IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 293 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 938 OF 2014

Opus Software Solutions Private Limited

…Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 294 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 937 OF 2014

Opus Software Technologies Private Limited

…Petitioner/Transferee Company

In the matter of the Companies Act, 1956

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956

AND

In the matter of Scheme of Arrangement and Reconstruction between Opus Software Solutions Private Limited (Demerged Company), Opus Software Technologies Private Limited (Resulting

Company) and their respective shareholders and creditors

Called Company Scheme Petition for hearing

Mr. Aditya Bapat, Adv. i/b Mr. Sameer Sibal, Adv. for the Petitioners

Mr. BB Sharma, i/b Mr. A. A. Ansari for Regional Director

Coram: S.C. Gupte, J.

Date: 10th July 2015

1. Heard learned counsel for the parties. No objector has come before the court to oppose the Scheme and no party has controverted any averments made in the petition.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Arrangement and Reconstruction between Opus Software Solutions Private Limited (Demerged Company), Opus Software Technologies Private Limited (Resulting Company) and their respective shareholders and creditors.
3. The Demerged Company is currently engaged in the business of software services and other activities. The Resulting Company is engaged in the business of *inter alia* designing software programs, data processing, consulting services for computer systems and debugging.

4. The rationale for the Scheme is that it will enable the Demerged Company to focus on the remaining businesses that it carries on, and to enable an increased focus on the software services business by its transfer to the Resulting Company. The demerger would also enable the Resulting Company to build a larger and more efficient 'Enterprise Service Offering' which will enable greater market benefits and increased customer loyalty, a cornerstone of any service organization. As a result of the demerger, each company will be in a position to focus on its core business areas and this will ensure that the customers derive every benefit possible.
5. The Demerged Company and the Resulting Company had approved the said Scheme by passing board resolutions to that effect on June 17, 2014 and October 30, 2014 respectively.
6. The Counsel for the Petitioners states that the Petitioner Companies have complied with all directions passed in the Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in the Company Summons for Direction.
7. Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the Rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 23rd June 2015 stating therein, that it appears that the Scheme is not prejudicial to the interest of shareholders and public, save and except what is stated in para 6(a), (b) and (c) of the said Affidavit. In paragraphs 6(a) to (c) of the said Affidavit, the Regional Director has stated:

"6. That the Deponent further submits that:-

a) *Clause 32(a)(i) of the scheme provides for adjustment in the profit and loss account/securities premium account of demerged company. In this regard, it is submitted the reduction of the securities premium account would attract the provisions of section 52 of the Companies Act. The same is silent with respect to compliance of section 52/section 100 of the Companies Act. In this regard, it is suggested that a new clause may be added immediately below the existing clause 32(a)(i) in the following manner:-*

32(a)(ii) "The Reduction in the Securities Premium Account of the Demerged Company shall be effected as an integral part of the Scheme in accordance with the provisions of section 52 of the Companies Act, 2013 read with Section 100 to Section 103 of the Companies Act, 1956, and any other applicable provisions of the Act. The order of the Hon'ble High Court in approving the scheme is sufficient compliance *of section 52 of the Act and no separate approval is required for reduction of Securities Premium Account of the Demerged Company."*

b) *Clause 25 of the scheme provides for issue of compulsorily convertible preference shares. The scheme is silent with respect to the terms and condition of such preference shares. The petitioner company may be directed to provide the same.*

c) *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. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Counsel for the Petitioner Companies agrees and undertakes to incorporate a new clause 32(a)(ii) in the Scheme of the Petitioner Company as follows, and the said Scheme shall stand amended and modified as follows:

"32 (a) (ii) The Reduction in the Securities Premium Account of the Demerged Company shall be effected as an integral part of the Scheme in accordance with the provisions of section 52 of the Companies Act, 2013 read with Section 100 to Section 103 of the Companies Act, 1956, and any other applicable provisions of the Act. The order of the Hon'ble High Court in approving the scheme is sufficient compliance of section 52 of the Act and no separate approval is required for reduction of Securities Premium Account of the Demerged Company."

10. As far as the objection of the Regional Director in paragraph 6(b) of his affidavit is concerned, Counsel for the Petitioner Companies submits and undertakes that the terms and conditions of the Compulsorily Convertible Preference Shares (CCPS) to be issued as per Clause 25 of the Scheme will be as follows:

Issue Price of the CCPS	Rs. 10 per CCPS
Conversion Term / Duration	Within 10 (Ten) years from the date of issue of CCPS
Dividend	10% Non-Cumulative
Conversion Formula	Based on fair value of equity shares of the Transferee Company at the time of Conversion, as certified by a Chartered Accountant

11. The Counsel for the Petitioner Companies seeks leave to amend Clause 32 of the Scheme of the Petitioner Companies by adding a new Clause

32(a)(ii) and also attaching new Schedule 'A' which deals with all the terms and conditions of the issue of CCPS.

12. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in Paragraph 6(c) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. The Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) from the office of the Regional Director states that they are satisfied with the undertaking given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted. In view thereof, leave to amend the Scheme annexed to the Company Scheme Petition, including all consequential amendments is granted. Amendments to be carried out within four weeks from the date of the Order.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 293 of 2015 and Company Scheme Petition No. 294 of 2015 are made absolute in terms of prayer clauses (a) and (b) thereof respectively.

16. The Petitioner Companies to file a copy of this order and the Scheme duly amended as stated above, and authenticated by the Company Registrar, High Court (O.S.), 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.
17. Petitioner Companies are directed to file a certified copy of order along with a copy of the duly amended Scheme of Arrangement and Reconstruction with the concerned Registrar of Companies, electronically, along with E Form INC- 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.
18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in the Company Scheme Petition No. 293 of 2015 and Company Scheme Petition No. 294 of 2015. Filing and issuance of the drawn up order is dispensed with.
19. Costs to be paid within four weeks from today.
20. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.C. GUPTE, J.)