

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-II**

**COMPANY SCHEME PETITION NO.153 OF 2024  
IN  
COMPANY SCHEME APPLICATION NO.84 OF 2024**

In the matter of Section 230 to 232  
read with Section 66 of the  
Companies Act, 2013 and the Rules  
framed thereunder

AND

In the matter of the Scheme of  
Arrangement and Amalgamation

BETWEEN

Arcalis Technologies Private Limited  
(Transferor Company)

AND

Nihilent Limited (Transferee  
Company)

AND

Their Respective Shareholders

**ARCALIS TECHNOLOGIES PRIVATE LIMITED**

[CIN: U72900PN2023PTC217747] ... Petitioner No.1 /Transferor

**NIHILENT LIMITED**

[CIN: U72900PN2000PLC014934] ... Petitioner No.2/ Transferee

**Pronounced: 09.01.2025**



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IN  
CA No. 84 of 2024

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR MEMBER, (JUDICIAL)**

**HON'BLE SHRI ANIL RAJ CHELLAN, MEMBER (TECHNICAL)**

*Appearances:*

**For the Petitioners:** Shyam Kapadia, Counsel a/w Adv. Gaurang Samel and Adv. Abhishek Kumar i/b. M/s. Wadia Ghandy & Co.

**For Income-tax Department:** Adv. Prachi Wazalwar a/w Adv. Arusha Bapat

**For Regional Director:** Gaurav Jaiswal, Company Prosecutor

**ORDER**

**PER: CORAM**

1. Sanction of this Tribunal is sought under Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 (**Act**) and the Rules framed thereunder, to the composite scheme of amalgamation (**Scheme**) and reduction of capital between Arcalis Technologies Private Limited (**Transferor Company**) and Nihilent Limited (**Transferee Company**) and their respective shareholders.
2. Heard Ld. Counsel for the Petitioners, the authorised representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai and the Ld. Counsel appearing on behalf of the Income-tax Department, Pune. Neither any objector has come before this Tribunal to oppose the Scheme, nor has any party controverted any averments made in the Petition.



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3. The Ld. Counsel for the Petitioners submits that the Petitioners are engaged in the following business:
  - a. The Transferor Company is engaged, *inter alia*, in the business of software development, ITES, Data analytics, modelling, mining and management consultancy.
  - b. The Transferee Company is engaged, *inter alia*, in the business of rendering software services, business consulting in the area of enterprise transformation and change management and providing related information technology services.
4. The Ld. Counsel for the Petitioners states that resolutions approving the Scheme were passed by the Board of Directors of the Transferor Company and the Transferee Company at their respective meetings held on 4<sup>th</sup> March 2024. The Appointed Date fixed under the Scheme is 1<sup>st</sup> April 2024.
5. The Ld. Counsel for the Petitioners submits that the restructuring, consolidation and streamlining pursuant to this Scheme shall achieve the following key objectives/ benefits:
  - a. Streamline operations, efforts, employees, costs and enable better and more efficient management, control and day to day operations and reducing overheads, administrative, and other expenditure and achieve operational rationalisation, organisational efficiency and optimal utilisation of resources which will be in the interest of shareholders, employees, creditors and other stakeholders, post the implementation of the Scheme;
  - b. Consolidating the Transferor Company and the Transferee



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Company (a subsidiary of the Transferor Company) and as a result of such consolidation reducing the layer of entities, post the implementation of the Scheme;

- c. Eliminating multiple accounting, multiple compliances and multiple auditing, i.e. at the level of both the Transferor Company and the Transferee Company, resulting in reduction of costs, post the implementation of the Scheme;
  - d. Pooling in administrative synergies and know-how of Transferor Company within and into Transferee Company, post the implementation of the Scheme;
  - e. Attracting and facilitating investors, strategic partners and other stakeholders who may be interested in investing in the consolidated business as a whole and overall offering a better investment opportunity to potential investors resulting in a greater market for Transferee Company, post the implementation of the Scheme;
  - f. Simplifying the decision making in respect of the Transferor Company and the Transferee Company at one consolidated level, post the implementation of the Scheme.
6. The Ld. Counsel for the Petitioner Companies submits that the present Company Scheme Petition is filed in consonance with Section 230 to 232 of the Act and other applicable provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other provisions as applicable and in terms of the order pronounced on 8<sup>th</sup> July 2024, passed in C.A.(CAA)/84/MB/2024 by this Tribunal.



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7. The Ld. Counsel for the Petitioners states that the Petitioners have complied with all the requirements as per the directions of this Tribunal and have made requisite filings to demonstrate compliance. Moreover, the Petitioners undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Act and the rules made thereunder.
8. The Central Government through the Regional Director, Western Region, Mumbai, has filed his Report dated 4<sup>th</sup> October 2024 (**RD Report**), setting out its observations on the Scheme as stated in paragraphs 2(a) to 2(i) therein. In response to the observations made by the Regional Director, the Petitioners have given necessary clarifications and undertakings by way of its Joint Affidavit dated 29<sup>th</sup> October 2024. The observations made by the Regional Director and the clarifications and undertakings thereto, given by the Petitioners are summarised in the table below:

Para	Observations in the RD Report	Response of the Petitioners
2(a)	<i>In compliance of AS-14 (IND AS-103), the Transferor company and Transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 IND AS-8 etc.</i>	The Petitioner Companies undertake to pass such accounting entries which are necessary in connection with the Scheme to comply with the other applicable Accounting Standards such as AS-5 or IND AS-8, etc., to the extent applicable.



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2(b)	<p><i>As per Definition of the Scheme: -</i></p> <p><b>"Appointed Date"</b> means start of business hours in Pune, India April 01, 2024.</p> <p><b>"Effective Date"</b> shall mean a date on which all the conditions (taken together) specified under clause 18 of this scheme stands satisfied;</p> <p><i>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.</i></p> <p><i>The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	<p>The Petitioner Companies submit that the Scheme shall take effect from the "Appointed Date" i.e. April 1, 2024, as mentioned clearly in the Scheme, once the conditions set out in the Scheme are fulfilled. Further, the Petitioner Companies have complied with the requirements of circular No.F.No.7/12/2019/CL-I dated 21<sup>st</sup> August 2019 issued by the Ministry of Corporate Affairs, and the Appointed Date is in accordance with Section 232(6) of the Act and the said Circular.</p>
2(c)	<p><i>The Transferor company and Transferee company have to undertake to comply with section</i></p>	<p>The Petitioner Companies undertake to pay the applicable fee and stamp</p>





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	<p><i>232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.</i></p>	<p>duty on the increase of the authorised share capital.</p>
2(d)	<p><i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</i></p>	<p>The Petitioner Companies submit that the meeting of the members and creditors of each of the Petitioner Companies were duly dispensed with by this Tribunal vide its order dated 8<sup>th</sup> July 2024 and, therefore, the question of holding a meeting and placing on record minutes of such meeting before this Tribunal does not and cannot arise.</p>
2(e)	<p><i>The Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the</i></p>	<p>The Petitioner Companies state that the Scheme is in compliance with the provisions of Section 2(1B)</p>



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	<i>Transferor company and Transferee company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;</i>	and other applicable provisions of the Income-tax Act, 1961. and the Rules thereunder. The Petitioner Companies undertake to comply with the applicable provisions of the same.
2(f)	<i>The Transferor company and Transferee company shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</i>	The Petitioner Companies have no sectoral regulator. In any event, the Petitioner Companies undertake to comply with the directions of the concerned sectoral regulator, if so required.
2(g)	<i>The Transferor company and Transferee company shall undertake to comply with the directions of the I.T. Department and GST Department, if any.</i>	The Petitioner Companies undertake to comply with the directions, if any, of the Income-tax department and GST department.
2(h)	<i>The Transferor company and Transferee company shall be directed u/s 230(5) of CA, 2013 to serve notices to concerned Authorities which are likely to be affected by the present amalgamation or arrangement. Further the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with</i>	The Petitioner Companies submit that they have served notices under Section 230(5) of the Act to the concerned authorities as directed by this Tribunal by way of its order dated 8 <sup>th</sup> July 2024, passed in the captioned Company Scheme Application. The Petitioner Companies have





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	<p><i>any of the issues arising after giving effect to the scheme and the decision of such authorities shall be binding on the Transferor company and Transferee company.</i></p>	<p>jointly filed an Affidavit of Service dated 2<sup>nd</sup> August 2024, showcasing compliance with the directions issued by this Tribunal. Furthermore, pursuant to the order dated 7<sup>th</sup> October 2024 admitting the captioned Company Scheme Petition, the Petitioner Companies have once again served upon the sectoral authorities, notice of hearing in compliance with the directions by this Tribunal and filed an Affidavit of Service dated 29<sup>th</sup> October 2024.</p> <p>The rest of the contents of the paragraph under reply are general and do not require any comments.</p>
2(i)	<p><i>That on examination of the report of the Registrar of Companies, Pune dated 01.10.2024 (Annexed as Annexure A-1) that the Transferor company and Transferee company fall within the jurisdiction of ROC, Pune. It is submitted that no complaint and /or representation</i></p>	<p>The Petitioner Companies state that the contents of the paragraph do not require any comments.</p>



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<p><i>regarding the proposed scheme of Amalgamation has been received against the Transferor company and Transferee company. Further, the Transferor company and Transferee company have filed Financial Statements up to 31.03.2024. The observations in ROC report are as under :-</i></p> <p><i>i. That the ROC Pune in his report dated 01.10.2024 has stated that no Inquiry, inspection, investigation &amp; prosecution is pending against the subject applicant companies.</i></p> <p><i>ii. May be decided on its merits.</i></p>	
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9. The Ld. Representative for the Regional Director, on instructions from the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that the Regional Director is satisfied with the undertakings given by the Petitioners and states that the Scheme is otherwise not prejudicial to the interests of the shareholders/creditors and the public. The said undertaking is taken on record.
10. The Ld. Counsel for the Petitioner Companies states that the Official Liquidator has filed his report dated 4<sup>th</sup> September 2024, *inter alia*, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and not prejudicial to the interest of the shareholders of the Transferor Company.



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11. The Ld. Counsel for the Petitioner states that the office of the Goods and Services Tax (Central), has addressed a letter dated 30<sup>th</sup> August 2024 to this Tribunal with a copy marked to the Petitioner Companies, *inter alia*, stating that while there is no demand against the Transferor Company, assessment for the period 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24 is still under process. The Ld. Counsel for the Petitioners submits that the Transferee Company undertakes to discharge lawful liability, if any, that may arise against the Transferor Company during any of the aforementioned period. The the Ld. Counsel for the Petitioners submits that, in any event, the Scheme will have no impact on the GST liability of the Petitioner Companies.
12. The Income-tax Department has filed its Report which was served on the Petitioner Companies on 27<sup>th</sup> November 2024 (**IT Report**), setting out its observations on the Scheme as stated in paragraphs 4(i) to 4(vii). In response to the observations made by the Assistant Commissioner of Income-tax, the Petitioners have given necessary clarifications and undertakings by way of its Joint Affidavit dated 3<sup>rd</sup> December 2024. The observations made by the Assistant Commissioner of Income Tax and the clarifications and undertakings thereto, given by the Petitioners are summarised in the table below:

Para	Observation in IT Report	Response of the Petitioners
4(i)	<i>It should be clarified and undertaken that all pending proceedings against M/s Arcalis Technologies Private Limited (Transferor Company) shall be continued against the</i>	The Petitioner Companies undertake that all pending proceedings, if any, against the Transferor Company



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	<p><i>Nihilent Limited (Resultant Company). Therefore, the Scheme should be without prejudice to the rights of the Income Tax Department and the Income-tax Department is free to proceed against the Resultant Company for all its proceedings.</i></p>	<p>shall be continued against the Transferee Company, in accordance with applicable law.</p>
4(ii)	<p><i>It should be clarified that, at the moment this scheme is not being examined with reference to the taxation aspect vis-a-vis other such schemes, if any. Thus liberty be given that in future, if it is discovered that this scheme or similar such schemes are in any way acting as a device for tax-avoidance, then the Department will be at liberty to initiate the appropriate course of action as per law.</i></p>	<p>The Petitioner Companies clarify that the Scheme is not a device for tax-avoidance and / or evasion. In any event, the Income-tax Department shall be at liberty to adopt appropriate course of action, in accordance with Income-tax</p>
4(iii)	<p><i>The Income-Tax Department will be at liberty to examine the aspect of any tax payable as a result of the Scheme and in case it is found that the scheme ultimately results in tax avoidance or is not in accordance to the provisions of the Income Tax Act, then the Department will be at liberty to initiate the appropriate course of action as per law.</i></p>	<p>Act, 1961.</p>
4(iv)	<p><i>It is further requested that the rights of the Income Tax Department should remain intact to take out appropriate proceedings regarding raising of any tax demand against the Resultant Company at any future date and these rights should not be adversely</i></p>	<p>The Petitioner Companies state that the rights of the Income-tax Department shall not be adversely affected by the Scheme being sanctioned by this Tribunal, and they shall be at liberty to</p>



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	<i>affected in view of the sanction of the Scheme.</i>	initiate appropriate proceedings in accordance with law.														
4(v)	<i>It should be undertaken that scheme of arrangement will not in any manner affect the ability of the assessee that are due in accordance with the Income tax Act and the same shall be paid in accordance with the Income Tax Act.</i>	The Petitioner Companies state that the Scheme shall not affect the tax liability of the Petitioner Companies, and the Petitioner Companies undertake to discharge tax liability, if any, in accordance with the Income-tax Act, 1961 and other applicable provisions of law. The Petitioner Companies expressly reserve their rights and contentions														
4(vi)	<i>In this connection please find attached herewith list of demands as per the demand analysis and recoverability status report as downloaded from the ITBA recovery module. Further it is submitted that as per ITBA system the following proceedings are pending in respect of Nihilent Limited. The said proceedings will be continued against the Transferee Company.</i>	The Petitioner Companies state that the alleged proceedings mentioned in the paragraph under reference are against the Transferee Company itself, which shall continue its existence post the implementation of the Scheme. In any event, as can be seen from the table, there are no outstanding demands in four out of five														
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			Sect ion	Ord er	Out sta ndi ng (In Rs.)	Diffi cult to Rec ove r (In Rs.)	Collect ible (In Rs.)	proceedings. Even otherwise the Income-tax department shall be at liberty to take appropriate action, if any, in respect of the Transferee Company in accordance with the law.
20 08- 09	201 220 081 001 033 164 0C	115 WE 3	25/ 10/ 201 2	0		0		
20 16- 17	201 920 163 711 343 078 0C	154	25/ 02/ 202 0	0		0		
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	20 21- 22	202 320 213 724 363 787 6C	154	30/ 01/ 202 4	3,6 0,3 20		3,60,3 20	
4(vii)	<p><i>Subject to the Objections/ liberties as mentioned hereinabove, this Hon'ble NCLT may pass appropriate order / orders as deem fit and proper on merits ..."</i></p>							<p>The Petitioner Companies state that the contents of the paragraph do not warrant any response and submit that the objections and/or clarifications as sought for by the Income-tax Department have been appropriately answered/addressed and, therefore, the Scheme be sanctioned by the Tribunal.</p>

13. The Ld. Counsel appearing on behalf of the Income-tax Department, on instructions from the Income-tax Department states that the Department is satisfied with the undertakings and clarifications given by the Petitioners. The said undertakings are taken on record.



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14. From the material on record, the Scheme annexed as *Exhibit I* to the Company Scheme Petition appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition bearing C.P.(CAA)/153/MB/2024 is made absolute in terms of prayer in the said Company Scheme Petition.
16. The Petitioners are directed to file a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28 in addition to physical copy, within 30 days from the date of receipt of certified copy of the same from the Registry.
17. The Petitioners to submit a certified copy of this Order and Scheme duly authenticated by the Designated Registrar of 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 certified copy of this Order.
18. All regulatory authorities concerned to act on a copy of this Order along with the Scheme duly certified by the Designated, National Company Law Tribunal, Mumbai.



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19. The Scheme is hereby approved and sanctioned, and  
C.P.(CAA)/153/MB/2024 is allowed and disposed of.

Sd/-

**ANIL RAJ CHELLAN**  
**MEMBER (TECHNICAL)**

Sd/-

**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**

Certified True Copy \_\_\_\_\_  
Date of Application 10/01/2025  
Number of Pages 17  
Fee Paid Rs. 85/-  
Applicant called for collection copy on 13/01/2025  
Copy prepared on 13/01/2025  
Copy issued on 13/01/2025



  
Deputy Registrar  
National Company Law Tribunal, Mumbai Bench