

November 15, 2023

To,

BSE Limited,
1st Floor, New Trading Ring,
Rotunda Building, PJ Towers, Dalal Street,
Mumbai - 400 001
Security Code - 539978

National Stock Exchange of India Limited
Exchange Plaza,
Bandra- Kurla Complex,
Bandra (East), Mumbai - 400 001
NSE Symbol - QUESS

Dear Sir/Madam,

Sub.: Receipt of Certified True Copy of Order of National Company Law Tribunal, Bengaluru Bench ("Hon'ble NCLT") sanctioning the Scheme of Amalgamation of MFX Infotech Private Limited, Greenpiece Landscapes India Private Limited and Conneqt Business Solutions Limited ("Transferor Companies") with Quess Corp Limited ("Transferee Company") and their respective shareholders and creditors ("Scheme")

This is with reference to the captioned subject and our letter dated November 07, 2023 with respect to the order passed by Hon'ble NCLT approving the aforementioned Scheme, we are pleased to inform that the Company has received the Certified True Copy of the order passed by Hon'ble NCLT approving the Scheme. The said copy of the Order is enclosed herewith.

The Scheme will become effective upon filing of the said order with the respective jurisdictional Registrar of Companies.

We request you to take the above information on record and treat this as compliance under Regulation 30 read with Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The same is being uploaded on the Company's official website <https://www.uesscorp.com/announcements/>

Yours sincerely,
For Quess Corp Limited

Kundan K Lal
Company Secretary & Compliance Officer



IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH- BENGALURU
(through web based video-conferencing platform)

CP (CAA) No.7/BB/2023

(Second Motion)

U/s. 230-232 of the Companies Act, 2013

r/w. Companies (CAA) Rules, 2016

IN THE MATTER OF:

Greenpiece Landscapes India Private Limited

Registered Office: S2, 104, 13th Main, 5th Sector,

H S R Layout, Bangalore,

Karnataka - 560034

...Applicant Co. No. 1 / Transferor Co. No. 1

Mfx Infotech Private Limited

Registered Office: 3/3/2, Ambalipura,

Sarjapur Road, Bellandur,

Bangalore, Karnataka -560102

... Applicant Co. No. 2 / Transferor Co. No. 2

Conneqt Business Solutions Limited

Registered Office: 3/3/2, Bellandur Gate,

Sarjapur Main Road,

Bangalore 560103

...Applicant Co. No. 3/ Transferor Co. No. 3

Quess Corp Limited

Registered Office: 3/3/2, Bellandur Gate,

Sarjapur Main Road, Bangalore, Karnataka- 560103

... Applicant Co. No. 4 / Transferee Co.

Order delivered on: 31.10.2023

CORAM:

1. Hon'ble Justice (Retd) T. Krishnavalli ,Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

Plaintiff Petitioners

: Shri Saji P. John

: Shri Ganesh R Ghale

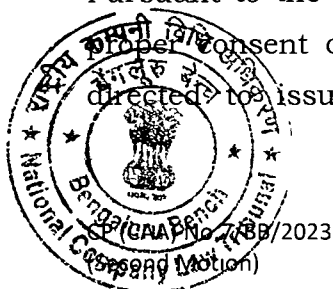


ORDER**Per: Manoj Kumar Dubey, Member (Technical)**

1. This is a Second Motion Petition jointly filed on 11.01.2023 by Greenpiece Landscapes India Private Limited (for brevity, the "Petitioner Company No.1"/ "Transferor Company No.1"), Mfx Infotech Private Limited (for brevity, the "Petitioner Company No.2"/ "Transferor Company No.2") Conneqt Business Solutions Limited (for brevity, the "Petitioner Company No.3"/ "Transferor Company No.3") and Quess Corp Limited (for brevity, "the Petitioner Company No.4"/ "Transferee Company") under Sections 230 and 232 of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act') and in terms of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, 'Rules') by *inter alia* seeking for the sanction of Scheme of Amalgamation (for brevity 'Scheme') between Transferor Companies and Transferee Company.
2. The Petitioner Companies filed First Motion Application bearing CA (CAA) No.22/BB/2022 ("**First Motion Application**") before this Tribunal seeking to dispense with the meeting of the Equity Shareholders, secured and unsecured creditors of Applicant Companies and also to dispense with unsecured debenture holders of Applicant No.3. Based on such Application moved under section 230-232 of the Companies Act, 2013 necessary directions were issued vide order dated 30.11.2022. Details of the first motion order dated 30.11.2022 are as under:

CA (CAA) No.22/BB/2022 - Date of Order 30.11.2022		
List	Transferor Company No.1 to 3	Transferee Company
Equity shareholders	Meeting Dispensed	Meeting Dispensed
Secured creditors	Meeting Dispensed	Meeting Dispensed
Unsecured Debenture Holder	-	Meeting Dispensed
Unsecured creditors	Meeting Dispensed	Meeting Dispensed

Pursuant to the First Motion Application, the Tribunal directed to submit the consent of affidavits of Secured creditors of Applicant No.1 to 3 and directed to issue notice to the Secured Creditor of Applicant Co.4 and





Unsecured creditors of Applicant Co. 3 & 4. In compliance to the Order dated 30.11.2022, petitioner filed vide D.No. 5711 and 5712 dated 27.12.2022.

3. When the petition was listed on 07.03.2023, the following directions were issued:-

“Admit and Issue Notice The Registry is directed to prepare notice on all the statutory authorities viz., the Registrar of Companies, Karnataka, the Regional Director South east Region, Hyderabad, Principal Chief Commissioner of Income Tax Karnataka & Goa, The Jurisdictional Deputy Commissioner, the Competition Commission of India, Official Liquidator, BSE Limited, National Stock Exchange Board of India and the Reserve Bank of India and the learned counsel for the petitioner is permitted to collect the notice and serve it on the said statutory authorities along with the Company Petition and material papers by speed post as well as by authorized email and to file proof of service of notice in the NCLT Registry, by way Compliance Affidavit well before the next date of hearing. The applicant is directed to take paper publication in one in Kannada daily and one English Daily vastly circulated in the region where the company is located. Accordingly, notice is issued to you to submit your reply on the above subject to the Bench in the matter on or before 31.03.2023. Next date of hearing of the above case is fixed on 12.04.2023 for hearing.”

4. In pursuant to the aforesaid notice, the Petitioner Companies have filed a compliance affidavit vide Diary No.1813 dated 29.03.2023 along with copies of proof of service of notice to the aforesaid authorities. On 22.06.2023 vide diary no. 3283 petitioner companies filed an affidavit stating that they have not received any objections from any persons/stakeholders/creditors as on the date of this Affidavit.
5. The main objects, date of incorporation, authorized, issued and paid-up share capital, rationale of the Scheme and interest of employees have been discussed in detail in First Motion Order passed on 30.11.2022.
6. The Board Resolution approving the Scheme by the Petitioner Companies is annexed at Annexure K of the Petition.
7. It is further submitted that the Certificates of Statutory Auditors of the Transferee Company, stating that the Accounting Treatment contained in Clause 12 of the Scheme, is in compliance with the with the relevant provisions of Companies Act, 2013, and the rules made thereunder with reference to applicable Accounting Standards notified under Section 133 of





the Companies act, 2013 and Other Generally accepted Accounting Principles, as applicable. The aforesaid certificate is attached as Annexure R of the petition.

8. The audited financial statements as on 31.03.2022 and the unaudited balance sheets as on 30.09.2022 of petitioner companies are attached as Annexure C,E,G & J to the petition.
9. As per the Scheme, the "Appointed Date" means 01.04.2021, or such other date as may be fixed or approved by the Hon'ble NCLT or any other appropriate authority.
10. The consideration for Amalgamation of the Transferor Company with the Transferee Company has been determined under clause 10 of the Scheme.
11. It is stated that the petitioner companies have filed affidavits stating that Scheme of Amalgamation does not envisage for Corporate Debt Restructuring or capital reduction. The Scheme herein does not provide for any kind of arrangement with the Creditors of the Petitioner Companies and thereby Corporate Debt Restructuring is not applicable to the Scheme. The petitioner companies further stated that there are no investigation proceedings pending against the Petitioner Companies under any statutes. The aforesaid affidavits is attached as Annexure L & M of the petition.
12. In pursuant to the notice, the Regional Director (RD) has filed its report along with the ROC *vide* Diary No.3456 dated 30.06.2023, by *inter alia* observing as under, *vide* para 2:

- (i) As per the latest shareholders list attached to the last Annual Return filed as on 31.03.2022, Transferee Company holds the entire share capital in Transferor Company 1, 2 & 3 and hence all the Transferor Companies are wholly owned subsidiaries of the Transferee Company. Despite all the transferor companies being wholly owned subsidiaries of the Transferee Company, the applicant companies have preferred a petition under section 230-232 of Companies Act, 2013 and not under section 233 of Companies Act, 2013.
- (ii) The Transferee Company being a listed company shall obtain No Objection Certificate from SEBI and the stock exchanges on which its shares are listed after complying with applicable regu-



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lations.

- (iii) As per clause 1.2 of Part A of the scheme, the appointed date is 1st April 2021. Since this appointed date is ante-dated beyond a year, justification for the same is to be provided and it is to be ensured that it should not be against public interest.
- (iv) As per MCA records, Transferor Company 3 and Transferee Company have huge open charges. Hence, the Petitioner Companies have to obtain and furnish No Objection Certificate from the concerned charge holders/s to Hon'ble NCLT before the scheme is allowed.
- (v) The Paid-Up Share Capital of Transferee Company as provided in clause 3.4 of Part-A of the Scheme does not match with the MCA Records and this needs to be clarified by the Company along with documentary evidences.
- (vi) As per clause 10 of Part C of the Scheme, the entire share capital of the Transferor Companies is held by the Transferee Company and upon scheme becoming effective, there shall not be any issue of shares as consideration to the shareholders of the Transferor Companies. The Investments, Compulsorily Convertible Debentures and Optionally Convertible Debentures held by the Transferee Company in the Transferor Companies shall stand cancelled upon this scheme becoming effective.
- (vii) Transferor Company 3 has shifted Its Registered Office from the State of Telangana to the State of Karnataka w.e.f. 10.06.2021.
- (viii) The object clause of the Transferee Company may be altered suitably to enable it to carry on all the existing objects of the Transferor Companies after amalgamation by complying with the applicable provisions of Companies Act, 2013 and also by filing relevant e-forms.
- (ix) As per the Independent Auditor's Report of Transferor Company 1 for the financial year ending 31.03.2022, the company is a loss-making entity, whereas the Transferee Company is a profit-making company. There may be a negative outflow of the tax liability of the Transferee Company once the Scheme is approved.





- (x) As per the Independent Auditor's Report of Transferee Company for the financial year ending 31.03.2022, certain book debts in form of Trade receivables as per quarterly statements are not in agreement with the unaudited books of account of the Company. Transferee Company needs to explain how the books of accounts reflect true and fair view of the state of affairs of the company in compliance with section 129 of the Companies Act, 2013, before the scheme is allowed.
- (xi) As per Independent Auditor's Report of Transferee Company for the financial year ending 31.03.2022, in respect of ongoing projects, Company has not transferred unspent Corporate Social Responsibility amount as at the end of previous financial year ending on 31.03.2021 to a special account within a period of 30 days from the end of the said financial year in compliance with the provisions of section 135(6) of the Companies Act, 2013. Hence the Company is required to file an adjudication application under section 454 of Companies Act, 2013 with the Registrar of Companies, before the scheme is allowed.
- (xii) As per the Independent Auditor's Report for the financial year ending 31.03.2022, Transferor Company 2, Transferor Company 3 and Transferee Company have outstanding disputed statutory dues to the tune of Rs. 2.75 crores, Rs. 54.40 crores and Rs. 17.82 crores respectively. The Petitioner Companies may be directed to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the dues as and when the claim is crystallized.
- (xiii) As per note no. 23, 20, 15.2 and 24 of the Financial Statement for the financial year ending 31.03.2022 of Transferor Company 1, 2 & 3 and Transferee Company have undisputed statutory dues to the tune of Rs. 6 64 lakhs, Rs. 11.21 lakhs, Rs. 21.75 crores and Rs. 322.86 crores respectively. The Companies may be directed to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the statutory dues immediately, If not settled so far.

- (xiv) As per note no. 20, 14, 21 of the Financial Statements for the





year ending 31.03.2022 of the Transferor Company 1, Transferor Company 3 and Transferee Company, outstanding dues to Micro and Small Enterprises to the tune of Rs. 8.94 lakhs, Rs. 1.25 crores and Rs. 3.49 crores exists respectively. The Companies may be asked to show as to how it has complied with Micro, Small and Medium Enterprises Development Act, 2006 and may be directed to furnish an undertaking to the effect that it will settle the dues as per the said Act immediately, if not settled so far.

- (xv) Clause 11.1 of Part C of the Scheme provides for Clubbing of Authorized Capital wherein, it is stated that the authorized share capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232(3)(1) of the Companies Act, 2013. In this regard, the Transferee Company shall comply with the provisions of the Section and pay the difference of fee, after setting off the fee already paid by the Transferor Companies on its respective capital. For this purpose, the Transferee Company needs to make a separate request letter to ROC for clubbing of Authorized capital within one month from the order.
- (xvi) As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the Officers in default, of the Transferor Company prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.
- (xvii) With reference to this Directorate's letter dated 17.03.2023, Issued to Income Tax, Bangalore, letter No. NCLT/DCIT-4(1)/BLR/2022-23 dated 08.05.2023 received from Mr. Saurabh Suryabhan Raskar, Joint Commissioner of Income Tax (OSD), Circle-4(1)(1), Bangalore, stating that MFX Infotech Private Limited (Transferor Company No.2) is the assessee of their circle and stated that there are outstanding demand dues for the Assessment Year 2016-17 for Rs. 2,75,83,530/-. Further, stated that their office has objection In the scheme of amalgamation between





the companies and requested to clear the outstanding demand before going into scheme of amalgamation. Hon'ble Tribunal may be pleased to direct the Income Tax Office to be a party to the proposed scheme for their comments, before the scheme is allowed.

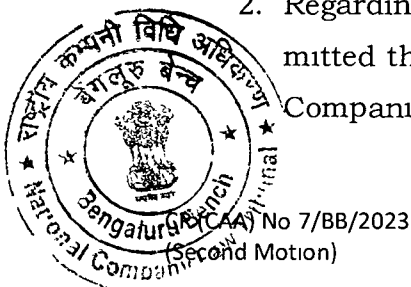
(xviii) As per para (b) of Annexure-A to the Independent Auditor's Report attached to the Balance Sheet as at 31.03.2022 of Conneqt Business Solutions Limited (Transferor Company No.3), it is stated that there are certain disputes pending before the Central Excise Service Tax Appellate Tribunal, Hyderabad, Assistant Commissioner, Tuni Circle, Kakina Division, Andhra Pradesh, Deputy Commissioner, Begumpet, Hyderabad, Superintendent, Gandhinagar, Bellary, High Court of Maharashtra, etc. with respect to Service Tax, GST, Provident Fund and Income Tax, may taken into consideration by the Hon'ble Tribunal.

(xix) This Directorate's addressed letter's dated 21.03.2023 to SEBI, CCI, NSE and BSE requesting to offer their comments/objections if any. However, till date no reply/comments in the matter have been received from them. Hon'ble Tribunal may be pleased to direct the SEBI, CCI, NSE and BSE to offer their comments/observations if required by the Hon'ble Tribunal as deem fit and proper.

(xx) Official Liquidator, Karnataka in his report dated 29.05.2023 filed before Hon'ble NCLT, Bengaluru Bench with respect to CP(CAA)07/B8/2023 has pointed out certain observations. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to comply with the observations pointed out by the Official Liquidator, before the Scheme is allowed.

13. Subsequently, reply affidavit to the Common RD & ROC report have been filed by petitioner companies vide diary No.3418 dated 28.06.2023 *inter alia* stating as under:-

2. Regarding observation in Para No 2(I) of the Common Report it is submitted that before filing this scheme under Section 230 and 232 of the Companies Act, 2013, the Petitioner Companies in the past had also





filed the Scheme of Arrangement under Section 233 of the Companies Act, 2013 for fast track merger and the Transferee Company being a Listed Company was unable to obtain Consents from Shareholders to the tune of more than 90% and accordingly the same was rejected by the Office of Regional Director. This is a matter of fact and mentioned in the Report of Official Liquidator at Observation No. 8 of the Report of Official Liquidator. Accordingly, the Petitioner Companies filed the Scheme under Section 230 and 232 of the Companies Act, 2013.

3. Regarding observation in Para No 2(II) of the Common Report, it is submitted that Petitioners have complied with all applicable laws, rules & regulations regarding the Scheme of Arrangement and its approval. Since the Scheme provides for merger of Transferor Companies who are wholly owned subsidiaries with their holding/Parent Company, the Transferee Company, NOC from SEBI and the Stock Exchanges is not required to be obtained. Only the intimation and submission of proposed scheme of arrangement is required, which has been complied with as per the SEBI regulations. A copy of the intimation served to BSE Limited and National Stock Exchange of India Limited and SEBI under SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 has already been filed and annexed as ANNEXURE P of the Company Petition

4. Regarding observation in Para No. 2(III) of the Common Report, it is submitted that the Appointed Date i.e. 1st April 2021 as mentioned in the Scheme is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Petitioner Companies is in compliance and undertakes to comply with the requirements clarified vide circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner Companies submit that the Company Application was filed on 21st January, 2022 whereas the Appointed Date mentioned in the Scheme is 1st April 2021. The Appointed date as fixed in the Scheme precedes the date of filing of the Application however the Appointed Date is **not ante-dated beyond a year and therefore, the**



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(Motion)

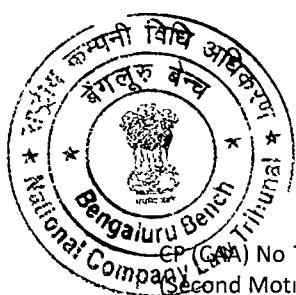


Scheme is in compliance with the Circular. Para 6 (c) of the said Circular is reproduced below;

6 (c): *"Where the 'Appointed Date' is chosen as a specific calendar date, it may precede the date of filing of the Application for scheme of merger/amalgamation in NCLT. However, if the 'Appointed Date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest."*

As the Appointed Date is not significantly ante-dated beyond a year from the date of filing of Scheme and approved by respective Boards, Shareholders, Creditors, wherever applicable, as per the directions of Hon'ble National Company Law Tribunal, the Scheme shall take effect from such Appointed Date.

5. Regarding observation in Para No. 2(IV) of the Common Report, it is submitted that that the Secured Creditors of Transferor Company No. 3 had extended their Consent to the Scheme by way of Affidavit and the same was produced along with the Company Application and this Hon'ble Tribunal had dispensed the Meetings of Secured Creditors of TR-3. It is further submitted that Clause 1.17 (b) of the Scheme of Amalgamation provides that all secured and unsecured debts of Transferor Companies will be absorbed by Transferee Company.
6. Regarding observation in Para No. 2(V) of the Common Report, it is submitted that the Regional Director has compared paid up capital for 2 (two) different periods/dates. Transferee Company has allotted equity shares against the exercise of stock options to its employees pursuant to the Existing Employee Stock Option Schemes. Therefore, Paid-up Share Capital of the Transferee Company is increased from 31st March 2021, which is mentioned in the Scheme. Return of allotment as filed with the ROC is annexed as ANNEXURE 1.



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7. Regarding observation in Para No. 2(VI) of the Common Report, it is submitted that the said observation is a matter of fact & record and is not required to be traversed
8. Regarding observation in Para No. 2(VII) of the Common Report, it is humbly submitted that the said observation is a matter of fact & record and is not required to be traversed.
9. Regarding observation in Para No. 2(VIII) of the Common Report, it is submitted that Transferee Company's main object No. 3, 4, 5 has broadly covers the main objects of Transferor Companies' main business/objects which includes maintenance of Landscaping & gardening and commercial places maintenance provided by Transferor No. 1, designing, developing, marketing of Computer and other IT services provided by Transferor No. 2, and Digital IT & Business process outsourcing services provided by Transferor No. 3. The Transferee Company's division is already engaged in such business and the main object clauses cover the same. The Petitioner Companies have already disclosed the main objects and undertake to comply with the provisions of Sec 16 of the Companies Act, 2013, and file necessary e-forms, if applicable.
10. Regarding observation in Para No. 2(IX) of the Common Report, it is submitted that there are no restrictions under Companies Act, 2013 for merger of Loss making entity with Profit making ones. Further it is submitted that the Transferor Companies are the wholly owned subsidiaries of the Transferee Company and this proposed merger is to consolidate the group entities & business. The proposed Scheme of Amalgamation is between wholly owned subsidiaries and their holding Company and upon the scheme becoming effective, the Transferor Companies shall stand dissolved, all the assets, liabilities and reserves of the Transferor Companies will be recorded at the carrying values in the consolidated financial statements. Further, Petitioners complied with the procedure set out in the Companies Act, 2013 and that the proposed scheme of compromise or arrangement is

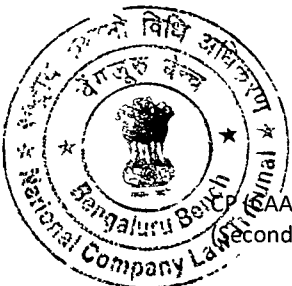




not in violation to any provision of law, unconscionable or contrary to public policy.

11.Regarding observation in Para No. 2(X) of the Common Report, it is humbly submitted that the books of account reflect true and fair view as per section 129 of Companies Act 2013 and the same has been emphasized in the second para of the 'Independent Auditor's Report'. In Annexure 'B' to the 'Independent Auditor's Report' the Auditor has stated that there are differences in trade receivable balances between the statement submitted to banks and as per unaudited books due to the timing difference between when the report was generated from the ERP system for submission to banks and the balance at the end of the day due to additional entries recorded in the books of account. The additional entries were recorded to reflect true and fair view of books of account for the financial year March 2022.

12.Regarding observation in Para No. 2(XI) of the Common Report, it is submitted that that the Transferee Company had allocated Rs. 42.2 million towards CSR budget for the financial year 2020-21 and the same was transferred to Careworks Foundation (CWF), implementing agency set up for undertaking CSR activities even before January 11, 2021, i.e., before the CSR amendment Rules came into effect. Pursuant to Ministry of Corporate Affairs (MCA) Circular No. 21/2014 dated 18 June 2014 which states that contribution of CSR amount to Corpus of a Trust will qualify as CSR expenditure as long as (a) the Trust is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act. A copy of the extract of the aforesaid Circular is produced as ANNEXURE 2. In view of the above, the Company is in compliance with Section 135 of the Companies Act, 2013 and there was no unspent amount for the financial year ending 31st March 2021. The same has been mentioned in the Annual report on Corporate Social Responsibility activities, Annexure G to the Annual Report 2021 published by the Company. A copy of Extract of the same has been



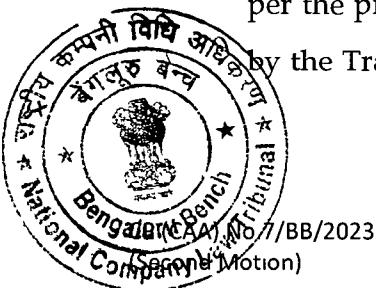


annexed as ANNEXURE 3. It is further submitted that the MCA had issued Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 in which provision relating to transfer of unspent account to a separate account was introduced and the amendment was effective from 22 January, 2021 which was well after the transfer of amount to CWF in accordance with the Circular No. 21/2014 dated 18 June, 2014. Hence, the Company has complied with the CSR rules notified under the Companies Act.

Donation: Donation Name	Transaction: Transaction Number	Transaction Amount	Donation: Pan Details	Transaction Date
Quess Corp Limited	PMT-02445	1,00,00,000	AABCI7601M	11-01-2021
Quess Corp Limited	PMT-02446	1,00,00,000	AABCI7601M	11-01-2021
Quess Corp Limited	PMT-02444	52,00,000	AABCI7601M	11-01-2021
Quess Corp Limited	PMT-02442	1,00,00,000	AABCI7601M	06-08-2020
Quess Corp Limited	PMT-02443	70,00,000	AABCI7601M	24-09-2020
Total		4,22,00,000		

13. Regarding observation in Para No. 2(XII) of the Common Report, it is humbly submitted that Transferee Company undertakes to clear the disputed Statutory Dues once the matters attain finality and amount is crystalized.

14. Regarding observation in Para No. 2(XIII) of the Common Report, it is humbly submitted that the balances mentioned by Regional Director/ROC were taken from audited financial statements for 31, March 2022 and have already been paid/set-off by respective petitioners in due course of time. As per the proposed Scheme, all unpaid statutory dues, if any, shall be absorb by the Transferee Company post sanction of the Scheme and the Transferee





Company undertakes to settle all pending statutory dues, as per applicable laws & provisions thereto.

- 15.Regarding observation in Para No. 2(XIV) of the Common Report, it is humbly submitted that that Clause 5.2 of the Scheme of Amalgamation provides for absorption of liabilities of Transferor Companies by the Transferee Company. Accordingly, the Creditors Liabilities including MSME dues will be the liabilities of the Transferee Company post sanction of the Scheme by this Hon'ble Tribunal and accordingly the interest of all creditors, including MSME are safeguarded by virtue of Scheme itself. Upon sanctioning of the Scheme the transferee company undertakes to comply with the provisions of MSME Act, 2006 for settlement of legitimate dues.
- 16.Regarding observation in Para No. 2(XV) of the Common Report, it is humbly submitted that the Transferee Company undertakes to pay differential fee, if any, upon clubbing of Authorized Share Capital of Transferor Companies with Transferee Company. The Transferee Company further undertakes to file necessary Application, for Clubbing of Authorized Share Capital pursuant to sanction of the Scheme by this Hon'ble Tribunal.
- 17.Regarding observation in Para No. 2(XVI) of the Common Report, it is humbly submitted that the said observation is not required to be traversed
- 18.Regarding observation in Para No. 2(XVII) of the Common Report, it is humbly submitted that the said Demand of Rs. 2,75,83,530/- for the Assessment Year 2016-2017 against Transferor Company No. 2 is currently pending before Transfer Pricing Officer (TPO). It is further submitted that in any event Clause 5.2 of the Scheme of Amalgamation provides for absorption of liabilities of Transferor Companies by the Transferee Company and accordingly, the said Demand will be cleared by the Transferee Company as and when the matter attains finality.
- 19.Regarding observation in Para No. 2(XVIII) of the Common Report, it is humbly submitted that Transferee Company undertakes to clear the Service Tax, GST, Provident Fund and Income Tax, pending before Tax Authorities once the matters attain finality.





20.Regarding observation in Para No. 2(XIX) of the Common Report, it is humbly submitted that a copy of the intimation served to BSE Limited and National Stock Exchange of India Limited and SEBI under LODR Regulations, 2015 is available at ANNEXURE P of the Company Petition. CCI is not applicable to the instant Scheme of Amalgamation and the Petitioner Companies have filed an Affidavit to this effect and the same is available at ANNEXURE N SERIES.

21.Regarding observation in Para No. 2(XX) of the Common Report, it is humbly submitted that Reply Affidavit vide Diary No. 2903111000562023/3 has been filed before the Hon'ble NCLT, Bengaluru Bench in response to the observations of the Official Liquidator, Karnataka vide his report dated 29-05-2023

14. Official Liquidator (OL) has filed a memo and report vide diary No. 2771 dated 29.05.2023 wherein it is stated that the Chartered Accountant in their report in respect of Petitioner Companies by inter alia observing as under:

1. TR companies and TE Company are registered in the state of Karnataka This report is in respect of Transferor companies only which is prepared based on the published financial statements and documents /details furnished by the petitioner TR companies.

2. The appointed date proposed is 1.4.2021. Being an old and out date, the scheme may be allowed from 01.04.2023. It may be noted that Transferor companies has already filed their latest Balance sheets as at 31.03.2022 with the ROC.

3. In TR1 & TR2 Companies there are no secured creditors. There are secured creditors In TR3 company as per charge register /master data maintained by MCA/ROC. The Hon'ble NCLT vide order dated 30.11.2022 dispensed with the meeting of shareholders, secured and unsecured creditors of the Transferor companies subject to certain conditions. In spite of it, the Interest of all secured and unsecured creditors Including of MSME, lease creditors shall be taken care by the TE company. As per financial statement of TR3 company there are huge MSME creditors and operative lease creditors and other unsecured creditors in the company.





4. The Board of Transferor companies have approved the scheme on 14.7.2021, 15.7.2021 and 19.7.2021.

5. The entire share capital of the TR companies are held by the TE company and its nominees. Upon the scheme becoming effective, as the TE company being wholly owned holding company of TR companies, there shall not be any issue of shares as consideration to the shareholders of the TR companies

6. The Authorized and paid up capital of TR1 Company is Rs. 85 lakhs and Rs. 80 lakhs respectively. The Authorized and paid-up capital of TR2 Company Is Rs. 2 crores and 1 crore respectively. The Authorized and paid of TR3 Company is Rs. 191 Crores and Rs.149,46,38,870/- respectively.

7. The TE company is a listed company with substantial public Interest. It is seen from the NCLT notice that copy of the scheme has been served to the respective BSE, NSE and SEBI for their objections if any. A copy of the scheme has also been served to the Hon'ble High Court of Karnataka. It is not known as to any specific reason for the same.

8. It is noticed that earlier the petitioner companies had filed an application u/s 233 of the Companies Act, 2013 for fast-track merger before the Regional Director (SER), Hyderabad. However, the Regional Director has dismissed the scheme as at least 90% approval of creditors and creditors did not give their consent. Hence the petitioner company has filed this scheme by invoking Sec. 230-232 of Companies Act, 2013 before the Hon'ble NCLT for consideration.

9. The main objects of all the TR companies are different to the main objects of TE company. Therefore, TE company has to comply with Sec. 16 of Companies Act, 2013 before doing or absorbing the objects of TR companies.

10. In all the TR companies, there are huge, related party transactions. The TE company has to explain the compliance of Sec. 188 of Companies Act, 2013 to the satisfaction of Jurisdictional ROC.



No 7/BB/2023

(Second Motion)



11. Against TR2 and TR3 companies many cases are pending before the statutory authorities like income tax, GST, PF. The TE Company has to settle the amount once the payment is crystalized

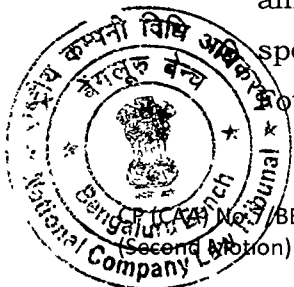
12.The TR1 company is a loss-making company, TR2 company made certain profits and TR3 company is a highly profit-making company with huge turnover and net worth. The income tax Impact after merger of TE company needs to be explained by the petitioners.

13.As per records, the TR3 company was a TATA group initially and many TATA group companies were interested in the affairs of company till April 2021. Apparently, the TE company has purchased the Interest from TATA concerns and made TR3 company as a wholly owned subsidiary. Though the TR3 company has shown as wholly owned subsidiary of TE company now, with regard to convertible debentures issued by TR3 company during 2019 there are certain obligations on the part of TR 3 company to Tata Sons Pvt Ltd. The entire issues may kindly be asked to explain by the petitioners.

14.No Employees/workmen of TR companies to be retrenched/terminated in the terms of amalgamation of TR companies with TE company. This Hon'ble Tribunal may kindly see that TR or TE will not retrench staff or employee of TR companies in the guise of surplus staff on account of merger. Need to give a separate undertaking by the TE Company in this regard by TR3 company/TE company as there are 43874 employees/workers as on 31.3.2023 as per CA's report.

15.The TR3 company has one subsidiary namely AllSec Technologies Ltd with 73.99% holding. The status of the said subsidiary has not been disclosed in the scheme including of allotting fresh shares to the remaining 22.61% shareholders and also about approval of the scheme from them.

16.The CSR expenditure incurred by TR3 company has been examined prima facie. It is noticed that the company has unspent amount of CSR in 2021-2022 and also huge amount has shown as spent for the last two years though its own entity the Careworks foundation. Many expenses were incurred and shown as CSR





expenditure. However no CSR registration has been disclosed in the statement for the year 2021-2022. The compliance of Sec. 135 with rules made thereon including amendments notified may be shown to the jurisdictional ROC

17. From the document submitted and other books and papers available, the TR companies or TE Company is not under management dispute or under IBC

18. That for scrutiny of the books of accounts and records of TR companies the Official Liquidator has engaged M/s N. C. Ramadurai & Co, Chartered Accountants having its registered office at Flat No. 301, Topaz Block, Esteem Heritage, Apartments, Rose Garden, Road, JP Nagar 5th Phase, Bengaluru -560078 for TR1 and TR2 companies and Shri. UC Bhandari, CA having its office at 325, 1st floor, Prabhat Complex, 8 K G Road, Bangalore 560 009 engaged for TR 3 company from the panel approved by the Hon'ble High Court of Karnataka.

19. That the said Chartered Accountants, have submitted their reports on 11.5.2023 in respect of TR 1 & TR 2 companies & on 19.5.2023 in respect of TR 3 company after examining the affairs of the Transferor Company. The said reports are enclosed herewith in this report. The Chartered Accountant's reports regarding transferor companies may be treated as part and parcel of this report. It is noticed from the Chartered Accountant reports that no adverse comments as such has been given.

15. The petitioner companies filed its reply vide diary no: 2968 dated 06.06.2023 to the observations made by the Official Liquidator is as under.

2. Regarding observation in Para No. 1 of the report of the Official Liquidator, it is submitted that it is a matter of fact and is not required to be traversed.
3. Regarding observation in Para No. 2 of the report of the Official Liquidator, it is submitted that that the Appointed Date i.e. 1st April 2021 as mentioned in the Scheme is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Petitioner Companies undertakes to comply with the requirements clarified vide circular





No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner Companies submit that the Company Scheme Application was filed on 21st January, 2022 whereas the Appointed Date mentioned in the Scheme is 01st April 2021 The Appointed date as fixed in the Scheme precedes the date of filing of the Application however the Appointed Date is not ante-dated beyond a year and therefore, the Scheme is in compliance with the Circular. Para 6 (c) of the said Circular is reproduced below;

6 (c): *“Where the 'Appointed Date' is chosen as a specific calendar date, it may precede the date of filing of the Application for scheme of merger/amalgamation in NCLT. However, if the 'Appointed Date' is significantly ante-dated **beyond a year** from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.”*

The Petitioner Companies submit that the Appointed Date may not be changed from 01.04.2021. A copy of the MCA Circular regarding Appointed Date and E-receipt of filing Company Application on 22.01.2022 are attached as **ANNEXURE 1**.

4. Regarding observation in Para No. 3 of the report of the Official Liquidator, it is submitted that it is submitted that Clause 1.17 (b) of the Scheme of Amalgamation provides that all secured and unsecured debts of Transferor Companies will be absorbed by Transferee Company. Additionally, the Transferee Company undertakes to clear the dues of Creditors in the ordinary course of its business.
5. Regarding observation in Para No. 4,5 & 6 of the report of the Official Liquidator, it is submitted that it is a matter of fact and is not required to be traversed
6. Regarding observation in Para No. 7 of the report of the Official Liquidator it is submitted that a Notice of the Petition was issued to Hon'ble High Court of Karnataka due to oversight. There is no specific reason for the same. The Hon'ble High Court of Karnataka is not involved in the matter and the said Notice was returned as the Addressee refused to accept it. The above-mentioned facts are already brought





on record in Para 12 of the Compliance Affidavit filed by Petitioner Companies.

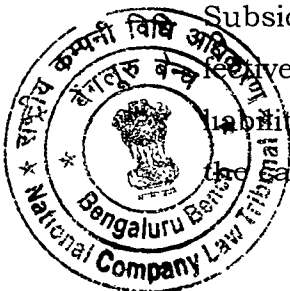
7. Regarding observation in Para No. 8 of the report of the Official Liquidator, it is submitted that it is a matter of fact and is not required to be traversed
8. Regarding observation in Para No. 9 of the report of the Official Liquidator, it is submitted that the Transferee Company's main object No. 3, 4, 5 has broadly covered the main objects of Transferor Companies' main business/objects which includes maintenance of Landscaping & gardening and commercial places maintenance provided by Transferor No. 1, designing, developing, marketing of Computer and other IT services provided by Transferor No. 2, and Digital IT & Business process outsourcing services provided by Transferor No. 3. The Transferee Company's division is already engaged in such business and the main object clauses cover the same. The Petitioner Companies have disclosed the main objects and undertake to comply with the provisions of Sec 16 of the Companies Act, 2013, if applicable.
9. Regarding observation in Para No. 10 of the report of the Official Liquidator, it is submitted that all the Related Party Transactions are in compliance with Section 188 of the CA, 2013 and are entered in the ordinary course of business and are on an arm's length basis. The Related Party transactions are disclosed in the Financial Statements and Form AOC-2 of the Board's Report. The same is part of the Company Petition filed by Petitioner Companies at ANNEXURE C-2, E-2, G-2 and J-2. It is further submitted that Transferee Company has taken necessary approval of all related party transactions in its Audit Committee meeting as applicable. The Related party transaction between holding company and its wholly owned subsidiaries are exempted whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval as per Sec. 188 of Companies Act, 2013.
10. Regarding observation in Para No. 11 of the report of the Official Liquidator, it is submitted that the Transferee Company undertakes to





clear the Demands of Income Tax Department and GST once the matters attain finality.

11. Regarding observation in Para No. 12 of the report of the Official Liquidator, it is submitted that there is no restrictions under Companies Act, 2013 for merger of Loss making entity with Profit making ones. Further it is submitted that this merger is to consolidate the group business. The Transferee Company is the Parent Company of the Transferor Companies. The proposed Scheme of Amalgamation is between wholly owned subsidiaries and their holding Company and upon the scheme becoming effective, the Transferor Companies shall stand dissolved, all the assets, liabilities and reserves of the Transferor Companies will be recorded at the carrying values in the consolidated financial statements.
12. Regarding observation in Para No. 13 of the report of the Official Liquidator, it is submitted that the details of previous name changes of Petitioner No. 3/Transferor Company No. 3 and status of optionally convertible debentures are produced herewith as **ANNEXURE 2**. The Transferor Company No. 3 is a wholly owned subsidiary of the Transferee Company.
13. Regarding observation in Para No. 14 of the report of the Official Liquidator, it is submitted that Transferee Company undertakes to not retrench or terminate any of the Employees of Transferor Company pursuant to the merger.
14. Regarding observation in Para No. 15 of the report of the Official Liquidator, it is submitted that upon this Scheme becoming effective, the investments in the share capital of the Transferor Companies, appearing in the books of account of the Transferee Company shall be cancelled and extinguished without any further application, act, instrument or deed. Scheme of Amalgamation is between Wholly-owned Subsidiaries and parent Company, and upon the scheme becoming effective, the Transferor Companies shall stand dissolved, all the assets, liabilities and reserves of the Transferor Companies will be recorded at carrying values in the consolidated financial statements.





It is further submitted that the Transferee Company is the ultimate holding Company of Allsec Technologies Limited and the investment made by Transferor Company No. 3 in Allsec Technologies will be transferred under this scheme to Transferee Company. There is no compromise or arrangements with Allsec Technologies Limited or its public shareholders and therefore, no allotment of shares is to be made to the shareholders of Allsec Technologies Limited and no minority shareholder approval is required under the SEBI Regulations. Further, Transferor Company No. 3 and the Transferee Company had filed necessary disclosure with SEBI at the time acquisition of the shares in Allsec Technologies Limited. Copy of the disclosures filed with the Stock Exchanges are attached as **ANNEXURE 3**.

15. Regarding observation in Para No. 16 of the report of the Official Liquidator, it is submitted that the Company allocated CSR Budget in each financial year as per prescribed calculations. The Company has incurred expenditure in accordance with the planned programs. The Company contributed through Care Works Foundation (CSR Registration Number: CSR00001744), which is mentioned in CSR Disclosures of the Annual Report (Page No. 14 of the Annual Report). A copy of the relevant extracts pertaining to CSR is produced herewith as **ANNEXURE 4**.

16 Regarding observation in Para No. 17 of the report of the Official Liquidator, it is submitted that the said observation is correct and is not required to be traversed.

16. The reports of the RoC, RD & OL are taken on record. Similarly, reply filed by the Petitioner Company to the RD & OL report are taken on record.

17. In view of the above discussion, we conclude that the objections/ observations to the Scheme received from RD, RoC and OL have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.

18. On 08.09.2023, the learned counsel appearing for the IT Department submitted that there is some losses in the Transferor Company, therefore

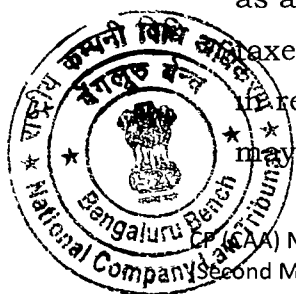
requested further time to file their report. However, the learned counsel for petitioner submitted that they have already given undertaking for the





same. With reference to the observation in para 2(ix) of RoC report and para 12 of OL report regarding negative tax impact once the scheme is approved, the Applicant has merely explained that there are no restrictions under Companies Act, 2013 for merger of Loss making entity with Profit making ones. In this connection, it is stated that there are specific provisions under the Income Tax Act, 1961 dealing with the conditions to be satisfied for Amalgamation under Section 2(1B) of the IT Act, 1961. Moreover Section 72A of the Income Tax Act, read with Rule 9C deal with the provisions related to carrying forward and set off of accumulated losses and unabsorbed depreciation, in the case of Amalgamation and Demerger. In Section 72 A (2) specific conditions are given for allowing the claim of carrying forward and set off of said losses/depreciation in the Income Tax Assessment proceedings. Accordingly, it is observed that there is no bar for set off of losses of the Amalgamating Company with the Amalgamated Company even if the Amalgamating Company was having substantial profits under the Income Tax Act. There were sufficient safeguards built in for the revenue by providing for the conditions prescribed U/s. 72A(2) of the IT Act, 1961; where the Assessing Authority can disallow the claim for carry forward and set off of losses, if these conditions are not satisfied. Accordingly, it is observed that there is no impediment in approval of the Scheme on this point.

19. It is noticed that the Transferee Company has undertaken to clear the Service Tax, GST, Provident Fund and Income Tax, pending before Tax Authorities once the matters attain finality as per the Reply to ROC (point 19). Further, it is clear that from the Scheme in Clause 9 all the taxation matters in the account of Transferee Company.
20. The Scheme in question as annexed at **Annexure-A is approved** and we hereby declare that the same is to be binding on all the shareholders and creditors of the Transferor Company as well as Transferee Company. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the





Scheme, the Transferor Companies shall stand dissolved without undergoing the process of winding up resulting in increase in the authorised share capital of the Transferee Company.

AND THIS TRIBUNAL DOES FURTHER ORDER:

- (i) That the petitioner companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- with the Pay & Accounts Office, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and Rs.25,000/- in favour of The Prime Minister's National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) The Petitioner Companies are directed to make compliance to the provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time.
- (iv) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (v) The approval /sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

21. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Companies on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the





Transferor Company by way of affidavit of the Transferor Company respectively.

22. Accordingly, CP (CAA) No.7/BB/2023, is disposed of. Copy of this Order be communicated to the Learned Counsel for the Petitioner Companies.

-Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)



-Sd/-
(T.KRISHNAVALLI)
MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Anilista Shah 9/11/2023.

DEPUTY/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
Bengaluru Bench