transferee. The investment made by the Petitioner/Transferee Company in the membership interest of the Transferor Company shall stand cancelled and no shares shall be issued by the Transferee Company to the member of the Transferor Company and therefore the Transferee Company is not required to comply with the provisions of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017.
- e. Indian company having a wholly owned subsidiary outside India is required to comply with the provisions of the Foreign Exchange Management (Transfer or issue of any Foreign Security) Regulations, 2004. As per the said regulation, on disinvestment the Indian company is required to file Form ODI Part III through the Authorized Dealer. The Petitioner/Transferee Company shall submit Form ODI Part III regarding its disinvestment in the Transferor Company upon completion of the disinvestment and shall be in compliance with the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2004.



- f. Transferor Company has no subsidiary company and therefore the Petitioner/Transferee Company is not acquiring any step down subsidiary of the Transferor Company.
- g. On perusal of Regulation 4(2) of the Cross Border Regulation, pursuant to the sanction of the Scheme of Amalgamation, the office of the Transferor Company shall be deemed to be a branch office of the Petitioner/Transferee Company in accordance with the Foreign Exchange Management (Foreign Currency Account by a person resident in India) Regulations, 2015 and the said branch office shall be maintained in accordance with the Foreign Exchange Management (Foreign Currency Account by a person resident in India) Regulations, 2015. The Petitioner/Transferee Company undertakes to comply with the provisions of the Foreign Exchange Management (Foreign Currency Account by a person resident in India) Regulations, 2015.
- h. There is no borrowing in the Transferor Company. Hence the External Commercial Borrowing norms or Trade Credit norms or Trade Credit norms or other Foreign Borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Borrowing or Lending in Rupees) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations, 2000 are not applicable. Further, the Transferor Company's bank, Venture Bank, having its office at 4470 W 78<sup>th</sup> St. Circle, Suite 100, Bloomington, MN 55435, has issued a letter dated June 26, 2018 stating that there are no borrowings.

**(ii) Response to CCI observations**

- a. Regulation 4 of the Competition Commission of India (Procedure in regard to the transaction of Business Relating to Combinations) Regulations, 2011 provides for categories of transaction not likely to have appreciable adverse effect on competition in India and therefore such transactions are exempt from obtaining permission from the Competition Commission of India.
- b. On perusal of Item 9 of Schedule 1 of the Competition Commission of India (Procedure in regard to the Transaction of Business Relating to Combinations) Regulations, 2011, the Transferor Company being a wholly owned subsidiary of the Transferee Company, the Transferee Company complies with the



requirements of the above-mentioned provision and hence it is exempted from getting any approval from the Competition Commission of India.

17. The Learned Counsels for the Petitioner Company has filed a clarification memo dated 8<sup>th</sup> October, 2018 reiterating the submissions and clarifying the averments made in affidavits dated 13<sup>th</sup> June, 2018, 9<sup>th</sup> July, 2018 and 6<sup>th</sup> September, 2018 stating inter alia as follows:

- a. Regulation 4(1) of Cross Border Regulation is not applicable to the Petitioner/Transferee Company since there is no issue or transfer of security by the Petitioner/Transferee Company to any person resident outside India as the Transferor Company is a wholly owned subsidiary of the Petitioner/Transferee Company. The investment made by the Petitioner/Transferee Company in the membership interest of the Transferor Company shall stand cancelled as per Clause 8.2 of the Scheme and no shares shall be issued by the Transferee Company to the member of the Transferor Company and therefore the Transferee Company is not required to comply with the provisions of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017.
- b. As contemplated in the Clause 13 of Scheme of Amalgamation, the sanction or approval by this Tribunal shall be conditional and shall come into force only upon compliance of all relevant acts, rules and regulations.
- c. Clause 3.2 of the Scheme of Amalgamation provides for compliances upon coming into effect of the Scheme with effect from the Appointed Date. Further Clause 3.2 of the Scheme of Amalgamation provides for transfer and vesting of assets upon coming into effect the Scheme with effect from the Appointed Date and subject to provisions of the Scheme of Amalgamation including in relation to the mode of transfer and vesting, all of the assets, both movable and immovable, tangible and intangible, investments, rights, title and interests in the undertaking of the Transferor Company shall pursuant to the provisions of the Companies Act, 2013 and Minnesota Statutes.
- d. Pursuant to the sanction of the Scheme of Amalgamation, as per Clause 3.1.2.2, the office of the Transferor Company shall be deemed to be the office of the branch office of the Petitioner/Transferee Company in accordance with the Foreign Exchange Management (Foreign Currency Account by a person resident in India) Regulations, 2015 and the said branch office shall be maintained in accordance with the stated



legislation. The Petitioner/Transferee Company undertakes to comply with the provisions of the Foreign Exchange Management (Foreign Currency Account by a person resident in India) Regulations, 2015 as this is a future event.

- e. The Petitioner/Transferee Company has also annexed the following decisions:
- i. In Re: Sasken Communication Technologies Ltd. (Hon'ble High Court of Karnataka [2010]155 Comp Case 463 (Kar))
  - ii. In Re: Axa Group Solutions Private Limited (Hon'ble High Court of Karnataka, CP No. 6 of 2012) and Axa Technologies Shared Services Private Limited (Hon'ble High Court of Karnataka, CP No. 6 of 2012)

18. The authorised signatory for the Petitioner Company has filed an additional clarifying affidavit dated 31<sup>st</sup> October, 2018 reiterating the submissions and clarifying the averments made in affidavits dated 13<sup>th</sup> June, 2018, 9<sup>th</sup> July, 2018, 6<sup>th</sup> September, 2018 and clarifying memo dated 8<sup>th</sup> October, 2018 stating inter alia as follows:

- a. Reserve Bank of India as well as RoC has acknowledged that the Transferee Company has fulfilled the stipulations as prescribed under Section 234 of the Companies Act, 2013 before filing of the Company Application 83/2017 to the Honourable Tribunal and that there is no infringement of the provisions committed by the Transferee Company.
- b. Transferor Company has complied with all the requirements of merger under the Minnesota Revised Uniform Limited Liability Company Act, Chapter 322C of the Minnesota Statutes and no prior statutory approval is required to be obtained under the applicable laws. Upon the Scheme of Amalgamation being approved by this Hon'ble Tribunal, the same will be filed with the Minnesota Secretary of State to give effect to the Scheme of Amalgamation.
- c. The Transferee Company shall undertake to comply to any other condition that the Hon'ble Tribunal may impose including to Reserve Bank of India, Income Tax, Competition Commission of India, BSE, NSE, SEBI, IOSCO Financial Action Task Force or under the Companies Act, 2013, or to any other statutory body towards the sanction and approval of the Scheme of Amalgamation as prayed for by the Transferee Company.

19. The Counsel for the Petitioner Companies has furnished the certificate of Deloitte Haskins & Sells, Chartered Accountant, Statutory Auditors of the Petitioner/Transferee



Company stating that the accounting treatment detailed in the aforesaid Scheme is in compliance with Accounting Standards prescribed under Section 133 of the Act read with rules made thereunder and other generally accepted accounting principles. The Certificate of the Chartered Accountant is filed by memo dated 23<sup>rd</sup> March, 2018.

20. After hearing the counsel for the Petitioner Companies and also considering the materials on records the scheme appears to be fair, reasonable and is not detrimental against the Members or Creditors or contrary to public policy and the same can be approved.

**THIS TRIBUNAL DO FURTHER ORDER**

- (1) While Approving the Scheme as above, it is further clarified that, this order should not be construed as an order in any way of 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 specially required under any law for the time being in force including the approval of Reserve Bank of India, Securities Exchange Board of India, National Stock Exchange and Bombay Stock Exchange, Competition Commission of India and any other regulatory applicable authorities, Indian law, US law and international law; and
- (2) This order only pertains to the approval of the Scheme based on the material placed on record by the Petitioners and representations made by Reserve Bank of India, Registrar of Companies, Regional Directorate, IT Department and Bombay Stock Exchange, and it will not come in the way of Reserve Bank of India or any other Appropriate Authority to take appropriate action(s) in accordance with Indian, US law and international law, for any other violations/non-compliance/offences, if any, committed by the Company prior to or during or after the implementation of the scheme of amalgamation;
- (3) The Whole of the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company for all the state and interest of the Transferor Company therein but subject nevertheless to all the charges now affecting the same and compliance with Indian law, US law and international law; and
- (4) All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be



- transferred to and become the liabilities and duties of the Transferee Company in accordance with Indian law, US law and international law; and
- (5) All the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company, if any; and
- (6) The tax implications, if any arising out of the scheme is subject to final decision of concerned Tax Authorities and the decision of the respective Tax Authority shall be binding; and
- (7) The Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Arrangement to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements And Amalgamations) Rules, 2016.
- (8) This sanction under the provisions of Companies Act, 2013 and allied rules is subject to the compliance of the following by the Transferee Company and concurrent responsibility on the Authorized Signatories of the Transferee Company prior to the implementation of the Scheme:
- (i) Ensure that the implementation of the Scheme shall be in compliance with foreign exchange laws, cross border merger laws including Foreign Exchange Management Act, 1991, legislations, rules, regulations, notifications and circulars issued by Reserve Bank of India and Department of Industrial Promotion and Policy.
  - (ii) Ensure that the stamp duty as fixed by the Inspector General of Registration and Commissioner of Stamps is paid within stipulated time under relevant provisions of law.
  - (iii) Ensure co-operation with the Registrar of Companies, Karnataka until the completion of the technical scrutiny and the observations of the Registrar of Companies, Karnataka (if any) shall be complied with to the satisfaction of the Registrar of Companies, Karnataka.
  - (iv) Ensure that the accounting treatment in the Scheme of Amalgamation is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
  - (v) In case of clubbing of authorised capital of the Transferor Company with the Transferee Company, the Transferee company has to pay the differential fee if any after setting off the fee already paid by the Transferee company on its authorised capital before the merger.



- (9) The Scheme shall be effective from the appointed date as mentioned in the Scheme of Arrangement i.e., 1<sup>st</sup> April, 2017.
- (10) The Registrar of Companies to ensure that the Petitioner/Transferor Company shall comply with its affidavits dated 13<sup>th</sup> June, 2018, 7<sup>th</sup> July, 2018, 6<sup>th</sup> September, 2018 and 31<sup>st</sup> October, 2018 prior to the implementation of the Scheme.
- (11) The Transferor Company or its Authorized Signatories are directed that after the completion of the process of Amalgamation to handover the possession of the Books of Accounts and other relevant documents of the Transferor Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013 in accordance with Indian law, US law and international law.
- (12) The scheme is sanctioned only under the provisions of the Companies Act, 2013 and allied rules, and should not be construed to convey the approval by any other statutory authority or Government under any other laws/regulations. If further sanction, approval or permission is required from any other regulatory authority or Government under the relevant laws/regulations, the Petitioner Company should take the approval of the concerned regulator before effecting the transaction. Further, this order should not be construed as regularizing or validating any irregularities, contravention or other lapses, if any, under the provisions of any law/regulation.
- (13) Any person shall be at the liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

SG/VY



(RAJESWARA RAO VITTANALA)  
MEMBER, JUDICIAL

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

Deputy Registrar  
National Company Law Tribunal  
Bengaluru Bench

Swapan C