IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 656 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 543 OF 2015

Tieto Software Technologies Limited

.

……Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 657 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 544 OF 2015

Tieto IT Services India Private Limited

……….Petitioner /Transferee Company

In the matter of the Companies Act (I of 1956);

AND

In the matter of Sections 391 to 394 read of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Tieto Software Technologies Limited with Tieto IT Services India Private Limited and Their respective Shareholders

<u>Called for hearing</u>

Mr. Virag Tulzapurkar, Senior Advocate, i/b Mr. Hemant Sethi, for both the Petitioners.

Mr. Chandanamuthu, Joint Director (legal),for Regional Director in both the Petitions.

Mr. Vinod Sharma, Official Liquidator, High Court, Bombay, a/w Ms. Yogini Chauhan, Deputy Official Liquidator, present

CORAM: G.S Patel, J.

DATE: 18th March, 2016

PC:

1. Heard the learned counsel for the Petitioner Companies.
2. The sanction of the Court is sought to the Scheme of Amalgamation between Tieto Software Technologies Limited and Tieto IT Services India Private Limited and their respective shareholders.
3. The learned Counsel for Petitoners state that the Transferor Company is presently carrying on business of providing IT Solutions and IT enabled services.
4. The proposed Scheme of Amalgamation is aimed at achieving the following commercial benefits:

    a. *The amalgamation will enable consolidation of Operations of both the Companies into one entity and provide impetus for the growth of the Transferee Company.*
    b. *The consolidation by way of amalgamation will lead to stronger and wider capital and financial base for future growth/expansion.*
    c. *The amalgamation will lead to better leverage of facilities and infrastructure for better administration.*
    d. *The amalgamation will result in reduction in administrative, managerial and other expenditure, operational rationalization and optimal utilization of various resources.*
    e. *Duplication of administrative functions will be eliminated resulting in reduced expenditure.*
    f. *The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Companies and Transferee Company.*
    g. *There will be improvement in financial structure and management of the Transferee Company.*
    h. *The consolidation of all the businesses would increase the long term value for shareholders and investors.*

5. The Transferor Company and the Transferee Company have approved the Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Counsel for the Petitioners further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 11th February, 2016 stating therein that save and except as stated in paragraph 6 (a) to (e) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that :

(a) *Clause 12.9 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Comp[any . 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) *With reference to clause 11 of the scheme so far it relates to issue of shares by the transferee company, it is submitted that the words "at a premium of Rs.7308.67" appearing in that clause be deleted. In this regard it is submitted that the transferee company is not receiving any premium from the shareholders of the transferor company. In the process of amalgamation, the shareholders of the transferor company (who are vested with the rights and privileges over the assets and* *liabilities of the transferor company) gets new shares from the transferee company not on payment of cash, but on exchange of shares held by them with transferee company. The shareholders of the transferor company thus becomes the shareholders of the transferee company in exchange of shares. As the transferee company issues shares in exchange of share value held in the transferor company, the transferee company is not receiving any cash by way of securities premium from the shareholders of Transferor Company. In other words, it is submitted that the shares of the transferee companee are issued to the shareholders of the transferor company equal to the value of shares they were holding in the Transferor Company and Transferee Company is not receiving any cash or otherwise cash consideration over and above the value of shares issued. Hence no securities premium should be allotted to be created.*

The deponent further submits that reserve arising out of amalgamation is only in the nature of capital reserve which is more evident from pars 37 of AS-14. This reserve is arising while transferring the capital assets from transferor company to transferee company and issuing new shares is in exchange of share capital of transferor company by transferee company. Corollary the reserve arising out of capital transaction has to be recorded as capital reserve only or it can be named as amalgamation reserve also. At no stretch of imagination it can be construed as revenue receipt of the transferee company and hence the reserve arising out of amalgamation is only capital reserve and it cannot be grouped under the head securities premium account.

(c) *Consequent to above observation, it is submitted that the words appearing in clause 12.5 of the scheme namely " the premium on the new equity shares shall be credited to the securities premium account of the transferee company," as also the following words ("Including*

securities premium account") appearing in clause 12.6 of the scheme be deleted.

(d) *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 regulations as applicable in this regard.*

(e) *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*

9. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Transferee Company undertakes that in addition to compliance of Accounting Standard-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

10. In so far as objections raised in paragraph 6(b) and (c) of the Affidavit of Regional Director are concerned, the learned Senior Counsel for the Petitioners stated that the interpretation of word "otherwise" in Section 52(1) of the Companies Act, 2013 cannot be restricted to cash consideration only as the words used in Section 52 of the Companies Act, 2013 are "cash or otherwise". The Petitioners Counsel also relied upon the judgment of the Supreme Court in Commissioner of Income Tax v. Standard Vaccum Oil co reported in AIR 1966 SC 1393 and in particularly paras 9 & 11 thereof, which show that shares can be issued at a premium otherwise than for cash.

After some hearing, a statement is made on behalf of the Regional Director that he is agreeable to the interpretation placed by the Petitioners in regard to the question of payment of receipt of premium as stated in clause 12.5 of the Scheme particularly having regard to the provisions of Section 78 of the Companies Act, 1956 and the corresponding provisions of Section 52 of the Companies Act, 2013. The statement made on behalf of Regional Director has been recorded by a separate order.

11. As far as observations made in paragraph 6(d) of Affidavit of the Regional Director are concerned, the Transferee Company submits that the Transferee Company is bound to comply with all applicable FEMA / RBI regulations.

12. As far as observations made in paragraph 6(e) of Affidavit of the Regional Director is concerned, the Transferee Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

13. The Official Liquidator has filed his report dated 12th January, 2016 in Company Scheme Petition No. 656 and 657 of 2015 stating therein that the affairs of the Transferor Companies Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved without winding up.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned has come forward to oppose the Scheme.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 656 of 2015 and 657 of 2015 filed by the Transferor Companies and the Transferee Company are made absolute in terms of prayer clauses (a) of the respective Petitions.

16. The Petitioner Companies to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), 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 receipt of Order.

17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E - Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioners in Company Scheme Petition Nos. 656 of 2015 and 657 of 2015 to pay costs of Rs 10,000/- each to the Official Liquidator. Costs to be paid within four weeks from the date of the order.

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

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

(G.S. Patel, J)

CERTIFICATE

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

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