IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 663 OF 2015

WITH

COMPANY SUMMONS FOR DIRECTION NO. 417 OF 2015

Fluent India Private Limited…Petitioner/the Transferor Company

COMPANY SCHEME PETITION NO. 664 OF 2015

WITH

COMPANY SUMMONS FOR DIRECTION NO. 416 OF 2015

Ansys Software Private Limited…Petitioner/the Transferee Company

In the matter of the Companies Act of 1956.

AND

In the matter of Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956.

AND

In the matter of the Scheme of Amalgamation of:

Ansys Software Private Limited.

WITH

Fluent India Private Limited

AND

their Respective Shareholders.

Called for Hearing

Mr. Ashish Parwani, i/b Rajani, Singhania & Partners, Advocate for the Petitioner Company

Mr. Atul A. Singh, i/b A.A Ansari for Regional Director

Mr. S.Ramakantha, Official Liquidator Present

CORAM: K.R. Shriram, J

DATE: 11th December, 2015

PC:

1. Heard learned counsel for parties. None appears before the Court to oppose the Scheme and nor any party has controverted any averments made in the Company Scheme Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 with Sections 100 to 104 of the Companies Act, to a Scheme of Amalgamation of Fluent India Private Limited (Petitioner/Transferor Company) with Ansys Software Private Limited (Petitioner/ Transferee Company)

3. The learned Advocate for the Petitioner Companies states that the Transferor Company mainly carries on the business of software development, applications, software testing and documentation and such activities for Ansys Inc. being the parent company of the Transferor Company, and the

Transferee Company is engaged in the business of distribution of ANSYS® range of products and also provides technical support and other related services for the same.

4. The learned Advocate for Petitioner Companies states that the entire business and undertaking of the Transferor Company shall stand transferred to and vested in, as a going concern, in the Transferee Company. The proposed amalgamation would *inter-alia* streamline and consolidate the petitioner companies and would result in value creation for the shareholders of the Petitioner Companies. It would result in consolidation of the activities of both the Petitioner Companies, thus facilitating effective management of investments with benefits of synergy.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner Company in Company Scheme Petition No 664 of 2015, states that the Transferor Company owns 2,19,850 equity shares of Rs.10 of the Transferee Company. The Advocate further submits that, upon the Scheme coming into effect the aforesaid equity shares of the Transferor Company held by Transferee Company shall stand cancelled and extinguished. This cancellation of Share Capital of the Transferee Company amounting to reduction as contemplated under Clause 8 of the Scheme of Amalgamation shall be effected as integral part of

the Scheme and shall not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital. In view of the above, the procedure prescribed under section 101(2) of the Companies Act 1956 is dispensed with.

7. The Learned Advocate for the Petitioner Companies states that the Petitioner Companies has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

8. The Learned Advocate appearing on behalf of the Petitioner Companies has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

9. The Regional Director has filed his affidavit dated 16th November , 2015 stating therein that save and except as stated in paragraphs 6 (a) to (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (d) of the said Regional Director has stated that

"6 That the Deponent further submits that,

(a) Clause 11.8 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard –14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(b) Clause 8.3 of the scheme provides for cancellation of equity share capital of Transferee Company held by Transferor Company by which the paid up capital of the company will be reduced from 42,00,860/- to 20,02,360/-. By cancelling 2,19,850 equity share of Rs.10/- each by Transferor Company. Such reduction of capital is effected as an integral part of the scheme.

(c) The equity shareholders of both the Transferor and Transferee Company are held by foreign body corporate as its shareholders. Hence for allotment of new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI regulation as applicable in this regard.

(d) That the Deponent further submits that the Tax issue if

any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company"

10. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his Affidavit is concerned in relation to the accounting entries, the learned advocate for the Petitioner Companies states that the Clause 11.7 of the Scheme of Amalgamation already provides that the Transferee Company shall follow accounting treatment for the amalgamation as per Accounting Standard 14 issued by the Institute of Chartered Accountants of India along with other applicable accounting standard issued from time to time. The Petitioner Companies further undertake that the Transferee Company shall comply with other applicable Accounting Standards such as Accounting Standard (AS) 5 while making accounting entries which are necessary in connection with the adjustment if there are any differences in accounting policies between the Transferor Company and the Transferee Company.

11. So far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned in relation to Clause 8.3 of the Scheme which

provides that proposed cancellation of equity share capital of Transferee Company held by the Transferor Company to be integral part of the Scheme, the learned Advocate for the Petitioner Companies submits that upon the Scheme coming into effect, the issued, subscribed and paid-up equity share capital of the Transferee Company shall stand reduced from the present sum of Rs.42,00,860 (Rupees forty two lakhs eight hundred sixty only) to Rs.20,02,360 (Rupees twenty lakhs two thousand three hundred sixty only) to give effect to cancellation of equity shares held by the Transferor Company in the Transferee Company. The Advocate further states that, as already provided in Clause 8.4 of the Scheme, this aforesaid cancellation, which amounts to reduction of share capital of the Transferee Company, shall be effected as an integral part of the Scheme itself and shall be deemed to be in accordance with the provisions of Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956 and other applicable provisions of the relevant Act as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital.

12. So far as the observation made by the Regional Director in paragraph No.6 (c) of his Affidavit is concerned in relation to allotment of new shares by the Transferee Company to Foreign Body Corporate/ Non Resident Indian shareholders of the Transferor Company, the learned Advocate for the Petitioner Companies states that existing Clause 7.2 of the Scheme of Amalgamation already provides that in the event, New Shares

are required to be issued and allotted to the shareholders of the Transferor Company, being non-resident, the issue of such shares shall be in accordance with the provisions of the Foreign Exchange Management Act, 1999 and the applicable rules and regulations made thereunder (for the time being in force, including, any statutory modifications, re-enactments or amendments made thereto from time to time). The Advocate to Petitioner Companies undertake that any such issue of shares by the Transferee Company to any foreign body corporate / Non Resident Indian shareholder of the Transferor Company shall be according to the applicable provisions of Foreign Exchange Management Act, 1999/ RBI and rules and regulations made thereunder.

13. So far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(d) of his Affidavit is concerned in relation to any tax issue arising out of the Scheme of Amalgamation, the Petitioner Company submits that Scheme shall be subject to final decision of Income Tax Authority and the approval of the same by this Hon’ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the arrangement. However, the Transferee Company shall have liberty to exercise all its legal rights under applicable laws including, under Income Tax Act, 1961 and/or under equity in the event the Transferee Company is not satisfied with the order/adjudication done by the Income Tax Authority (ies) in the aforesaid matter.

14. The Official Liquidator has filed his affidavit on 26th November, 2015 wherein he has stated that the affairs of the Petitioner/ Transferor Company have been conducted in a proper manner. Therefore, the Petitioner/ Transferor Company may kindly be ordered to be dissolved by this Hon'ble Court."

15. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submissions made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

16. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.663 of 2015 filed by the Transferor Company are made absolute in terms of prayer clauses (a) to (g) and the Company Scheme Petition No.664 of 2015 filed by the Transferee Company are made absolute in terms of prayer clauses (a) to (i).

18. The Petitioner Companies to lodge a copy of this order and the Scheme of Amalgamation duly authenticated by the Company

Registrar, High Court, Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of this Order.

19. The Petitioner Companies are directed to file/lodge a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

20. The Petitioners in both Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner/Transferor Company to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

21. Filing and issuance of the drawn up order is dispensed with.

22. All concerned regulatory authorities to act on a copy of this Order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K. R. Shriram, J.)

<u>CERTIFICATE</u>

I certify that this Order uploaded is a true and correct copy of the original signed Order.

Uploaded by: S. Gawde
Stenographer