

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II
COMPANY APPLICATION (CAA)/56(MB)2022**

*In the matter of Scheme of
Amalgamation under*

Section 230 to 232 of the
Companies Act, 2013 and
other applicable provisions
of the Companies Act, 2013
and rules framed
thereunder

And

In the matter of

Aricent Technologies (Holdings) Limited
CIN: U72100MH2006PLC367638
Registered office: 3rd Floor, A Block, B-Wing,
IT- 1 & IT-2, Airoli Knowledge Park,
Thane-Belapur Road, Airoli, Navi Mumbai- 400708,
Maharashtra, India.

...First Applicant Company/Transferor Company

AND

Capgemini Technology Services India Limited,
CIN: U85110PN1993PLC145950
Registered office at No 14, Rajiv Gandhi Infotech Park,
Hinjawadi, Phase – III, MIDC-SEZ,
Village Man, Taluka Mulshi, Pune – 411057, Maharashtra, India

...Second Applicant Company/ Transferee Company

Order delivered on: 10.06.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances :-

For the Applicant Companies: Counsel Hemant Sethi a/w Adv.
Ankit J. Parekh a/w. Adv. Palak Shah i/b. ALMT Legal

ORDER

Per: Shyam Babu Gautam, Member Technical

- 1) The Court is convened via videoconference.
- 2) Learned Counsel for the Applicant Companies states that the present scheme is a Scheme of Amalgamation of a subsidiary company namely, Aricent Technologies (Holdings) Limited ("**Transferor Company**") with its holding company namely, Capgemini Technology Services India Limited ("**Transferee Company**") (together "**Applicant Companies**") and their respective shareholders ("**Scheme**") under the provisions of section 230 to 232 of the Companies Act, 2013.
- 3) Learned Counsel for the Applicant Companies states that resolutions approving the Scheme were passed by the Board of Directors of the Transferor Company in its board meeting held on 18 January 2022 and by the Board of Directors of the Transferee Company in its board meeting held on 10 January 2022. The Appointed Date fixed under the Scheme is 1 October 2021.
- 4) Learned Counsel for the Applicant Companies further states that the Transferor Company is engaged in the business

of providing software development and support services and the Transferee Company *inter alia* is in business of development, designing of software programmes and products, training personnel in connection with the software programmes, dealing with electric and electromechanical products and rendering technical and associated services.

5) The Counsel for the Applicant Companies submits that the amalgamation of the Transferor Company with the Transferee Company would *inter alia* have the benefits which is summarized as below:

- a) The businesses of the Applicant Companies will be carried out in conjunction more advantageously to achieve operational efficiency and cost minimization;
- b) Combining the businesses of the Applicant Companies will result in integration of processes, thereby resulting in synergies of operations;
- c) The amalgamation will bring greater management focus, integration, enhanced greater financial strength, and economies of scale;
- d) The amalgamation is expected to enable pooling of resources of the Transferor Company and the Transferee Company to their common advantage, resulting in more productive utilization of the said resources and cost and operational efficiencies which would be beneficial for all stakeholders;
- e) An increase in the financial strength of the combined company by creating a healthy combined balance sheet which will enhance the ability of the Transferee Company to undertake large projects;

- f) The amalgamation is expected to reduce costs, administrative and procedural work and legal compliances, and generally improve efficiency in the corporate decision making of the merged entity.
- 6) The Counsel for the Applicant Companies submits that the Transferor Company is a subsidiary of the Transferee Company and out of the total share capital of the Transferor Company, 98.25% is held by the Transferee Company. The remaining 1.75% of the share capital of the Transferor Company is held by public shareholders.
- 7) The Applicant Companies do not have any secured creditors. Therefore, the question of conducting a meeting of the secured creditors of the Applicant Companies does not arise.
- 8) The Transferor Company has 177 (One Hundred and Seventy-Seven) unsecured creditors with outstanding value as Rs. 81,39,09,206 as per the list of creditors as on 31 December 2021 which has been placed on record at **Annexure "G"** of this Application.
- 9) The Transferee Company has 722 (seven hundred and twenty-two) unsecured creditors with outstanding value as Rs. 3,272,178,672 as per the list of creditors as on 31 December 2021 which has been placed on record at **Annexure "J"** of this Application.
- 10) This Bench issues directions with regard to the meetings of the equity shareholders and the unsecured creditors of the Transferor Company and the Transferee Company as follows: -

- (i) The meeting of the equity shareholders of the Transferor Company be convened and held on Saturday, 30 July 2022 at 11 a.m. for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation between Aricent Technologies (Holdings) Limited (Transferor Company) and Capgemini Technology Services Limited (Transferee Company) and their respective shareholders, through video conferencing or other audio visual means, and not in physical presence of shareholders, as the same in the current COVID 19 environment related social distancing norms shall not be possible.
- (ii) The meeting of the equity shareholders of the Transferee Company be convened and held on Friday, 29 July 2022 at 11 a.m. for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation between Aricent Technologies (Holdings) Limited (Transferor Company) and Capgemini Technology Services Limited (Transferee Company) and their respective shareholders, through video conferencing or other audio visual means, and not in physical presence of shareholders, as the same in the current COVID 19 environment related social distancing norms shall not be possible.
- (iii) The meeting of the unsecured creditors of the Transferor Company be convened and held on Saturday, 30 July 2022 at 3 p.m. for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation between Aricent Technologies (Holdings) Limited (Transferor Company) and Capgemini Technology Services Limited (Transferee Company) and their respective shareholders, through video conferencing or other audio visual means, and not

in physical presence of the unsecured creditors, as the same in the current COVID 19 environment related social distancing norms shall not be possible.

- (iv) The meeting of the unsecured creditors of the Transferee Company be convened and held on Friday, 29 July 2022 at 3 p.m. for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation between Aricent Technologies (Holdings) Limited (Transferor Company) and Capgemini Technology Services Limited (Transferee Company) and their respective shareholders, through video conferencing or other audio visual means, and not in physical presence of unsecured creditors, as the same in the current COVID 19 environment related social distancing norms shall not be possible.
- (v) In view of provisions of Section 230(4) read with Section 108 of the Companies Act, 2013 read with Rule 20 and other applicable provisions of the Companies (Management and Administration) Rules, 2014, the Applicant Companies propose to provide the facility of remote e-voting to their respective equity shareholders and unsecured creditors for the relevant resolution to be passed at their respective meetings. The equity shareholders and unsecured creditors of the Applicant Companies are also allowed to avail the facility of e-voting during the aforesaid respective meetings to be held through video conferencing and/or other audio visual means. The e-voting facility for the equity shareholders and unsecured creditors of the Applicant Companies shall be provided in compliance with the provision of the Companies Act, 2013 and conditions specified under the Companies (Management and Administration) Rules, 2014 and circulars and notifications issued thereunder, as applicable.

- (vi) That atleast 30 (thirty) days before the said respective meetings of the equity shareholders and the unsecured creditors of the Applicant Companies are to be held as aforesaid, a Notice convening the said meetings at the day, date and time as aforesaid, together with a copy of the Scheme, a copy of Explanatory Statement disclosing all material facts as required under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 shall be sent through Air mail/ Courier/ Registered Post/ Hand Delivery/ Email to all the equity shareholders as well as the unsecured creditors of respective Applicant Companies.
- (vii) That at least 30 (thirty) days before the meeting of equity shareholders and the unsecured creditors of the respective Applicant Companies to be held as aforesaid, notice convening the said meeting shall be published in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in "Free Press Journal" (English edition) and "Navshakti" (Marathi edition) both circulated in Mumbai by the Transferor Company and "the Financial Express" (English edition) and "Loksatta" (Marathi edition), both circulated in Pune by the Transferee Company.
- (viii) That Sh. Harnam Singh Retd. IAS, Flat No. 22, Ritu Co-operative Housing Society Ltd., Juhu versova Link Road, Andheri West, Mumbai-400053; Mobile no: 09930063941, shall be the Chairperson of the aforesaid meeting of the equity shareholders and unsecured creditors of the Transferor Company to be held as aforesaid or any adjournment(s) thereof. Fee of the Chairman shall be Rs. 3 Lakhs.

- (ix) That Sh. Harnam Singh Retd. IAS, Flat No. 22, Ritu Co-operative Housing Society Ltd., Juhu versova Link Road, Andheri West, Mumbai-400053; Mobile no: 09930063941, shall be the Chairperson of the aforesaid meeting of the equity shareholders and unsecured creditors of the Transferee Company to be held as aforesaid or any adjournment(s) thereof. Fee of the Chairman shall be Rs. 3 Lakhs.
- (x) That the chairperson appointed for the relevant meetings as aforesaid, shall issue the advertisement and send out the notices of the meetings referred to above. The said chairperson shall have all powers as per the applicable Articles of Association and the Companies Act, 2013 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
- (xi) That Mr. Jayant Gupta, (FCS-7288), Practicing Company Secretary is hereby appointed as Scrutinizer of the aforesaid meeting of the equity shareholders and unsecured creditors of the Transferor Company and his remuneration is fixed as Rs. 15,000 for the aforesaid meetings.
- (xii) That Mr. Shailesh Indapurkar, (ACS 17306), Practicing Company Secretary is hereby appointed as Scrutinizer of the aforesaid meeting of the equity shareholders and unsecured creditors of the Transferee Company and his remuneration is fixed as Rs. 20,000 for the aforesaid meetings.
- (xiii) That the quorum of the aforesaid relevant meetings shall be as prescribed under Section 103 of the Companies Act, 2013. If the quorum is not present at the commencement of the

aforesaid meetings, the relevant meeting would be adjourned by half an hour, and thereafter the members present would be treated as proper quorum.

(xiv) The voting by proxy shall not be permitted as the meeting would be held through video conferencing and/or other audio-visual means. However, voting in case of body corporate be permitted, provided the prescribed form/authorization is filed with the Applicant Companies at their respective registered office address not later than 48 hours before the start of the aforesaid meetings as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(xv) That the value / number of the shares of each equity shareholder and unsecured creditors shall be in accordance with the books / register of the Transferor Company and Transferee Company, as the case may be, or depository records and where the entries in the books / register / depository records are disputed, the chairperson of the relevant meeting(s) shall determine the value for the purpose of the aforesaid relevant meeting(s) and his decision in that behalf would be final.

(xvi) That the chairperson of the relevant meetings shall file an affidavit not less than 7 (seven) days before the date fixed for holding such meetings, as the case may be, and to report this Tribunal that the directions regarding the issue of notices and the advertisement have been duly complied with.

(xvii) That the chairperson of the relevant meetings shall report to this Tribunal, the results of the aforesaid meetings, as applicable, within 30 (thirty) days of the conclusion of the respective meetings.

11) As mentioned in the Scheme, new equity shares will be issued/allotted to the members of the Transferor Company by the Transferee Company as per the Share Exchange Ratio mentioned in the Scheme as follows:

1 (One) equity share of Rs. 10 each, credited as fully paid up of the Transferee Company to be issued for every 17 (Seventeen) equity Shares of Rs. 10 each held by the shareholders (other than the Transferee Company itself) in the Transferor Company.

12) The Transferor Company and the Transferee Company are each directed to serve notice along with a copy of the Scheme of Amalgamation upon:

- i. the Central Government through the office of the Regional Director, Western Region, Mumbai;
- ii. concerned Income Tax Authority at below stated address under which the respective Transferor Company's and the Transferee Company's assessments are made, clearly indicating the PAN of the company concerned;

Name of the Company	Permanent Account Number	Income Tax Jurisdiction
Aricent Technologies (Holdings) Limited	AACCK8280B	5 Jain Mandir Marg, (Annexe.), Connaught Place – 110001, New Delhi.

Cag Gemini Technology Services India Limited	AABCM4573E	Office of the Assistant Commissioner of Income-tax; Circle 1(1), Income-tax Office; IInd Floor, P.M.T. Building Swargate; Pune – 411 037
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- iii. the concerned Registrar of Companies, each in terms of Section 230 (5) of the Companies Act, 2013, read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- iv. Reserve Bank of India.

If no response is received within a period of 30 (thirty) days from the date of receipt of the notice, it shall be presumed that the respective authorities have no objection to the proposed Scheme of Amalgamation as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- 13) The Transferor Company is hereby further directed to serve a notice along with copy of the Scheme of Amalgamation upon the Official Liquidator. The Tribunal hereby appoints B.A. Ved & Co. having office address at Shop No. 3, Balaji Arcade, S.V. Road, Kandivali West, Mumbai 400 067 to assist the Official Liquidator to scrutinize the books of accounts of the Transferor Company for the last 5 (five) years and submit their report to the Tribunal. The Transferor Company is directed to pay fees of INR 2,00,000 to the Chartered Accountant for this purpose. The Official Liquidator may submit his representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal

with a copy of such representations be served to the Transferor Company, failing which, it shall be presumed that the Official Liquidator has no representations / objections to make on the proposed Scheme of Amalgamation.

- 14) With a view to providing full disclosure to all shareholders and unsecured creditors, including those shareholders and unsecured creditors, whose email addresses are not available with the respective Applicant Companies or who do not receive the notice convening meeting or notice seeking representation, as the case may be, the Applicant Companies shall host such notice on their respective websites.
- 15) The Transferor Company shall file an affidavit of service confirming that the directions given by the Tribunal regarding the issue of notices to equity shareholders, unsecured creditors, regulatory authorities, Official Liquidator have been duly complied with.
- 16) The Transferee Company shall file an affidavit of service in the Registry that the directions given by the Tribunals regarding the issue of notices to equity shareholders, unsecured creditors, regulatory authorities have been complied with.
- 17) Ordered accordingly.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)**