



ASM TECHNOLOGIES LIMITED

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CIN : L85110KA1992PLC013421 GST No. : 29AABCA4362P1Z9

Date:15th November 2024

To,
BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai- 400001

Scrip Code: 526433; Trading Symbol: ASMTEC

Subject: Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”),

Ref: Intimation of NCLT Approval for Scheme of Amalgamation and Merger - Scheme of amalgamation and merger of ASM Digital Engineering Private Limited (formerly Semcon India Private Limited) (“Transferor Company”) with ASM Technologies Limited (“Transferee Company”) and their respective shareholders under Sections 230-232 of the Companies Act, 2013 and applicable provisions and rules made thereunder

Dear Sir/Madam,

In continuation to all the previous intimations regarding the aforesaid scheme of amalgamation, this is to inform you that the Hon’ble National Company Law Tribunal (NCLT), Bengaluru Bench, has sanctioned the Scheme of Amalgamation and Merger between ASM Digital Engineering Private Limited (formerly known as Semcon India Private Limited) (“Transferor Company”) and ASM Technologies Limited (“Transferee Company”) on 14th November 2024. The order has been pronounced, and attached Final Order for the case. The said order is accessible on the Hon'ble NCLT's website at

https://efiling.nclt.gov.in/nclt/public/order_view.php?path=L0VmaWxIX0RvY3VtZW50L25jbHRkb2MvY2FzZWVvYy8yOTAzMTEzMTEzLzA0L09yZGVyLUNoYWxsZW5nZS9xcmFwcGVuZGVkcGRmLzA0X29yZGVyLUNoYWxsYW5nZV8wMDRfMTczMTY1MDU2Mjg5MzcyNzIzNzY3MzZINDAyNmY1N2EucGRm

Please take the above on record.

For **ASM Technologies Limited**

Vanishree Kulkarni
Company Secretary and Compliance Officer
Membership Number: F13306

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**

[[Through Physical hearing/ VC Mode (Hybrid)]]

**C.P. (CAA)No.07/BB/2024
(Second Motion)**

U/ss.230-232 of the Companies Act, 2013
and other applicable provisions of the Companies Act, 2013
R/w. the Companies (CAA) Rules, 2016

IN THE MATTER OF:

1. M/s. ASM Digital Engineering Private Limited

(formerly known as Semcom India Private Limited)

Rep. by its Authorised Representative

Ms. Vanishree Anandmurthy Kulkarni

R/o. at RMZ NXT, Campus IB, 1st Floor,
Mahadevapura Unit 102,
Sonnenahalli Village, K R Puram Hobli,
Bengaluru – 560 066

- Petitioner Company No.1/
Transferor Company

2. M/s. ASM Technologies Limited

Rep. by its Authorised Representative

Ms. Vanishree Anandmurthy Kulkarni

80/2, Lusanne Court, Richmond Road,
Bengaluru – 560 025

- Petitioner Company No.2/
Transferee Company

Order delivered on: 14th November, 2024

CORAM:

1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner Companies : Shri Pramod S.M
For the ROC & RD : Shri Hemanth Rao
For the IT Department : Shri Ganesh Ghale

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This is a second motion Petition filed on 29.12.2023 by **M/s. ASM Digital Engineering Private Limited** (for brevity, the Petitioner Company No.1/



Transferor Company) and **M/s. ASM Technologies Limited** (for brevity, the Petitioner Company No.2/Transferee Company) under Sections 230 to 232 of the Companies Act, 2013 and other Applicable provision of the Companies Act, 2013 (for short to be referred hereinafter as the “Act”), R/w. the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, ‘Rules’), seeking for the sanction of Scheme of Amalgamation and Merger between the Transferor Company and Transferee Company w.e.f. the Appointed Date or such other date as determined in terms of the Scheme, so as to be binding on all the Shareholders and Creditors of the Transferor and Transferee Companies. Further, the Transferor Company shall be dissolved without being wound up.

2. The Petitioner Companies filed First Motion Application bearing C.A. (CAA)No.12/BB/2023 before this Tribunal under Sections 230 to 232 of the Companies Act, 2013. Based on the said Application *vide* Order dated 27.07.2023 of this Tribunal, the meetings of Equity Shareholders of the Applicant Companies, Secured and Unsecured Creditors of the Transferee Company were dispensed; and the meeting of the Unsecured Creditors of the Transferor Company was directed to be convened.

In compliance with the above directions, meeting of the Unsecured Creditors of the Transferor Company have been conducted by the Chairperson and Scrutinizer who have also filed their reports in this regard, which are placed as Annexure-I to the Petition. It is seen that the Unsecured Creditors of the Transferor Company has approved the proposed Scheme.

3. *Vide* Order dated 13.03.2024 of this Tribunal, the following directions were issued:-

*“...4. The Petition be listed for hearing on **30.05.2024**. At least ten days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspapers viz. “Hosa Diganta” in English edition and translation thereof in “Financial Express” in Kannada edition, as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*



5. Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Act, 2013 who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the annexures filed therewith at least 15 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which, it will be considered that there is no objection to the approval of the Scheme on the part of the objector(s).


6. In addition to the above public notice, each of the Petitioner Company shall serve the Notice of the Petition on the following Authorities, namely (a) Regional Director (South East Region), Hyderabad (b) Registrar of Companies, Karnataka, Bengaluru (c) office of the Official Liquidator (d) the Reserve Bank of India (e) jurisdictional Income Tax Authorities by disclosing the PAN numbers of the Applicant Companies (f) the Designated Nodal Officer - Principal Chief Commissioner of Income Tax, Karnataka & Goa (g) Securities and Exchange Board of India, Mumbai (h) BSE Limited, Mumbai along with the copy of this Petition by Speed Post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective Companies involved in the Scheme as per Rule 8 of the Companies (CAA) Rules, 2016, with a direction that they may submit their representation, if any, within thirty days from the date of receipt of such notice, failing which, it will be presumed that the said Authority has no representation to make to the Scheme.”

4. In pursuant to the Order dated 13.03.2024, the learned PCS for the Petitioner Companies has filed copies of proof of service of notices, along with paper clippings of Paper Publication and an Affidavit to the effect that the Petitioner Companies have not received any objections pursuant to Section 230(4) of the Companies Act, 2013 vide Diary No.2904 dated 24.05.2024.
5. The main objects, dates 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 dated 27.07.2023.
6. The Board Resolution of the Petitioner Companies approving the Scheme are annexed as Annexures-F and F1 to the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Petitioner Companies i.e., M/s. B.K.Ramadhyan & Co., LLP, Chartered Accountants vide Certificate dated 09.11.2022, have




inter alia, certified that the Accounting Treatment contained in Clause 12, Part-D of the Scheme, is in compliance with Accounting standards prescribed under Section 133 of the Companies Act, 2013 and Other Generally Accepted Accounting Principles in India. The aforesaid Certificates are attached as Annexure-J to the Petition.

8. Ld. PCS for the Petitioner Companies has filed various affidavits with regard to the Sectoral Regulators, no Corporate Debt Restructuring and no investigations or proceedings are pending against the Petitioner Companies under Sections 235 to 251 of the Companies Act, 1956 or Sections 206 to 229 of the Companies Act, 2013 or any other provision of the Act or statutes. The aforesaid Affidavits are attached as Annexures-M to T to the Petition.
9. The Audited Financial Statement of the Petitioner Companies as on 31.03.2023 are attached as Annexures-C & E and Provisional Unaudited Financial Statements of the Petitioner Companies as on 30.09.2023 of the Petitioner Companies are attached as Annexures-C1 & E1 to the Petition.
10. As per the Composite Scheme, the “Appointed Date” means 01.04.2023 or such other date as the NCLT may direct.
11. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) have filed a Common Report *vide* Diary No.5244 dated 09.09.2024. Both RD and ROC have raised the following observation *vide* para II:
 - 1) As per the last Annual Return filed as on 31.03.2023 of the Transferor Company, ASM Technologies Limited (Transferee Company) holds 100% of Equity Shares in the Transferor Company. Hence, the Transferor Company is a Wholly Owned Subsidiary of the Transferee Company.
 - 2) The Transferee Company is a Listed Company. The Equity Shares of the Transferee Company are listed on BSE Limited. The Transferee Company is required to show the compliance of SEBI (Listing Obligations and Disclosure Requirements), 2015. The Hon’ble Tribunal may be pleased to direct the Petitioner Transferee Company




to comply with the requirements of the listing agreement along with SEBI Regulation in this regard.

- 3) As per MCA records, the Transferor Company and the Transferee Company have open Charges. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to obtain and furnish No Objection Certificate/s from the concerned Charge holder/s before the Scheme is allowed.
- 4) As per Clause 10 of Part C of the Scheme, as the Transferor Company is a Wholly Owned Subsidiary of the Transferee Company, the Transferee Company shall not allot shares to the shareholders of the Transferor Company. Further, the entire Equity Share Capital held by the Transferee Company in the Transferor Company shall stand cancelled and extinguished.
- 5) As per Para 1.3 of Part-A of the proposed Scheme, the appointed date has been stated as 01.04.2023.
- 6) As per Note no.14 and 16(iv) of the latest Audited Financial Statements for the year ending 31/03/2023, both the Transferor Company and the Transferee Company have undisputed statutory dues to the tune of Rs.1.11 crores and Rs.2.82 crores respectively. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking to the effect that it will settle the statutory dues immediately, if not settled so far.
- 7) As per the Independent Auditor's Report for the Financial Year ending 31/03/2023, the Transferor Company has total outstanding disputed dues towards Provident Fund and Professional Tax to the tune of Rs.47,928 and Rs.200 respectively. Further, the Transferee Company has total outstanding disputed dues towards Service Tax and Income Tax to the tune of Rs.3.55 crores and Rs.10.5 lakhs respectively. The Hon'ble Tribunal may be pleased to direct the Petitioner Transferee Company to furnish an undertaking to the effect that it will settle the dues of the Transferor Company as and when the claim is crystallize.
- 8) As per Note no.13 and 16(ii) of the Audited Financial Statements for the year ending 31/03/2023, both the Transferor and Transferee Companies have outstanding dues to Micro, Small and Medium




Enterprises to the tune of Rs.5.2 lakhs and Rs.21.3 lakhs respectively. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies 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 Hon'ble NCLT to the effect that it will settle the dues as per the said Act immediately, if not settled so far.

- 9) As per the Audited Financial Statements for the year ending 31/03/2023, the Transferor and Transferee Companies have Foreign Exchange Transactions. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to submit the relevant approvals and compliances made under FEMA/ RBI Regulations before the Scheme is allowed.
- 10) Clause 11 of Part C of the Scheme provides for Clubbing of Authorised Share Capital wherein it is stated that the Authorised 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)(i) of the Companies Act, 2013. In this regard, the Transferee Company shall comply with the provisions of the Section 232 of the Companies Act and to pay the difference of fee, after setting off the fee already paid by the Transferor Company on its authorised share capital.
- 11) As per Clause 5 of Part B of the Scheme, all staff and employees of the Transferor Company shall be absorbed into the Transferee Company. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to explain before the Hon'ble NCLT as to what measures are being taken to safeguard the interests of the employees of the Transferor Company and steps taken for implementation of this scheme.
- 12) The Accounting Treatment as mentioned in the Scheme needs to be as per the prescribed Accounting Treatment in the Companies Act, 2013 and the applicable Accounting Standards issued from time to time.
- 13) 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.

- 14) Letter dated 20.05.2024 has been received from Aboli Dhawankar, Manager (RBI) vide letter dated 20.05.2024 and submitted their comments/objections with respect to M/s. ASM Technologies Limited (Transferee Company). Hon'ble Tribunal may be pleased to direct the Petitioner Transferee Company to comply with the observations of RBI, before the scheme is allowed. Copy of the said letter of RBI dated 20.05.2024 is enclosed as Annexure-1.
- 15) The Transferee Company is a listed company. The equity shares of the Transferee Company are listed with BSE Limited. With reference to this Directorate's letter dated 23.04.2024 issued to SEBI & BSE, till date no report/comments in the matter have been received from them. The Hon'ble Tribunal may be pleased to direct the Transferee Company to show the compliance of SEBI (Listing Obligations and Disclosure Requirements), 2015 and no Objection Certificate from Securities and Exchange Board of India, BSE Limited may be asked to submit for merging of Unlisted Transferor Company with a Listed Transferee Company, before the scheme is allowed.
- 16) With reference to this Directorate's letter dated 23.04.2024 issued to the Principal Commissioner of Income Tax, Bengaluru, till date no report/comments in the matter have been received from Income Tax Department with respect to Transferor Company and Transferee Company. The Hon'ble Tribunal may be pleased to obtain consent/ NOC from the Income Tax Department, before the scheme is allowed.
- 17) As per Section 240 of the Companies Act, 2013, the liability in respect of offence 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.
- 18) The Petitioner Companies are required to comply with the provisions of Section 239 of the Companies Act, 2013 with respect to preservation of books and papers of amalgamated company. The



Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking that they will preserve the books and papers of the amalgamated company.

- 19) Report of the Official Liquidator, Karnataka dated 10.05.2024 is filed before the Hon'ble NCLT(BB) and copy of the same has been furnished to this Directorate vide e-mail dated 15.05.2024 (copy enclosed as Annexure-2) with respect to CP(CAA)07/BB/2024. The Official Liquidator in his report 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.

III. There are no Complaints, Prosecution, Technical Scrutiny/Inquiry, Inspection and Investigation pending in this office against both the Transferor and Transferee Companies.

12. Subsequently, the Petitioner Companies have filed a reply affidavit and additional reply affidavit to the Common Report of RD & ROC *vide* Diary Nos.5240 & 5273 dated 06.09.2024 & 10.09.2024 respectively, *inter alia*, stating as follows:-

- i. **Reply to para II (2) of the ROC & RD report:** It is submitted that the Transferee Company is a Listed Company. The Equity Shares of the Transferee Company are listed on BSE Limited. The Transferee Company is required to show the compliance of SEBI (Listing Obligations and Disclosure Requirements), 2015 by furnishing No Objection Certificate from Securities and Exchange Board of India and BSE Limited.

As per Regulation 37(6) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Obtaining of No-objection letter does not apply to draft schemes which solely provide for merger of a wholly owned subsidiary with its holding Company.

The Company promptly disclosed the outcome of the board meeting within 30 minutes of its conclusion and immediately disclosed the complete approved scheme under the 'Scheme of Arrangement' tab.

This was done before submitting it to the Tribunal for sanction. Below is a screenshot of the submission:



Company	Announcement	Category	File Size	XBRL
ASM TECHNOLOGIES LTD	526433 Announcement under Regulation 30 (LODR)-Investor Presentation	Company Update	2.15 MB	XBRL
	Investor Presentation- Sep 2022			
	Exchange Received Time 10-11-2022 16:41:50 Exchange Disseminated Time 10-11-2022 16:41:50 Time Taken 00:00:00			
	526433 Statement Of Deviations Or Variation In The Use Of Proceeds Of Rights Issue	Company Update	1.23 MB	XBRL
	Statement of deviations or variation in the use of proceeds of Rights Issue			
	Exchange Received Time 09-11-2022 22:24:27 Exchange Disseminated Time 09-11-2022 22:24:27 Time Taken 00:00:00			
	526433 Announcement under Regulation 30 (LODR)-Scheme of Arrangement	Company Update	20.26 MB	XBRL
	Scheme of Amalgamation			
	Exchange Received Time 09-11-2022 22:22:23 Exchange Disseminated Time 09-11-2022 22:22:23 Time Taken 00:00:00			
	526433 Intimation Of Record Date	Corp. Action	0.35 MB	XBRL
	Intimation of Record Date			
	Exchange Received Time 09-11-2022 22:18:03 Exchange Disseminated Time 09-11-2022 22:18:04 Time Taken 00:00:01			
	526433 Results For The Half Year Ended 30th September 2022	Result		
	Results for the half year ended 30th September 2022			
	Exchange Received Time 09-11-2022 22:12:15 Exchange Disseminated Time 09-11-2022 22:12:16 Time Taken 00:00:01			
	526433 Board Meeting Outcome for Outcome Of Board Meeting Held On 9th Of November 2022	Board Meeting	20.26 MB	XBRL

Additionally, the Stock Exchange has observed that the aforesaid scheme of arrangement of WOS with the Parent Company is not uploaded under Regulation 37(6) of the SEBI LODR Regulations. Hence, they requested the Company to submit certain documents and required the Company to pay a processing fee for public disclosure under Regulation 37(6) of the SEBI LODR Regulations. Below is a screenshot of the Stock Exchange's public disclosure.

Company Name	Date of Uploading	Draft Scheme / NOC Document	Complaint Report	Observation Letter of Exchange	Remarks
ASM TECHNOLOGIES LIMITED	07/05/2024	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SCHEME OF AMALGAMATION AND MERGER OF ASM DIGITAL ENGINEERING PRIVATE LIMITED (FORMERLY KNOWN AS SEMCON INDIA PRIVATE LIMITED) WITH ASM TECHNOLOGIES LIMITED AND THEIR RESPECTIVE SHAREHOLDERS

- ii. **Reply to Para II (3) of the ROC & RD report:** It is submitted that the Companies have duly obtained the No Objection Certificates in the form of affidavits, which have already been submitted to the Tribunal.



iii. **Reply to Para II (6) of the ROC & RD report:** It submitted that they undertake to pay and settle any lawful and legal liabilities of statutory dues as and when such liabilities arise.

iv. **Reply to Para II (7) of the ROC & RD report:** It is to be noted that the Company has calculated and deposited PF for the employees according to the applicable provisions of the law on their monthly salaries. Other fees, such as consultancy fees, do not impact PF payments.


Additionally, the statutory auditors, in their audit reports (point 7(a) on page 63 of the Annual Report for FY 2021-22, and page 67 of the Annual Report for FY 2022-23), have mentioned: "According to the records of the Company, the Company is generally regular in depositing undisputed statutory dues, including provident fund, Goods and Services Tax, and other statutory dues to the appropriate authorities as of March 31, 2022, and March 31, 2023, concerned for a period of more than six months from the date they became payable."

The Petitioner Companies undertake to ensure compliance with all applicable laws in this regard.

Furthermore, the Petitioner Companies undertake to pay and settle the lawful and legal liabilities of Service Tax, Income Tax, and Provident Fund, as well as any dues of the Transferor Company, as and when such claims are crystallized.


v. **Reply to Para II (8) of the ROC & RD report:** The Petitioner Companies undertake to ensure that MSME vendors receive payments in accordance with the provisions outlined in the MSME Act, preventing any vendor from being denied their rightful payment. Additionally, they ensure that the scheme of amalgamation does not lead to the withholding of payments from any creditors, including MSME vendors, maintaining a fair and equitable distribution of funds. They shall settle their dues if any, in accordance with the applicable laws, rules, and regulations.

vi. **Reply to Para II (9) of the ROC & RD report:** It is submitted that they have duly complied with all the applicable regulations,



provisions, and procedures of the Reserve Bank of India and Foreign Exchange Management Act, 1999, wherever applicable. Further, the companies will ensure compliance with all applicable provisions and directions of the Reserve Bank of India as and when they are received.

- vii. **Reply to Para II (10) of the ROC & RD report:** The Transferee Company undertakes to pay any differential fee and stamp duty on its authorised capital subsequent to the sanction of the scheme of amalgamation by the Tribunal.
- viii. **Reply to Para II (11) of the ROC & RD report:** None of the employees of the Transferor Company will be retrenched or terminated under the terms of the amalgamation of the Transferor Companies with the Transferee Company. Provisions for this have been made in Clause 5 of the scheme. The employees of the Transferor Company will be transferred to the Transferee Company.
- ix. **Reply to Para II (12) of the ROC & RD report:** It is submitted that the accounting treatment outlined in the Scheme is in accordance with the prescribed accounting treatment under the Companies Act, 2013, and the applicable Accounting Standards issued from time to time. A certificate from the statutory auditor forms part of the second motion petition filed before the Tribunal.
- x. **Reply to Para II (13) of the ROC & RD report:** It is submitted that 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 the merger, shall continue after the amalgamation.
- xi. **Reply to Para II (14) of the ROC & RD report:** It is submitted that the objections raised by the Reserve Bank of India dated 15th May, 2024 were sufficiently addressed by Company's response dated 14th June, 2024 and the companies duly complied with the applicable laws and the Income Tax authority did not raise any further objections to it. The Companies will ensure compliance with all applicable provisions and directions of the Reserve Bank of India as



and when they are received, and the Petitioner Companies undertake to comply with the same.

- xii. Reply to Para II (15) of the ROC & RD report:** It is submitted that the Petitioner Companies have complied with all applicable laws, rules, and regulations of the Securities and Exchange Board of India and the Bombay Stock Exchange.
- xiii. Reply to Para II (16) of the ROC & RD report:** It is submitted that no objections were raised by the Income Tax Department. Hence, compliance of the same was not required. However, in case any objection is raised by the Income Tax Department subsequent to the date of this Affidavit, Petitioner Companies undertake to comply with the same.
- xiv. Reply to Para II (17) of the ROC & RD report:** It is submitted that 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 the merger, shall continue after the amalgamation.
- xv. Reply to Para II (18) of the ROC & RD report:** As per Section 239 of the Companies Act, 2013, the books and papers of the Transferor Company shall be preserved and maintained by the Transferee Company.
- xvi. Reply to Para II (19) of the ROC & RD report:** It is submitted that the Official Liquidator, in a letter dated 10th May, 2024, sought a questionnaire, information, documents, and undertakings. The companies have provided the required undertakings, and a response was submitted by the Petitioner Companies on 14th June 2024. The Petitioner Companies confirm that the requirements of the Official Liquidator have been complied with.


13. The Official Liquidator (OL) has filed its report, *vide* Diary No.2792 dated 14.05.2024, *inter-alia* stating as under:

- 1) The Transferor Company and the Transferee Company filed a Petition U/s.230 to 232 of the Companies Act, 2013 before the Tribunal Bengaluru, Bench, in C.P.(CAA)No.07/BB/2024 seeking

approval for sanction of Scheme of Amalgamation of Transferor Company with the Transferee Company.

- 2) Transferor Company and Transferee Company are registered in the state of Karnataka and T.R. Company is private unlisted Company. T.E. Company is a listed Company.
- 3) The Appointed Date proposed in the Scheme was 01.04.2023.
- 4) The T.R. Company Board of Directors has approved the Scheme on 09.11.2022. The meeting of Equity Shareholders and Secured Creditors of the T.R. Company has been dispensed by the NCLT, Bengaluru vide Order dated 27.07.2023 and directed to convene the meeting of the unsecured creditors on 21.12.2023. The Chairman of the meeting has submitted his report in Form CAA 4 stating that 8 unsecured creditors of the T.R Company who are entitle for Rs.2,75,24,722/- representing 61.93% voted in favour of the scheme and none of them voted against the scheme. As per Balance Sheet as at 31.03.2023, an amount of Rs.15.08 million have been shown as Secured Creditors. NOC to be obtained if not obtained earlier.
- 5) Interest of all creditors as on date shall be taken care by the T.E. Company including statutory dues and pending tax dues.
- 6) There are 4 common directors in T.R. & T.E. Company viz., Sri Ramesh Radhakrishnan, Rabindra Srikantan, Vikram Ravindra Mamidipudi and Shekar Viswanathan.
- 7) The Authorized Share Capital of T.R. Company is of Rs.4,00,00,000/- divided in to 40,00,000 equity share of face value of Rs.10/- each and Paid-up Capital is Rs.3,99,99,710/- divided in to 39,99,971 equity share of face value of Rs.10/- each.
- 8) There are no cross holdings between T.R and T.E. Companies. T.R. Company is a 100% wholly owned subsidiary of T.E. Company and T.R. Company is not having any subsidiary or associated Company. It became subsidiary from 06.11.2020 and hence T.R. Company is a Limited Company for all purpose.
- 9) The entire share capital of the T.R. Company is held by the T.E. Company. Hence, no share of the T.E. Company will be allotted. The

entire share capital of the T.R. Company has to be cancelled and extinguished up on the scheme approved.

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- 10) The T.R. Company have dues to the MSME. The TE Company need to settle the MSME dues as per the MSME Act including payment of interest, if any.
 - 11) As per the Audit Report of the T.R. Company for the year ended 31.03.2023, the Company heavily defaulted in payment of P.F and P.T. Needs to settle the dues immediately and comply to statutory compliance.
 - 12) The T.R. Company has huge related party transactions. Needs to comply the provisions of Section 188 of Companies Act, 2013.
 - 13) The T.R. Company is a profit making Company with positive EPS.
 - 14) No employees/workmen of Transferor Company to be retrenched/terminated in the terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may kindly see that T.R or T.E. will not retrench Swap the staff or employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard.
 - 15) An undertaking may be obtained from the Applicant Companies that they will pay applicable stamp duty and other charges to the State Govt. within a reasonable time with an outer-limit of 6 months.
14. The reply to the report of the Official Liquidator has been filed by the Petitioner Companies *vide* Diary No.3451 dated 14.06.2024, *inter alia*, stating as follows:
- i. **Reply to para-4 of the OL report:** It is submitted that they obtained a No objection Certificate from the Secured Creditors, dated 13.12.2023. The No Objection Certificate has been attached as Annexure-A to the reply.
 - ii. **Reply to para-11 of the OL report:** It is submitted that payment of Professional Tax and Provident Fund dues of the Transferor Company have been paid.
 - iii. **Reply to para 14 of the OL report:** It is submitted that no employees /workmen of Transferor Company shall be retrenched/terminated in

the terms of amalgamation of Transferor Company with Transferee Company. An undertaking by the Transferee Company in this regard has been attached as Annexure-B.

- iv. **Reply to para 15 of the OL report:** It is submitted that the Transferee Company will pay applicable stamp duty and other charges to the State Government within a reasonable time with an outer limit of 6 months. An undertaking by the Transferee Company in this regard has been attached as Annexure-C.

15. The Deputy Commissioner of Income Tax, Circle-1(1) (1), Koramangala, Bengaluru has filed its report for the Transferee Company, vide Diary No.589 dated 29.01.2024, *inter alia*, stating that there are 'NIL' proceedings pending and nil demand pending for recovery against the Transferee Company. Also the details of ITRs filed by the Company, are as under:

AY	Date of filing	Return filed u/s.	Income returned/loss	Total Tax Paid	TDS
2022-23	30.11.2022	139(1)	20,27,21,990	5,32,91,838	3,36,20,528
2021-22	11.03.2022	139(1)	16,87,73,870	4,53,10,582	2,50,43,334
2020-21	10.12.2020	139(1)	4,93,69,620	5,96,90,992	5,96,90,992
2019-20	27.11.2019	139(1)	7,46,53,822	4,89,50,310	4,89,50,310

16. The Reserve Bank of India has filed a Letter dated 15.05.2024, submitting the following information with respect to the Transferee Company, as per available records and based on the outstanding entries in the IDPMS and EDPMS* database:

- 2) **(a)** In terms of Para A.2 of RBI Master Direction on Export of Goods and Services dated January 01, 2016 (updated as on November 22, 2022), it is obligatory on the part of the exporter to realise and repatriate the full value of goods/software/services to India, within a stipulated period of nine months from the date of export. However, based on the entries in EDPMS report, it is observed that, there are Shipping bills outstanding beyond nine months for M/s.ASM Technologies Limited, the details of which are provided in Table-1.

- (b)** In terms of Regulation 15 of Notification No. FEMA 23 (R)/2015-RB dated January 12, 2016, it is obligatory on the part of the exporter who receives advance payment (with or without interest) from a buyer

/third party named in the export declaration made by the exporter outside India, to ensure that the shipment of goods is made within one year from the date of receipt of advance payment. However, based on the entries in EDPMS report, it is observed that, there are Inward Remittance Messages (IRMs) outstanding beyond 1 year for M/s. ASM Technologies Limited, the details of which are provided in Table-1.

(c) As per Para B.5 of Master Direction-Import of Goods and Services dated January 01, 2016 (updated as on November 21, 2022), remittances against imports should be completed within six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance, etc. However, based on the entries in IDPMS report, it is observed that, there are Bill of entry outstanding for more than 6 months for M/s.ASM Technologies Limited, the details of which are provided in Table-1.

(d) As per Para C. 10 of Master Direction-Import of Goods and Services dated January 01, 2016 (updated as on November 21, 2022), an importer must furnish documentary evidence of import within 3 months from the date of remittance involving foreign exchange irrespective of value. In case an importer does not furnish any documentary evidence of import within 3 months from the date of remittance, the AD Category-I bank should rigorously follow-up for the next 3 months. However, based on the entries in IDPMS report, it is observed that, there are Outward Remittance Messages (ORMs) outstanding (import pending) beyond 6 months for M/s. ASM Technologies Limited, the details of which are provided in Table-1.

Table-1:

Category	Count	Amount (INR)
Shipping Bills outstanding beyond nine months as on March 31,2023	127	24,50,06,739
IRM outstanding beyond one year as on December 31, 2023	65	39,49,24,068
Bill of Entry outstanding beyond 6 months as on March 31, 2024	22	95,56,321
ORM outstanding beyond 6 months as on March 31, 2024	1	16,50,91,530



**Please note EDPMS and IDPMS are comprehensive IT-based systems for better monitoring of export of goods and software from India and import of goods to India, respectively. The data in these systems are secondary and are based on the Shipping Bills/Softex Forms/Bill of Entries, which are received from Customs (ICEGATE), SEZ and STPI respectively and the data related to outward/inward remittance for the goods and software exported /imported through Customs/STPI/SEZ are reported by AD banks in EDPMS/IDPMS.*

3) Further, it is submitted the following information with respect to FDI received by ASM Digital Engineering Private Limited, as per available records:

(a) In terms of Rule 9(6) of NDI Rules, 2019 dated October 17, 2019, in case of transfer of equity instruments between a person resident in India and a person resident outside India, an amount not exceeding twenty five percent of the total consideration may be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement.

However, it is observed that 3999971 equity shares of M/s.ASM Digital Engineering Private Limited held by Semcon Sweden AB, Sweden (non-resident seller) were transferred to M/s.ASM Technologies Limited (resident buyer) against deferred payment in two tranches, where the second tranche of payment was made beyond the stipulated period of eighteen months, thereby contravening the above provisions of Rule 9(6) of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 dated October 17, 2019.

17. In response to the above, an undertaking affidavit has been filed by the Petitioner Companies vide Diary No.3450 dated 14.06.2024, by *inter alia*, stating as follows:

1) **Reply to para 2(a) of the RBI letter:** It is submitted that ASM Technologies Limited is actively working with their Banker to address and resolve the outstanding shipping bills listed in the EDPMS report.


The Petitioner Companies are ensuring that all necessary steps are being taken to comply with the RBI's directions and guidelines.

- 2) **Reply to para 2(b) of the RBI letter:** It is submitted that ASM Technologies Limited is in close coordination with their Banker to reconcile and clear the IRMs that are outstanding beyond one year. They are committed to ensuring that all outstanding entries are settled promptly.
- 3) **Reply to para 2(c) of the RBI letter:** It is submitted that ASM Technologies Limited is working diligently with their Banker to address the Bill of Entry outstanding beyond six months as reported in the IDPMS. All pending documentation and remittances are being reviewed for compliance.
- 4) **Reply to para 2(d) of the RBI letter:** It is submitted that ASM Technologies Limited is coordinating with their Banker to resolve the ORMs that are pending beyond six months. The Petitioner Companies are rectifying these discrepancies in a timely manner.
- 5) **Reply to para 3 of the RBI letter:** It is submitted that the issue regarding the FDI from ASM Digital Engineering Private Limited has already been taken up with the Reserve Bank of India. As directed by the RBI, the Company has made the late submission Fee (LSF) and has applied for compounding to regularize the contravention concerning the transfer of equity instruments.

18. A notice was issued to the Income Tax Department on 13.03.2024 for the Transferor Company. Despite the notice being duly served, the Income Tax Department has not filed its report in respect of Transferor Company. Since, no I.T report is received in respect of the Transferor Company; we proceed further in the matter in view of the Rule 8 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016. Therefore, the matter is being disposed of based on the material available on record.

19. On 01.10.2024, the following Order was passed:

“...2. The learned Counsel for the ROC/RD stated that there are no observations from the ROC/RD after considering the reply filed by the Petitioner.



3. *The learned Counsel for the I.T. Department also stated that they don't have further observation in respect of the Scheme”.*

20. Heard the Ld. PCS appearing for the Petitioner Companies and Ld. Counsel for the ROC/RD, OL and I.T. Department. We have carefully perused the pleadings of the parties and the Law and fact on the issue.
21. The reports of the ROC, RD, OL, RBI and I.T. Department for the Petitioner Companies are taken on record. Similarly, reply filed by the Petitioner Companies to the ROC/RD, OL and RBI are also taken on record. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD/ROC, OL and RBI have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.
22. The Scheme in question as annexed at **Annexure-A is approved with the Appointed Date being 01.04.2023** and thus we hereby declare that the same is binding on all the shareholders and creditors of the Transferor as well as Transferee Companies. 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 being wound-up, without any further act or deed.

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. 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 Officer, 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) That 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) That 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.
 - (vi) The RBI vide its letter dated 15.05.2024, has made certain observations in para 2 of the letter, including pending compliance on the part of the Petitioner Companies. In response to this, the Petitioner Companies filed a para-wise reply vide Diary No.3450 dated 14.06.2024, in which an undertaking has been given for compliance with the observations of the RBI and also for filing Compounding Applications wherever is required. The Petitioner Companies are directed to ensure compliance with the undertakings and file all necessary reports/Compounding Applications with the RBI in respect of aforesaid observations. The ROC is directed to ensure that the Petitioner Companies are made compliance as per undertaking given in response to RBI’s observations.
 - (vii) That the Petitioner Companies have given various undertakings in response to observations made in ROC/RD, IT Dept., & OL reports and they are directed to ensure compliance of the same.
23. As per the directions, in Form No.CAA-7 of the 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 filing an affidavit.

24. Accordingly, **C.P. (CAA)No.07/BB/2024 is disposed of.**
25. Copy of this Order be communicated to the Ld. PCS for the Petitioner Companies.
26. The Learned PCS for the Petitioner Companies is directed to serve a copy of this Order to all the Statutory Authorities within ten days from the date of receipt of copy of this order.

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

-Sd-
(K. BISWAL)
MEMBER (JUDICIAL)