

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- IV)
C.A.(CAA)-72/ND/2022

IN THE MATTER OF SCHEME OF AMALGAMATION:

AMONGST

NUMBER THEORY SOFTWARE PRIVATE LIMITED

... Applicant No.1/Transferor Company

AND

NEWGEN SOFTWARE TECHNOLOGIES LIMITED

...Applicant No.2/ Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Order Delivered on: 14.07.2022

Section: 230 to 232 of the Companies Act, 2013

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SH. DHARMINDER SINGH, HON'BLE MEMBER, (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER, (TECHNICAL)

ORDER

PER SHRI DHARMINDER SINGH, MEMBER- JUDICIAL

Under consideration is the Application No. C.A.(CAA)72/ND/2022 filed under Sections 230 to 232 of the Companies Act, 2013. The prayer is made seeking convening/holding directions with respect to the meetings of shareholders and creditors of the Applicant Companies to consider the Scheme of Amalgamation.


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The said Scheme of Amalgamation, proposes merger of a part of the business of an existing company with the another company.

2. M/s Number Theory Software Private Limited, (hereinafter referred as the **“Transferor Company”**) having CIN no. U72300DL2016PTC289417, is a Company limited by Share, incorporated under the Companies Act, 2013 on 08.01.2016. The registered office of the demerged company is situated at BLK-D-10, PKT-8, G/F, Sec 23B, Dwarka New Delhi-110077.
3. M/s Newgen Software Technologies Limited, (hereinafter referred as the **“Transferee Company”**), having CIN no. L72200DL1992PLC049074 is a Private Company Limited by shares incorporated under the Companies Act, 1956 on 05.06.1992. The registered office of the resulting company is situated at A-6 Satsang Vihar Marg Qutab Institutional Area New Delhi-110067.
4. The present application has been jointly filed by both the transferor and transferee companies. The ‘transferor’ and ‘transferee’ Companies together are called ‘Applicant Companies’ hereinafter. That the Registered offices of all the Companies are in Delhi and therefore, the jurisdiction lies with this Bench.
5. It is seen from the record that the Board of Directors of all the Applicant Companies, vide separate meetings held on 25.04.2022 and 03.05.2022, have approved the proposed ‘Scheme of Amalgamation’.
6. It is stated by the Applicant Companies that the following objectives are sought to be achieved by way of Amalgamation:

a. *“Reduce managerial overlap, reduce administrative cost and strengthened leadership in the Industry.”*



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b. Improve organizational capabilities and leadership, arising from pooling of Assets, human capital and technical resources to compete successfully in an increasingly competitive industry.

c. Consolidation and simplification of the group structure, cost savings resulting from rationalization, standardization and simplification of business processes.

d. Avoiding un-necessary duplication of costs of administration, distribution, selling and marketing and reduction in legal and regulatory compliances.

e. Achieving economies of scale.”

7. All the Applicant Companies have filed their Affidavits in compliance of Section 230(2)(a) of Companies Act 2013, submitting therein that none of the Applicant Companies are under any prosecution/ investigation/ inquiry under Companies Act 2013.
8. The Applicant Companies have also placed on record the Certificate from the Statutory Auditors, confirming that their Accounting Standards are in conformity with the provision of Section 133 of the Companies Act 2013.
9. The Applicant Companies have filed their respective Memorandum of Association (MoAs) and Articles of Association (AoAs). The Applicant Companies have filed their latest Balance Sheets as on 31.03.2022.
10. The position regarding the Applicant Companies wise no. of Shareholders and Creditors and their Consent through Affidavits is summarised hereunder:

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Company	No. Shareholders	Consent Given (%)	No. Of Secured Creditors	Consent Given (%)	No. Of Un-Secured Creditors	Consent Given (%)
Transferor Company	2	100%	NIL	N.A.	1	100%
Transferee Company	97,523	NIL	NIL	N.A.	94	NIL

11. The applicants further affirmed that the Scheme is not prejudicial to the interests of the shareholders, and creditors of the applicant companies. Rather, the same may be beneficial to all the applicant companies and their respective shareholders, and creditors.

12. Taking into consideration the aforesaid facts and circumstances, following directions are issued: -

A. In relation to Transferor Company.

i. With respect to Shareholders:

2 shareholders, representing 100% of shareholding of the transferor Company, have given their consent by way of affidavits, therefore the requirement of convening/holding the meeting of the Equity shareholders is dispensed with.

ii. With respect to Secured Creditors:

3 Secured Creditors of the Demerged company have given their consent by way of affidavits, therefore the

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requirement of convening/holding the meeting of the secured creditors is dispensed with.

iii. With respect to unsecured creditors:

The sole unsecured creditor of the transferor company has given its consent affidavit in favour of the Scheme; therefore, the requirement of convening meeting of the unsecured creditor is dispensed with.

B. In relation to Transferee Company.

i. With respect to Shareholders:

Since, there are 97,523 shareholders in the transferee company the meeting of the shareholders of the Transferee Company shall be held on 26.08.2022 at 10:00 AM, at the registered office of the Transferee Company. The quorum of the meeting shall 75% in value.

ii. With respect to secured creditors:

Since there are no secured creditors in the Transferee Company the requirement of meeting of the secured creditors does not arise.

iii. With respect to unsecured creditors:

Since, there are 94 unsecured creditors in the transferee company the meeting of the unsecured creditors of the Transferee Company shall be held on 27.08.2022 at 10:00 AM, at the registered office of

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the Transferee Company. The quorum of the meeting shall 75% in value.

C. Sh. Raj Kumar, District & Session Judge (Rtd.), 9910384714 is appointed as the Chairperson and Ms. Vasundhra, Advocate, 8397878778, is appointed as Alternate Chairperson and, Sh. Parvindra Nautiyal, 8882017384, is appointed as the Scrutinizer for the meeting of the applicant companies, as has been directed to be convened by this Tribunal.

D. Sh. Gurmeet Pal Singh, 9416034405 is appointed as the Chairperson and Sh. Gajendra Singh, 9818909222 is appointed as Alternate Chairperson and, Sh. Hunnu Goyal, 9802953072 is appointed as the Scrutinizer for the meeting of the applicant companies as has been directed to be convened by this Tribunal.

E. The Fee for the Chairperson for the aforesaid meeting shall be Rs. 1,50,000/- and the fee of the Alternate Chairperson and the Scrutinizer shall be Rs. 1,25,000/- each in addition to meeting their incidental expenses. The Chairperson will file their report within 2 weeks from the closing of the e-voting and/ or postal ballot.

F. The individual notices of the said meetings shall be sent as required and prescribed by the Companies Act, 2013 through registered post or speed post or through courier or through e-mail, 30 days in advance

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before the scheduled date of the meeting, indicating the day, date, place and time as aforesaid, together with a copy of scheme of arrangement and, a copy of explanatory statement. The prescribed form of proxy shall be sent along with and in addition to the above documents, any other documents as may be prescribed under the Act may also be provided.

G. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the English Daily 'Business Standard' (Delhi Edition) and Hindi Daily 'Jansatta' (Delhi Edition) stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

H. Voting will be made through remote e-voting process in compliance with the guidelines issued by the Ministry of Corporate Affairs in this regard.

I. The Applicants shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator, and any sectoral regulators who may have significant bearing on the operation of the applicant companies, along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read

with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

J. All the aforesaid directions are to be complied with, strictly in accordance with the applicable law, including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016, as well as the provisions of the Applicant Companies Act, 2013 by the Applicants.

The application stands allowed in the aforesaid terms.

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

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(L. N. GUPTA)
MEMBER (TECHNICAL)

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(DHARMINDER SINGH)
MEMBER (JUDICIAL)