

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

Judgement reserved on: 18.01.2016
% Judgement delivered on: 03.02.2016

+ **CO.PET. 552/2015**

IN THE MATTER OF OXIGEN SERVICES (INDIA)
PRIVATE LIMITED .. Petitioner Company-1/
Demerged Company

AND

PHI ENTERPRISES PRIVATE LIMITED ... Petitioner Company- 2/
Resulting Company

Through: Mr Rajeev Kumar, Adv. for the
petitioners.
Ms AparnaMudiam, Asstt. ROC for the RD.
Mr. Rajiv Behl, Advocate for the OL

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by Oxigen Services (India) Private Limited (i.e. petitioner no.1/demerged company) with Phi Enterprises Private Limited (i.e. petitioner no.2/resulting company) under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of demerger (hereafter referred to as the scheme).

1.1 The petitioner no.1/demerged company and petitioner no.2/resulting company, as referred to above, will hereafter be collectively referred to as the petitioners.

1.2 The registered office of the petitioners are located within the

territorial jurisdiction of this court.

1.3 The details with respect to incorporation and the petitioners' authorised, issued, subscribed and paid up capital have been set out in the petition.

1.4 Petitioner no. 1/demerged company was originally incorporated as a Private Limited Company under the name and style: India Prepaid Services Private Limited, on 28.08.2003. Subsequently, the name of petitioner no. 1/demerged company was changed to its present name viz., Oxigen Services (India) Private Limited; on 21.08.2006.

2. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2014, have been filed by the petitioners.

3. Copies of Board of Directors' resolution of even date i.e. 05.05.2015, concerning the petitioners, whereby, the scheme has been approved, are filed with the petition.

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

5. To recapitulate, the petitioners had in the earlier round filed a petition (i.e. the first motion), being: CA(M) No.126/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of shareholders and creditors. This court vide order dated 03.08.2015, having regard to the fact, that all shareholders of the petitioners had given their consent to the scheme, dispensed with the requirement of convening meetings as prayed. Furthermore, the court, having regard to the fact, that secured creditors, being 97.65% in value (though 50% in number), and all the unsecured creditors of petitioner no.1/ demerged company had given

their consent to the scheme, dispensed with the requirement of convening meetings of the said class of persons/ entities as well. The court, also noted, that since, petitioner no.2/ resulting company did not have any secured or unsecured creditors; therefore, there was no requirement to convene a meeting with respect to that class of persons/entities.

6. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 11.08.15. Notice was accepted on behalf of the Regional Director (RD). Furthermore, citations were ordered to be published.

7. Pursuant thereto, reply/ representation has been filed by the RD. Citations were published in Delhi Editions of the following newspapers: Business Standard (English) and Business Standard (Hindi), on 04.09.2015.

7.1 An affidavit dated 27.10.2015 demonstrating service of the petition on the RD and establishing publication of citation alongwith the newspaper extracts, was filed by the petitioners.

8. Pursuant thereto, the RD filed its affidavit under Section 394 A of the 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 15.04.2014. 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 seeking their response to the scheme. However, no observation/comment/reply of the Income Tax department, it appears, has been received in the matter.

8.1 The affidavit of the RD adverts to the fact that it has received information from the ROC vide communication dated 05.01.2016 which, inter alia, alludes to the fact that the petitioners' filing vis-a-vis annual return

and balance sheet is up-to-date, and that, no prosecution is initiated against them.

8.2 The RD, evidently, has received input from the petitioners vide communication dated 12.10.2015, wherein, it has been communicated that at present petitioner no.2/ resulting company has no foreign NRI interest in it. In so far as petitioner no.1/demerged company is concerned, following disclosure is made qua foreign/NRI shareholding- (a) Gold Label Investments (Pty) Limited (South Africa) -37.22%; and (b) 2Fine Investments Mauritius (Mauritius)- 37.22%.

8.3 Furthermore, it is stated that after the approval of the scheme, the foreign shareholding will stand at 74.44%.

8.4 The petitioners have also taken a stand in consonance with clause 14.1 of the scheme, that upon the scheme being effective, the respective book values of the assets and liabilities of petitioner no.1/demerged company shall be adjusted in its books of accounts in accordance with the applicable accounting standard.

8.5 Since, this is a case of demerger, as far as the Official Liquidator (in short the OL) is concerned, it would have no role to play in this case. Mr.Behl, the learned counsel for the OL affirms this position.

9. To be noted, the scheme in clause 8.2 provides that all employees of petitioner no.1/demerged company in service on the effective date shall become the employees of petitioner no. 2/resulting company on such date without any break and interruption in service and on the terms and conditions not in any way less favorable to them than those subsisting in petitioner no.1/demerged company as the case may be on the said date.

10. In any event, notwithstanding what is stated by the petitioners, if there

is any deficiency found or, any violation committed of any provisions of the RBI Act and/ or Foreign Exchange Management Act, 1999 (FEMA), the sanction granted by this court to the scheme will not come in the way of any of any action being taken in accordance with law, against the concerned persons, directors and officials of the petitioners.

11. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors of the petitioners and, given the fact, that Ms.Aparna Mudiam, who appears for the RD confirming that the RD has no objection to the scheme being sanctioned, 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. A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

11.1 In terms of the provisions of Section 391 and 394 of the Act, and in terms of the scheme, the entire undertaking including assets, investments, properties, rights, privileges, benefits and interests of petitioner no.1/ demerged company will stand transferred to and vest in petitioner no.2/ resulting company without any further act or deed. Similarly, in terms of the scheme, all liabilities, duties and obligations of petitioner no.1/ demerged company shall stand transferred to petitioner no.2/ resulting company without any further act or deed.

12. It is made clear, that this order will not be construed as an order granting exemption from: payment of stamp duty or, taxes or, other penalties/ 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.

13. Resultantly, the petition is allowed and disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 03, 2016

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