IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 162 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 117 OF 2015

Minefields Computers Limited …………… Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangement between Mastek Limited AND Minefields Computers Limited AND Majesco Software and Solutions India Private Limited AND their respective shareholders and creditors

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocate for the Petitioner.

Mrs. Purnima Awasthi, i/b Mr. A. A. Ansari for Regional Director.

CORAM: S. J. KATHAWALLA, J.
DATE: 30^{th} April, 2015

P.C. :-

1. Heard the learned counsel for the Petitioner Company. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956, to the Scheme of Arrangement between Mastek Limited and Minefields Computers Limited and Majesco Software and Solutions India Private Limited and their respective shareholders and creditors.

3. The learned Counsel for the Petitioner states that the Petitioner Company is an IT/ITES software company which will provide IT solutions and services to corporates and makes business critical applications for its clients. However, the Petitioner Company has not yet commenced any commercial activity.

4. Learned Counsel for the Petitioner states that the scheme would result into following benefits namely, It will give shareholders the opportunity to participate in the business of their choice, based on their risk-reward profile; facilitate each business to independently pursue their growth plans through organic / inorganic means; enhance management focus and operational flexibility and create a platform to enhance financial flexibility to pursue next stage of growth.

5. The Petitioner Company approved the said Scheme by passing the Board Resolution which is annexed to the Company Scheme Petition.

6. The learned counsel for the Petitioner states that the Petitioner Company has complied with all directions passed in Company Summons for

Directions and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company summons for Directions.

7. The learned counsel for the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 29th April, 2015 in the above Petition stating therein that save and except as stated in paragraphs 6(a) to 6(g) of the said Affidavit, it appears that the scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6(a) to 6(g) of the said Affidavit, the Regional Director has stated that:-

6. "That the Deponent further submits that:-

a) Clause 14.5 of the scheme provides for adjustment for differences in Accounting Policies between Demerged Company and Resulting Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard -14, the Resulting Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

b) Clause 34 of the scheme provides for change of name of Resulting Company. In this connection Resulting Company may be directed to comply with the provisions of section 13 read with 16 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies and the *proposed new name will be allowed subject to availability of the same, by the Registrar of Companies since under the computerized MCA 21 System of allotting the names, it is systemically not possible to reserve the names. Therefore, the name if available at the time of filing of such application shall be made available by the Registrar of Companies, Mumbai.*

c) *With reference to clause 14.4 of the scheme, it is submitted that the excess or deficit if any remaining after recording the entries provides in clause 14.2 and 14,3 of the scheme including the reserve so transferred and adjusted by the demerged Company shall be credited by the Resulting Company to its capital reserve account or debited to goodwill account as the case may be.*

d) *Clause 24 of the scheme provides for transferring the assets and liabilities to transferee Company, for which the transferee Company shall pay lump sum consideration of Rs 22 crores. The transfer of assets and liabilities from the resulting company to transferee Company is a step down transfer, which is part of assets/liabilities is transferred from demerged company to resulting company. This slump sale is not within the provisions of demerger as defined in section 2(19AA) of the Income Tax Act, 1961. This is not a tax neutral scheme. Hence, any tax liability arising out of the scheme is subject to final decision of Income Tax Authority.*

e) *Clause 26.4 of the scheme provides for adjustment for differences in Accounting Policies between Demerged Company and Resulting Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard -14, the Resulting Company shall pass such* *accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.*

f) That the Registered Office of the Demerged Company and Transferee Company are situated in the State of Gujarat. Hence the Demerged Company and Transferee Company have to file similar petition before the Hon'ble High Court of Gujarat for approving the said scheme.

g) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the petitioner company.

9. In so far as observations made in paragraph 6(a) and 6(e) of the Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes that the Petitioner Company will pass such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting standards.

10. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with the provisions of section 13 read with section 16 of the Companies Act, 2013 and will file the necessary forms with the Registrar of Companies, Mumbai.

11. In so far as observations made in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Company

through their Counsel undertakes that the excess or deficit if any remaining after recording the entries provided in clause 14.2 and 14.3 of the scheme including the reserve so transferred and adjusted by the Demerged Company shall be credited by the Petitioner Company to its capital reserve account or debited to goodwill account as the case may be.

12. In so far as observations made in paragraph 6(d) and 6(g) of the Affidavit of the Regional Director is concerned, the Petitioner Company is bound to comply with all the applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

13. In so far as observations made in paragraph 6(f) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel state that the Demerged Company and Transferee Company have filed similar petition before the Hon'ble High Court of Gujarat for approving the said scheme and same is pending for final hearing.

14. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamutthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 162 of 2015 filed by the Petitioner Company is made absolute in terms of prayers clauses (a), (b) and

(d) of the Petition. Subject to similar approval of this Scheme from High Court of Gujarat.

17. The Petitioner Company is directed to lodge a copy of this order and the Scheme along with form of minutes duly authenticated by the Company Registrar, High Court, Bombay, 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 the order.

18. The Petitioner is directed to file a copy of this order along with a copy of the Scheme of Arrangement and form of minutes with the concerned Registrar of Companies, electronically, along with INC 28 in addition to physical copy, as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

19. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within period of four weeks from today.

20. Filing and issuance of the drawn up order is dispensed with.

21. All concerned regulatory authorities to act on a copy of this order along with Scheme and form of minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S J Kathawalla, J.)