

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement reserved on: 19.01.2016
Judgement delivered on: 26.02.2016

+ **CO.PET. 95/2015**

IN THE MATTER OF
QUADRIA CAPITAL INVESTMENT ADVISORS PRIVATE
LIMITED Petitioner No. 1/Transferor Company
and
QUADRIA ADVISORS PRIVATE LIMITED
.... Petitioner No. 2/Resulting Company

with
IBOF INVESTMENT MANAGEMENT PRIVATE
LIMITED Petitioner No. 3/Transferee Company
Through: Mr. Sumit Goel, Advocate
Ms Aparna Mudiam, Asstt. ROC for the RD.
Mr Rajiv Behl, Adv. for the OL.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by Quadria Capital Investment Advisors Private Limited (i.e. Transferor/Demerged Company or Petitioner no.1), Quadria Advisors Private Limited (i.e. Resulting Company/Petitioner no. 2) and IBOF Investment Management Private Limited (i.e. Transferee Company/Petitioner no. 3) under Section 391 and 394 of the Companies Act (in short the Act), in connection with the Composite Scheme of Arrangement proposed by them (hereafter referred to as the scheme). A copy of the scheme is enclosed with the petition.
2. The transferor/demerged company, resulting company and transferee company, as referred to above, will be collectively referred to as the petitioners hereafter.
3. The petitioners aver that the objective of the scheme is to focus on the

‘Offshore Investment Advisory Services’, division, by facilitating the demerger. Also, at the same time, consolidation of the assets and capital base is sought, for expansion and growth by way of merger by amalgamation of the residual undertaking of the demerged company with the transferee company.

4. The scheme with the appointed date as 01.07.2014 provides for the transfer by way of demerger, of the ‘Offshore Investment Advisory Services’, division of the transferor/demerged company, into the resulting company. The scheme further provides for a subsequent issue of equity shares by the resulting company to the shareholders of the transferor/demerged company. Additionally, the scheme, provides, as noted above, for the amalgamation of residual undertaking of the transferor/demerged company with the transferee company and the consequent issue of equity shares by the transferee company to the shareholders of the transferor/demerged company.

5. As per para 18.1 of the scheme, 4,99,999 equity shares of the transferee company of the face value of Rs. 10/- each, shall be issued for every 10,000 equity shares of the transferor/demerged company.

6. The registered office of the transferor/demerged and the resulting company is located within the jurisdiction of this court. The transferee company has its registered office in Mumbai which falls outside the jurisdiction of this court.

7. The details with respect to petitioners’ authorised, issued, subscribed and paid up capital have been set out in paragraph 7, 12 and 17 respectively, of the petition.

8. The transferor/demerged company was incorporated under the Act, on 26.02.2013 with the Registrar of Companies, NCT of Delhi & Haryana

(ROC) at New Delhi. On the other hand, the resulting company was incorporated with the ROC under the Act, on 29.05.2014 in consonance with the provisions of the Act.

8.1 The transferee company was incorporated on April 6, 2009, under the name and style: 'Milestone Religare Investment Advisors Private Limited'. Subsequently, the name was changed to: 'Quadria Investment Management Private Limited' and, a fresh certificate was issued by the Registrar of Companies, Maharashtra, Mumbai, on June 19, 2013. Thereafter, the name was finally changed to 'IBOF Investment Management Private Limited' and, once again, a fresh certificate consequent upon change of name was issued on June 2, 2014.

9. The copies of Memorandum and Articles of Association as well as the profit and loss accounts and the balance sheets as on 31.03.2014 have been filed by the petitioners along with the petition.

10. Copies of Board of Directors' (BOD) resolution of the petitioners of dated i.e. 23.06.2014, 27.06.2014 and 17.07.2014, respectively, approving the scheme have been filed along with the petition.

11. The petitioners have averred that there are no proceedings pending against them, under Section 235 to 251 of the Act.

12. The petitioners had earlier filed an application (i.e. the first motion), being: CA No. (M) 131/2014, whereby a prayer had been made, for dispensing with the requirement of convening meeting of all shareholders of the petitioners and secured and unsecured creditors of the transferor/demerged company.

12.1 This court vide order dated 01.12.2014, having regard to the fact that all shareholders of the petitioners had given their consent, dispensed with the requirement of convening a meeting of shareholders of the petitioners.

12.2 In view of the fact that written consent/NOC was obtained from the sole secured creditor and 2 out of 25 unsecured creditors (being 98.5% in value) of the transferor/demerged company as well, the court, also, dispensed with the requirement of convening a meeting of the secured and unsecured creditors of the said company.

12.3 The court, also noted, that since, the resulting company did not have any unsecured and secured creditors, there was no requirement to convene a meetings with respect to those classes of persons/entities.

13. The petitioners have, thereafter filed the instant petition (i.e. second motion). Notice in this petition was issued on 21.04.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD). Furthermore, citations were ordered to be published in Indian Express (English) and Jansatta (Hindi).

13.1 The citations were published in Delhi Editions of newspapers: Indian Express (English) and Jansatta (Hindi) on 02.10.2015. An affidavit dated 28.10.2015 demonstrating service of petition on the RD and establishing publication of citation, along with the newspaper extracts, has been filed by the petitioners.

13.2 Further, petitioners have averred by way of an affidavit dated 12.01.2016, that subsequent to the publication of the notice in the petition, they have not received any objection or complaint qua the scheme.

14. Pursuant thereto, the RD filed its affidavit under Section 394 A of the 1956 Act. In the affidavit, the RD relied upon the general circular bearing no. 53/2011, dated 26.07.2011 and, circular bearing no. 1/2014, dated 15.01.2014. Based on the aforementioned circulars, as per the affidavit of the RD, communication was sent to the Registrar of Companies, Delhi and Haryana (in short the ROC), and the Income Tax Department (in short the

I.T. Department) seeking their response to the scheme. However, no response by the I.T. department, on this matter, has apparently been received, to date.

15. The affidavit of RD, adverts to the fact that it has received information from the ROC vide communication dated 30.10.2015 which, pointed to the fact that;

a) The BOD resolutions dated 23.6.2014 and 27.06.2014, of the transferor/demerged and the resulting companies, approving the scheme, have not been filed in terms of provisions of section 117(3) r/w 179(3) of the Companies Act, 2013. According to the 2013 Act, the companies is required to file such resolution (e-Form MGT-14) with the ROC within 30 days of passing of the resolution.

b) As per Para 23 of the scheme, if, the scheme is not passed on or before 30.06.2015 or within such further period or periods as may be agreed upon between these companies, the scheme will stand revoked and will be null and void. It is averred that the petitioners have not filed copy of BOD Resolution, with regard to the extension of the period of the scheme, and hence, it could be, treated as null and void to that extent.

16. In response to the concerns raised by the RD, the petitioners filed an affidavit dated 16.11.2015, wherein, it is averred that due to oversight, the e-Form MGT -14 had not been filed by the petitioners. However, Form CG-1 was filed by the petitioners on 13.10.2015, and the same, stood approved by the Ministry of Corporate Affairs (in short the MCA).

16.1 It is, however, averred that the petitioners, are yet to receive the order from the MCA. It is submitted that as soon as the order is received, the petitioners would file the e-Form MGT-14.

16.2 With regard to the second objection, the petitioners have averred that

the time period mentioned in Para 23 of the scheme has been extended by the petitioners vide BOD Resolution dated 19.05.2015, to obtain sanction to the scheme till December 31, 2015. It is further averred that the petitioners have filed the said resolution vide E-Form GNL-1, with the ROC, and the same, stands approved by the ROC.

17. In these circumstances, to my mind, the concerns of the RD stand liquidated.

18. As far as the OL is concerned, he has, inter alia, stated in his report that no complaint qua the scheme has been received by him from any interested person or party. The OL has also averred, it appears, that on the basis of information supplied by the petitioners, that the affairs of the transferor/demerged company have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large. In other words, affairs of the transferor/ demerged company, according to the OL, do not fall foul of the provisions of the second proviso of Section 394(1) of the Act.

19. Thus, the OL, has conveyed that he has no objection to the scheme being sanctioned.

20. I may also note that the petitioners have informed this court that in so far as the transferee company is concerned, the High Court of Bombay vide order dated 10.04.2015, passed in Company Petition No.822/2014, has already, granted approval to the scheme subject to a further approval by this court.

21. To be noted, the scheme in para 15 provides that all employees of the transferor/demerged company, in service on the effective date, shall become the employees of the transferee company, on such date without any break or interruption in service and on terms and conditions as to remuneration not

less favorable than those subsisting with reference to transferor/demerged company, as on the said date.

22. In terms of the provisions of Section 391 and 394 of the Act, and in terms of para 5.2 of the scheme, the entire undertaking, properties, rights and powers of the transferor/demerged company will stand transferred to and / or vest in the transferee company without any further act or deed. Similarly, in terms of the scheme, all liabilities and duties of the transferor/demerged company shall stand transferred to the transferee company without any further act or deed.

23. Furthermore, as per para 16.1 of the scheme, transferor/demerged company shall stand dissolved without being wound up.

24. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors of the petitioners and, given the fact, that the concerns of the RD, as indicated above, have been duly taken care of, in my opinion, there appears to be no impediment in the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law.

24.1 A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

25. Resultantly, it is directed that the petitioners will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

26. Notwithstanding the above, if there is any deficiency found or, violation committed of qua provision of any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of any action being taken, albeit in accordance with law, against the

concerned persons, directors and officials of the petitioners.

27. It is made clear, that this order will not be construed as an order granting exemption from : payment of stamp duty or, taxes or, any other charges, if any, 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.

28. Consequently, the petition is allowed and disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 26, 2016