



SL.No.1

**HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)

CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 02.02.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (CAA) No.21/230/HDB/2022
NAME OF THE COMPANY	Pramati Software Pvt Ltd (Demerged Co.)& Wavemaker India Pvt Ltd (Resulting Co.)
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	230

ORDER

Petition is allowed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

**CP (CAA) No.21/230/HDB/2022
connected with
CA (CAA) No.14/230/HDB/2022**

***[Sections 230-232 r/w Section 66 and other applicable
provisions of the Companies Act, 2013]***

In the matter of Scheme of Arrangement of

M/s. Pramati Software Private Limited
(“the Demerged Company”)

And

M/s. Wavemaker India Private Limited
(“the esulting Company”)

And

Their respective Shareholders

M/s. Pramati Software Private Limited
Having Registered Office at
5th Floor, N Heights, Plot – 12
Software Units Layout, Madhapur
Hyderabad - 500081
Rep. by its Company Secretary, Mr. Jagadish Veeravalli

...Petitioner Company-1 /Demerged Company

And

M/s. Wavemaker India Private Limited
Having registered office at
5th Floor, N Heights, Plot – 12,
Software Units Layout, Madhapur,
Hyderabad, Telangana – 500081
Rep. by its Director, Mr. Harish Thirumalai

.... Petitioner Company-2/ Resulting Company



NCLT – Hyd. Bench –II
CP (CAA) No.21/230/HDB/2022
connected with
CA (CAA) No.14/230/HDB/2022

Date of Order: 02.02.2023

Date of order: 02.02.2023

Coram:

Hon'ble Justice Smt.Telaprolu Rajani, Member (Judicial)
Hon'ble Shri Charan Singh, Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr. P. Anil Mukherji, Advocate

For Regional Director : Mr.Shashi Raj Dhara, Joint Director

[PER: BENCH]

ORDER

- I. The present Company Petition is filed by M/s. Pramati Software Private Limited, for short 'Demerged Company' and M/s. Wavemaker India Private Limited, for short 'Resulting Company' under Sections 230-232 r/w Section 66 and all other applicable provisions of the Companies Act, 2013 seeking to sanction the Scheme of Arrangement, for short 'the Scheme' between M/s. Pramati Software Private Limited and M/s. Wavemaker India Private Limited and their respective shareholders.



II. Briefly, the facts of the Application are as follows:

- i. The Petitioner Company-1 was incorporated as a Private Limited Company on 15.12.2020 vide CIN: U72900TG2020PTC146867.
- ii. The Petitioner Company-1 is carrying on the business of developing, selling, distributing, providing support for and marketing software products in India and abroad using channels, agents and dealers and to act as agents and distributors for computer software of any foreign company in India and abroad; to provide onsite and offshore consulting services in internet, object and database technologies to companies abroad; and to develop World Wide Web content and interactive web applications for individuals and organizations in India and abroad, using programming languages and tools. To provide Internet provider services.”

A copy of the Memorandum and Articles of Association of the Petitioner Company-1 is filed as Annexure-A at page nos.33 to 49 of the application.



- iii. The Petitioner Company-1 is currently engaged, *inter alia*, in the business of software development which includes developing, selling, distributing, providing support for and marketing software products in India and abroad and the business of building independent businesses focused on profitable, well-defined markets in social, mobile and cloud computing technologies. The Petitioner Company-1 holds 24.45% shares in Wavemaker Inc., a company incorporated in the United States of America and having its registered office at 4965 Preston Park Blvd, Suite 825, Plano, TX 75093, USA which is engaged, *inter alia*, in the business of development of a software product, named “WaveMaker”.

Copies of the Audited Statement of Accounts as on 31st March, 2021 and as on 31st March, 2022 of the Petitioner Company-1 are filed as Annexure B1 and Annexure B2 respectively.

- iv. The authorized, issued, subscribed and paid-up share capital of the Petitioner Company-1 as on 31st March, 2022 is as under:



Description	Amount (Rs.)
Authorized Capital	
10,00,00,000 Equity Shares of Rs.10/- each	100,00,00,000
Total	100,00,00,000
Issued, Subscribed and Paid-up	
9,67,93,000 Equity Shares of Rs.10 each	96,79,30,000
Total	96,79,30,000

Subsequent to the above date and till the date of filing the Scheme, there has been no change in the issued, subscribed and paid-up capital of the Petitioner Company-1.

- v. The Petitioner Company-2 was incorporated as a Private Limited Company under the name and style of ‘*Wavemaker India Private Limited*’ in the State of Telangana on 15.04.2022 vide Corporate Identity Number U72900TG2022PTC161608.



- vi. The Petitioner Company-2 is carrying on the business of developing, selling, distributing, providing support for and marketing software products in India and abroad using channels, agents and dealers and to act as agents and distributors for computer software of any foreign company in India and abroad; *To provide onsite and offshore consulting services in internet, object and database technologies to companies abroad;* and to develop world wide web content and interactive web applications for individuals and organizations in India and abroad, using programming languages and tools. To provide Internet provider services.”

A copy of the Memorandum and Articles of Association of the Petitioner Company-2 is filed as Annexure C of the application.

A copy of the Audited Statements of Account of the Second Petitioner Company as on 16th May, 2022 is annexed hereto as Annexure D.

- vii. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Petitioner Company-2 as on 16th May, 2022 is as under:



Particulars	Amount (in INR)
Authorized Capital	
1,30,00,000 Equity Shares of Rs.10/- each	13,00,00,000
3,20,00,000 Redeemable Preference Shares of Rs.10/- each	32,00,00,000
Total	45,00,00,000
Issued, Subscribed and Paid-up	
1,10,10,000 Equity Shares of Rs.10/- each	11,01,00,000
3,00,00,000 Redeemable Preference Shares of Rs. 10 each	30,00,00,000
Total	41,01,00,000

Subsequent to the above date and till the date of filing the Scheme, there has been no change in the issued, subscribed and paid up capital of the Second Petitioner Company.

viii. The benefits of the Scheme are –

- a) The Demerger will enable investors to separately hold investments which best suit their investment strategies and risk profiles;



- b) Consolidation of Wavemaker Software Development Business under WIPL would lead to deeper focus on customer expectations. It is believed that the proposed scheme will create enhanced value for shareholders and allow a focused strategy and specialization for sustained growth;
 - c) The Demerger would optimize the value of the Resulting Company and would enable fund raising for future expansion. Further, it would unlock value for the shareholders of the Resulting Company;
 - d) The Demerger would provide focused management attention to the Wavemaker Software Development Business and thereby eliminate any conflict of interest in the growth strategies.
- ix. The Board of Directors of the Petitioner Companies approved their Scheme at their respective board meetings held on 16.05.2022. The appointed date is 15.04.2022. Consent, by way of Affidavit and No Objection to the Scheme supported by Board, was also obtained from all the Shareholders, Preference



shareholders and Unsecured Creditors of the Petitioner Companies.

- x. The Tribunal vide Order dated 21.07.2022 and Corrigendum dated 15.09.2022 dispensed with the requirement of holding meetings of all Equity Shareholders, Preference Shareholders and Unsecured Creditors of the Petitioner Companies. The Scheme of Arrangement was approved by the Board of Directors and others.

III. Heard the Learned Counsel appearing for the Petitioner, Learned Joint Director and perused the record.

IV. The Regional Director (RD) filed his report dated 30.01.2023 as follows:

Page/ Para No.	RD's Observations
Page 2 @ para 5	As per Clause 13.1 of the Scheme, with effect from the effective date, all the Redeemable preference shares of the Resulting Company to the tune of Rs.30,00,00,000/- held by the demerged company and forming part of the “demerged undertaking” shall stand cancelled.



Page 2 @ para 6	That as per Clause 12.6 of the Scheme, it is stated that in the event that Resulting Company and/or demerged company changes its capital structures by way of any Corporate Action, the share exchange ratio mentioned in Clause 12.1 shall further be suitably modified/adjusted to give effect to such corporate actions.
Page 2 @ para 7	This Directorate has received Letter No.ROCH/Amal/ 230-232/2022/2927 dated 09.11.2022 from the Registrar of Companies, Telangana, Hyderabad opining no objection to the proposed Amalgamation, but pointed out certain observations as under:-
7(a)	As per Clause 1.3 of the Scheme, the appointed date for demerger is 15.04.2022. It is seen that the Resulting Company was incorporated on 15.04.2022.
Page 2 @ para 7(b)	The Scheme provides for demerger of a unit of demerged company namely “Wavemaker Software Development Business” to the Resultant Company for which the shareholder of Demerged Company will get 1489 equity shares of Rs.10/- of the Resulting Company for every 1000 equity shares of Rs.10/- each held by them in this Demerged Company.
Page 3 @ para 7(c)	The scheme also provides for reduction of Redeemable Preference Shares of the Resulting Company which are held by the Demerged Company and hence the application is also filed under Section 66 of the Act.



Page 3 @ para 7(d)	Hon'ble Tribunal may be pleased to direct the Petitioner Company(s) to preserve its books of accounts and papers and records and shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
Page 3 @ para 7(e)	Hon'ble Tribunal may be pleased to direct the Petitioner Company(s), to ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme, the applicant company shall not be absolved for any of its statutory liability in any manner.
Page 3 @ para 7(f)	Hon'ble Tribunal may be pleased to direct the Petitioner Company(s), involved in the scheme to comply with Rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules 2013 with respect to filing of order for confirmation of scheme to be filed in Form No.INC-28 with the concerned office of Registrar of Companies by the Petitioner Company.
Page 3 Para 6	This office has sent a letter to the Additional Commissioner of Income Tax, Circle 16(2) and Circle 17(2), I.T. Towers, A.C. Guards, Hyderabad vide letter dated 27.10.2022. However, till date no reply/comments in the matter has been submitted to this office. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking that, if any demand arises in future with respect to Transferor Company and



	Transferee Company, Transferee Company will pay such dues to the Income Tax Authorities as per law.
Page 3	The Hon'ble Member may be pleased to consider the above observations and pass such order or orders as deemed fit and proper in the circumstances, after hearing the Income Tax Department.

During the hearings held on 31.01.2023, Mr. Shashi Raj Dhara, Learned Joint Director appeared and submitted that he does not have any objection in the matter.

- V. A copy of the Independent Auditor's Certificate issued by M/s. Akasam & Associates, Chartered Accountants, certifying that the proposed Accounting Treatment in the books of the Petitioner Company-1 as specified in Clause 14.1 in Part-II of the Draft Scheme, is in compliance with the applicable Accounting Standards and other generally accepted Accounting Principles in India. A copy of the same is filed as Annexure-H1 at page nos.201 to 203 of the application.



VI. A copy of the Independent Auditor's Certificate issued by M/s. Akasam & Associates, Chartered Accountants, certifying that the proposed Accounting Treatment in the books of the Petitioner Company-2 as specified in Clause 14.2 in Part-II of the Draft Scheme, is in compliance with the applicable Accounting Standards and other generally accepted Accounting Principles in India. A copy of the same is filed as Annexure-H2 at page nos.204 to 205 of the application.

VII. Consideration -

Upon the Scheme becoming operative and in consideration of the transfer and vesting of the Demerged Undertaking, Resulting Company, shall without any further application or deed, issue and allot equity shares credited as fully paid up to all the classes of the shareholders of the Demerged Company holding fully paid up shares and whose names appear in the Register of Members of the Demerged Company as on the Demerger Record Date, or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title, as may be



recognized by the Board of Directors of Demerged Company in the following manner:

Demerger of “Demerged Undertaking” of Demerged Company into Resulting Company

“1,489 (One Thousand Four Hundred and Eight Nine only) equity shares of Resulting Company of face value of Rs.10/- each fully paid up shall be issued for every 1,000 (One Thousand) equity shares of Rs.10/- each fully paid up held in the Demerged Company”.

- VIII. On consideration of the entire facts and circumstances of the case and on perusal of the Scheme, report of the Regional Director and submissions of the Learned Joint Director and the documents produced on record, the Scheme of Arrangement appears to be fair and reasonable and is not contrary to public policy and not in violation of any provisions of law. All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013.



IX. The Company Petition is allowed with the following directions:-

- a) The Scheme of Arrangement (Copy of the Scheme enclosed as Annexure-F at Page Nos.152 to 174 of the Petition) is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies and their respective Shareholders and Creditors, Employees and all concerned under the Scheme.
- b) The Scheme shall become effective from the Appointed Date i.e., 15.04.2022 and shall be made operational from the date of filing of the orders with the Registrar of Companies.
- c) While approving the Scheme as above, it is further clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
- d) The Petitioner Companies are directed to preserve their books of accounts and papers and records and not to



dispose of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.

- e) All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.
- f) The Petitioner Companies are directed to take appropriate steps to submit the said Scheme to Registrar of Companies within 30 days from the date of receipt of copy of this order.
- g) The Petitioner Companies are directed to issue newspaper publication with respect to approval of Scheme of Arrangement, in the same newspaper in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.



NCLT – Hyd. Bench –II
CP (CAA) No.21/230/HDB/2022
connected with
CA (CAA) No.14/230/HDB/2022

Date of Order: 02.02.2023

- h) The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Arrangement under the provisions of the Act.
- i) Though no representation has been received from the Income Tax Authorities despite service of notice by the Petitioner Companies, the tax implications, if any, arising out of the Scheme are subject to final decision of the Tax Authorities concerned and the decision of the Tax Authorities concerned shall be binding on the Resulting Company.
- j) The Petitioner Companies are directed to strictly adhere to the above directions and applicable provisions of the Companies Act.
- X. Accordingly, the Scheme stands sanctioned and the Company Petition bearing **CP (CAA) No.21/230/HDB/2022 stands allowed and disposed of.**

Sd/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)**

Syamala