

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 753/2015

Reserved on 26th April, 2016
Date of pronouncement: 30th May, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Section 394 of the Companies Act, 1956

Scheme of Arrangement and Demerger between:

MC Consulting Engineers Private Limited

Non-Petitioner/Demerged Company

AND

Technocrats Advisory Services Private Limited

Petitioner/Resulting Company

Through Mr. Rohit Mehra with Ms. Mani Gupta and Mr. Abhishek Gupta, Advocates for the petitioners
Ms. Aparna Mudiam, Assistant Registrar of Companies for the Regional Director
Mr. Ashish Makhija, Advocate for the Official Liquidator

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Section 394 of the Companies Act, 1956 by the petitioner/resulting company seeking sanction of the Scheme of Arrangement and Demerger between MC Consulting Engineers Private Limited (hereinafter referred to as the demerged company) and Technocrats Advisory Services Private Limited (hereinafter referred to as the petitioner/resulting company).

2. The registered office of the petitioner/resulting company is situated at New Delhi, within the jurisdiction of this Court. However, the registered office of the Demerged Company is situated at Hyderabad, outside the jurisdiction of this Court. Learned counsel for the petitioner submits that the High Court of Judicature at Hyderabad has approved the Scheme in respect of the demerged company vide order dated 17.08.2015. However, a copy of the said order is not placed on record.

3. The petitioner/resulting company was incorporated under the Companies Act, 2013 on 12th December, 2014 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the petitioner/resulting company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the petitioner/resulting company and the demerged company have been filed on record with the application being CA(M) 108/2015 earlier filed by the petitioner company. The audited balance sheets, as on 31st December,

2014, of the petitioner/resulting company and the demerged company, along with the report of the auditors, had also been filed.

6. A copy of the Scheme of Arrangement and Demerger has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It has been submitted by the petitioner that the Scheme, *inter alia*, provides for merger of a part of the demerged company i.e. the Demerged Business into the resulting company. It is claimed by the petitioner that the proposed demerger will enable the demerged company to focus on the operations of its consultancy business in sectors other than roads, highways bridges and the resulting company to focus on and build its competencies in the demerged business. It is further claimed that the proposed demerger will bring about effective utilization of resources and flexibility for the demerged company and will enable the resulting company to capitalize on the growth opportunities in the field of consultancy services in roads, highways and bridges and attract relevant stakeholders.

7. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the petitioner/resulting company shall issue and allot equity shares to the shareholders of the demerged company in the following ratio:-

“02 equity shares of Rs.10/- each of the resulting company for every 01 equity share of Rs.10/- each held in the demerged company.”

8. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/resulting company.

9. The Board of Directors of the petitioner/resulting company and the demerged company in their separate meetings held on 23rd February, 2015 has unanimously approved the proposed Scheme of Arrangement and Demerger. Copies of the resolutions passed at the meetings of the Board of Directors of the petitioner/resulting company and the demerged company had been placed on record.

10. The petitioner/resulting company had earlier filed CA (M) No. 108/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement and Demerger. Vide order dated 3rd August, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meeting of the equity shareholders of the petitioner/resulting company, there being no secured or unsecured creditor of the resulting company, to consider and, if

thought fit, approve, with or without modification, the proposed Scheme of Arrangement and Demerger.

11. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement and Demerger. Vide order dated 5th October, 2015, notice in the petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Citations were also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi) editions. Affidavit of services has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 19th November, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 27th January, 2016 wherein he has stated that the present Scheme involves demerger only whereby no company gets dissolved.

13. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 16th February, 2016. Although the Regional Director has not raised any objection to the proposed Scheme, but in para 7 of his report he has stated that the Board of Directors of the petitioner/resulting company have approved the proposed Scheme in their meeting held on 23.02.2015. Accordingly, in terms of provisions of Section 117(3) read with 179(3) of the Companies Act, 2013, the company is required to file such resolution (e-form MGT-14) with the ROC within 30 days of passing the resolution whereas the company has not filed the said resolution so far thereby prima facie violated the provisions of Section 117(3) of the Companies Act, 2013.

14. In response to the aforesaid observation of the Regional Director, the petitioner/resulting company in the affidavit dated 1st April, 2016 of Sh. Kamlesh Kumar Gupta, authorized signatory of the petitioner/resulting company, has submitted that the petitioner company has taken steps to file the e-form MGT-14 and has applied for condonation of delay beyond 300 days in filing the said e-form to the Central Government on 18.02.2016, and the said delay was condoned by the government vide order dated 31.03.2016. Accordingly, the petitioner company has filed the e-form MGT-14 with the ROC on 01.04.2016. A

copy of the said form has also been placed on record. In view of the above, the observation made by the Regional Director stands satisfied.

15. No objection has been received to the Scheme of Arrangement and Demerger from any other party. Learned counsel for the petitioner/resulting company has submitted that neither the petitioner companies nor their advocates have been received pursuant to the citations published in the newspapers on 19th November, 2015.

16. Considering the approval accorded by the shareholders of the petitioner/resulting company to the proposed Scheme of Arrangement, there being no secured and unsecured creditor of the petitioner company, and the affidavits filed by the Official Liquidator and the Regional Director, Northern Region, not raising any objection to the proposed Scheme of Arrangement and Demerger, and in view of the order dated 17.08.2015 of the High Court of Judicature at Hyderabad approving the Scheme in respect of the demerged company, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement and demerger. Consequently, sanction is hereby granted to the Scheme of Arrangement and demerger under Sections 391 and 394 of the Companies Act, 1956. The petitioner company will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified

that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Arrangement, i.e. 1st January, 2015, the Demerged Business of the demerged company shall stand merged in the resulting company.

17. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- should be paid by the petitioner keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 26.04.2016, the petitioner shall deposit a sum of Rs.50,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

18. The petition is allowed in the above terms.
Dasti.

SUDERSHAN KUMAR MISRA, J.

May 30, 2016