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CIN: L65990MH1978PLC020080

August 07, 2018

To
The BSE Ltd.
P.J. Towers, Dalal Street
Mumbai- 400 001
Scrip Code : 503101

To
NSE Ltd.
BKC, Bandra (E)
Mumbai-400 050
Symbol: "MARATHON"

Sub: Scheme of merger of Ithaca Informatics Pvt. Ltd. (Promoter Group Company of Marathon Nextgen Realty Limited) and Marathon IT Infrastructure Pvt. Ltd. with Marathon Realty Pvt. Ltd. (Group Companies).

Dear Sirs,

Pursuant to Scheme of Amalgamation of Marathon IT Infrastructure Private Limited ("MITI" or "First Transferor Company") and **Ithaca Informatics Private Limited** ("Ithaca" or "Second Transferor Company") with Marathon Realty Private Limited ("MRPL" or "Transferee Company"), the name of "Promoter group Company" has been changed from **Ithaca Informatics Private Limited to Marathon Realty Private Limited**. The order of Hon. National Company Law Tribunal, Mumbai dated July 23, 2018 is attached for your information and record.

Thanking you,
For Marathon Nextgen Realty Ltd.


K. S. Raghavan
Company Secretary & Compliance Officer



Encl.: as above.

Cc. Adroit Corporate Services Private Limited (RTA)
National Securities Depository Limited
Central Depository Services India Limited

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP 01/230-232/NCLT/MB/MAH/2018

Under section 230-232 of the Company Act, 2013

In the matter of

M/s. Marathon IT Infrastructure Private Limited
.....1st Petitioner
(1st Transferor Company)

M/s. Ithaca Informatics Private Limited
.....2nd Petitioner
(2nd Transferor Company)

M/s. Marathon Realty Private Limited
.....3rd Petitioner
(Transferee Company)

Order pronounced on : 23.07.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioner :

Mr. Ashish Parwani., Advocate i.b. Rajani Associates – Advocates for the Petitioners.

For the Regional Director :

Mr. R. S. Meena – Jt. Director

For the RoC:

Mr. Ramesh Gholap – Dy. Registrar (WR).

Per : M. K. Shrawat, Member (J)



COMMON ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Company Act, 2013, to a Scheme of Merger by Absorption of M/s. Marathon IT Infrastructure Private Limited (1st Transferor Company) and M/s. Ithaca Informatics Private Limited (2nd Transferor Company) with M/s. Marathon Realty Private Limited (Transferee Company) and their respective shareholders.
2. The Petitioner Companies have approved the said Scheme of Merger by Absorption by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.

3. The Transferee Company holds the entire issued, subscribed and paid-up share capital of the First Transferor Company and 43.5% of the total issued, subscribed and paid-up share capital of the Second Transferor Company.
4. The 1st Transferor Company, 2nd Transferor Company and Transferee Company are engaged in the business of developing different kinds of real estate projects.
5. The proposed scheme will reduce and broaden the risk profile, leading to efficiency in use of capital for the business; facilitate rapid expansion of business, bring greater management and operational efficiency and reduce operational and administrative overheads and expenses, consolidation of business and simplification of group corporate structure.
6. The averments made in the Petition and the submissions made by the Learned Representative for the Petitioners are:
 - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertake to comply with all the statutory requirements if any, as required under the Company Act, 2013 and the Rules made there under whichever is applicable.
 - b) The Regional Director has filed his Report dated 27.03.2018, stating therein that save and except as stated in paragraph IV (a) to (e), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

(a) As the Petitioners have not submitted copy of admitted Petition, till finalization of this Report, the Hon'ble NCLT kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.

(b) In addition to compliance of AS-14 (IND AS-103), the Transferee Company shall pass such Accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.



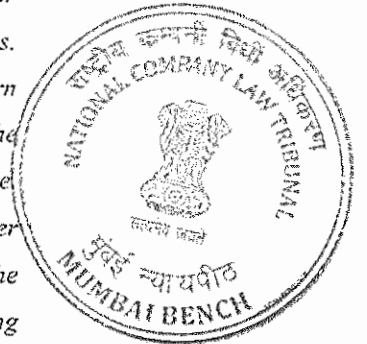
(c) As regards Para No. 14 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its **Authorised Share Capital**, subsequent to the Amalgamation for setting-off fees paid by the Transferor Companies on their **Authorised Share Capital** in accordance to the provisions of Section 232(3)(i) of the Companies Act, 2013.

(d) Since the First Transferor Company has Foreign Company as Debenture holder, the issuance of Debentures is subject to the compliance of the **FEMA Regulations/RBI Guidelines**, if any by the Transferee Company.

(e) As regards Para No. 29 of the Scheme, the Petitioners may be directed to comply with the provisions of the **Bombay Stamp Act, 1953 & any other law applicable** and to make the payment of applicable Stamp duty as considered/charged by the concerned Authority for the transfer of any property in accordance to the Scheme approved by the Hon'ble NCLT.

(f) As per observations made by ROC, Mumbai at Point No. 32(1) of their Report dated 14-03-2018, the Transferor Company No. 2 overstated its **Authorised Share capital** to Rs. 5,00,00,000/- instead of Rs. 50,00,000/- in its Annual Return for the years from 2003 to 2007 and Balance Sheet for the years 2003 to 2017 filed with the said Office. Therefore before approval of the Scheme, if any, the Petitioner Transferor Company No. 2 may be directed to rectify the above discrepancies in the records of ROC, Mumbai by filing necessary forms as per the provisions of the Companies Act, 1956/2013 & rules made thereunder.

Further, the approval of the Scheme by this Hon'ble Tribunal, if any, may not deter the ROC, Mumbai to initiate legal action under Section 628/448 of the Companies Act, 1956/2013 for such mis-statement (in the documents filed or any other action under the provisions of the Companies Act, 2013 &



rules made thereunder against the Directors/officers and Statutory Auditors of the Company.)

(g) As per observations made by ROC, Mumbai at Point No. 32(2) of their Report dated 14-03-2018, the Transferee Company has not filed AOC-4 in respect of Financial Statements for the year ended as on 31-03-2017, therefore the Petitioner Company may be directed to file the same."

- c) Apropos the observation of the Regional Director, Western Region, Mumbai in paragraph IV (a) of their Affidavit is concerned, the Learned Advocate for the Petitioner Companies submits that the legal representatives of the companies had submitted a copy of the admitted joint Company Scheme Petition to the office of Regional Director on 9th January, 2018. A copy of the acknowledgement received from the office of the Regional Director for the aforesaid submission has already been submitted to the Regional Director *vide* letter dated April 11, 2018. The Learned Advocate further undertakes on behalf of the Petitioner Companies that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation save and except the amendment allowed under M.A. No. 21 of 2018.
- d) Apropos the observation of the Regional Director, Western Region, Mumbai in paragraph IV (b) of their Affidavit is concerned, the Learned Advocate for the Petitioner Companies submits that the Transferee Company undertakes that, in addition to compliance of AS-14 corresponding (IND AS-103) accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.
- e) Apropos the observation of the Regional Director, Western Region, Mumbai in paragraph IV (c) of their Affidavit is concerned, the Learned Advocate for the Petitioner Companies states that the existing Para 14.1 of the Scheme already provides that the fees paid by the Transferor Companies on the authorised share capital of the Transferor Companies shall, without any act or deed, be available as a set off to the Transferee Company in terms of Section 232(3)(i) of the Act.



The said contention made by the Learned Advocate for the Petitioner Companies is taken on record.

- f) Apropos the observation of the Regional Director, Western Region, Mumbai in paragraph IV (d) of their Affidavit is concerned, the Learned Advocate for the Petitioner Companies submits that as on the date of the filing of the Scheme, the debentures issued by the First Transferor Company were held by the Transferee Company and Pramerica ASPF II Cyprus Holding Limited, a company incorporated and existing under the laws of Cyprus (Pramerica). As on date, all the debentures held by Pramerica have been acquired by the Transferee Company. Therefore, as on date the Transferee Company holds all the debentures of the First Transferor Company. Accordingly, upon the Scheme coming effect, all the debentures of the First Transferor Company held by the Transferee Company as on the Effective Date shall be cancelled and extinguished. Since no new debentures will be issued by the Transferee Company pursuant to the Scheme, FEMA Regulations/RBI Guidelines will not be applicable in such event.
- g) Apropos the observation of the Regional Director, Western Region, Mumbai in paragraph IV (e) of their Affidavit, the Learned Advocate on behalf of the Petitioner Companies undertake that the Transferee Company shall comply with all the provisions of Bombay Stamp Act, 1955 & any other law applicable and shall make the payment of applicable Stamp duty as considered/charged by the concerned Authority for the transfer of any property in accordance to the Scheme.
- h) Apropos the observation of the Regional Director, Western Region, Mumbai in paragraph IV (f) of their Affidavit is concerned, the Learned Advocate states that the inaccurate representation of the authorised share capital of the Second Transferor Company in the concerned balance sheets and Annual Returns was due to typographical error which was inadvertently continued/ overlooked by the officials, auditors, and accountants of the Second Transferor Company over the year. The Learned Advocate further states that the Authorised Share Capital indicates that the maximum amount of share capital that the company is authorised to issue to its shareholders. There was no malafide intention behind such misrepresentation which is well supported by the fact that the paid-up share capital of the Second Transferor Company is only ₹1.03.100/- (Rupees one lakh

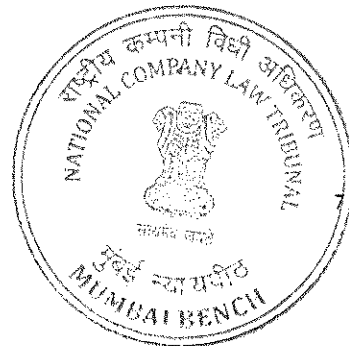


three thousand and one hundred) as set out in the MCA records. Further this discrepancy in the books of the Second Transferor Company does not have effect on the Scheme. The Learned Advocate undertakes that the Transferee Company will record authorized share capital of Second Transferor Company in its books of account as set out in MCA Records and not as per the alleged books of account. The Learned Advocate submits that the Second Transferor Company has already filed an application with this Hon'ble Tribunal under Section 131 of the Companies Act, 2013 to rectify the inadvertent error in its authorised share capital. A copy of the aforesaid application has been served upon the Regional Director and the Registrar of Companies. The Learned Advocate further undertakes on behalf of the Petitioner Companies that the Transferee Company shall do all act and deeds for rectification of the above discrepancies in the records of ROC, Mumbai as per applicable laws. The Learned Advocate further undertakes on behalf of the Petitioner Companies that the approval of the Scheme by this Hon'ble Tribunal may not deter the ROC, Mumbai to initiate legal action against the concerned Petitioner Companies.

- i) Apropos the observation of the Regional Director, Western Region, Mumbai in paragraph IV (g) of their Affidavit. Learned Advocate submits that the Transferee Company has filed e-Form AOC-4 with respect of its Financial Statements for the Financial Year 2016-17 with the Registrar of Companies. A copy of the aforesaid form along with the receipt has been submitted to the office of the Regional Directors vide letter dated April 11, 2018.
- j) The Learned Advocate has stated that, there are certain inadvertent typographical errors in the actual Scheme and the Scheme filed with this Bench. Hence, to amend the same the Petitioners has filed the Miscellaneous Application for the Amendment bearing no. MA 21/2018 along with the proposed schedule of Amendment. *to amend - my*
- k) It is further stated that, the Official Liquidator has filed its report inter alia stating therein that the affairs of the 1st Transferor Company and the 2nd Transferor Company had been conducted in proper manner and the Scheme is not prejudicial to the interest of public. Further, the Transferor Company may be ordered to be dissolved without winding-up.
- l) It is further stated that, no objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme.



7. From the material on record, the Scheme of Merger by Absorption appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Company, **do Order that:**
- a) All the Transferor liabilities including taxes and charges, if any, and duties of the Transferor Companies, shall, pursuant to S. 232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
 - b) The clarifications and undertakings given by the Learned Counsel for the Petitioner to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
 - c) The Consideration of the Scheme shall be as follows :
 - i) Since the 1st Transferor Company is the wholly owned subsidiary of the Transferee Company therefore the question of issuance of shares to the shareholders of the 1st Transferor Company does not arise; and
 - ii) 2 fully paid up Equity Share of ₹ 10/- each, credited as fully paid-up, of the Transferee Company shall be issued and allotted for every 1 Equity Share of ₹ 10/- each, credited as fully paid-up, to the equity shareholders of the 2nd Transferor Company.
 - d) The Transferor Companies shall be dissolved without winding-up.
 - e) As regards to MA 21/2018, this Bench hereby orders that the Application for proposed Amendment is allowed. The Petitioners are directed to carry out the said Amendment before giving effect to this Scheme.
 - f) The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.



- g) Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Company, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- h) The Petitioner Companies to pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.
- i) The Transferor Companies (i.e. 1st Petitioner and 2nd Petitioner) to pay costs of ₹ 25,000/- to the Official Liquidator, High Court Bombay. The cost is to be paid within four weeks from the date of the receipt of Order.
- j) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
- k) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- l) Any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) is at liberty to approach this Bench for any clarification/directions under this Scheme.
- m) The sanctioning of this Scheme shall not deter the rights of any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) to assess any transaction arising out of this Scheme.
- n) The Scheme is sanctioned hereby, and the appointed date of the Scheme is fixed as 1st April, 2016.

8. Ordered Accordingly. To be consigned to Records.


Dated : 23.07.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)



Certified True Copy
Copy Issued "free of cost"
On 23/7/2018

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Assistant Registrar
National Company Law Tribunal Mumbai Bench