IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 468 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 541 OF 2015

In the matter of Companies Act, 1956 or any other applicable provisions of the Companies Act, 2013;

And

In the matter of Sections 100 to 104 of the Companies Act, 1956 read with Section 52 of the Companies Act 2013 and all other applicable provisions, if any, of the Companies Act, 2013

And

In the matter of Reduction of Equity Share Capital and Securities Premium Account of Serco BPO Private Limited

SERCO BPO PRIVATE LIMITED, a company }
incorporated under the provisions of Companies Act, }
1956, having its registered office at Serco House, }
Plot CST No. 1406 – A/ 28, Mindspace Malad (West)}
Mumbai – 400 090, Maharashtra, India } ....Petitioner Company

Called for Hearing

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

CORAM: S.C. GUPTE, J

DATE: 24th JULY 2015

P.C.:

1. Heard the learned Counsel for the Petitioner Company. No objector has come before the Court to oppose the Scheme for Reduction of Equity Share Capital and Securities Premium Account and nor any party has contravened any averments made in the Company Scheme Petition.

2. The sanction of this Court is sought for the Reduction of Equity Share Capital and Securities Premium Account of Serco BPO Private Limited, the Petitioner Company as approved in a Special Resolution passed by the shareholders of the Petitioner Company at its Extra Ordinary General Meeting held on 30th April 2015. Copy of the Special Resolution is annexed as Exhibit F-2 to the Company Scheme Petition.

3. The learned Counsel for the Petitioner Company submits that Article 11 of the Articles of Association of the Petitioner Company empowers the Petitioner Company to reduce its Share Capital in the manner provided for in Section 100 to 104 of the Companies Act, 1956 or any statutory modifications thereof

4. The learned Counsel for the Petitioner Company states that in Paragraph 5 of the Company Scheme Petition, it is stated that the Petitioner Company is engaged in the business of providing Business Process Outsourcing services to its clients.

5. In Paragraph 8 of the Company Scheme Petition it is stated that the Board of Directors of the Petitioner Company are of the view that the current capital is in excess of requirements of the Petitioner Company and that such surplus capital be returned to the shareholder of the Petitioner Company. Accordingly, it is intended to return capital which is in excess of the requirements of the Petitioner Company to its shareholder viz. Serco International S.á r.l by way of undertaking reduction of capital for a cash consideration under the provisions of Section 100 to 104 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013.

6. The learned Counsel for the Petitioner Company further submits that the shareholders of the Petitioner Company having passed a Special Resolution with requisite majority at its Extraordinary General Meeting held on 30th day of April

2015, have approved the reduction of equity share capital from Rs.746,279,800/- (Rupees Seventy Four Crores, Sixty Two Lakhs, Seventy Nine Thousand and Eight Hundred) to Rs.537,779,800/- (Rupees Fifty Three Crores, Seventy Seven Lakhs, Seventy Nine Thousand and Eight Hundred) by reduction of 20,850,000 (Two Crores, Eight Lakhs and Fifty Thousand) equity shares of Rs. 10/- each, held in the Petitioner Company by Serco International S.á r.l. at a premium of Rs.136/- per share for a total cash consideration of Rs.3,044,100,000 (Rupees Three Hundred and Four Crores and Forty One Lakhs only), at a price of Rs.146/- per share, including a premium of Rs136/- per share, thereby reducing the Securities Premium Account from Rs.7,015,469,550/- (Rupees Seven Hundred and One Crores, Fifty Four Lakhs, Sixty Nine Thousand, Five Hundred and Fifty only) to Rs.4,179,869,550/- (Rupees Four Hundred and Seventeen Crores, Ninety Eight Lakhs, Sixty Nine Thousand, Five Hundred and Fifty only), payable to Serco International S.á r.l. for the aforesaid reduction of capital subject to payment of taxes as may be applicable. The copy of Special Resolution is annexed as Exhibit F-2 to the Company Scheme Petition. The learned Counsel for the Petitioner Company further submits that in view of the averments made in Paragraph 15 to 18 of the Affidavit in Support of Company Summons for Direction dated 13th day of May 2015, inter-alia stating that there are only 2 (Two) Secured Creditors in the Petitioner Company from whom written consent has been obtained by the Petitioner Company agreeing to the reduction of capital and that there are only 853 (Eight Hundred and Fifty Three) Unsecured Creditors in the Petitioner Company, of which 5 (Five) are long term Unsecured Creditors from whom the Petitioner Company has obtained written consent agreeing to the reduction of capital and that, with respect to the balance 848 (Eight Hundred and Forty Eight) Unsecured Creditors, the proposed reduction of equity capital would not in any way adversely affect the rights of the Unsecured Creditors or the ordinary operations of the Petitioner Company or the ability of the Petitioner Company to honour its debts in the ordinary course of business, and such Unsecured Creditors, if not already discharged, will be paid off in the ordinary course of business, as and when they are due. Further, no compromise or arrangement is called for with any of the Creditors of the Petitioner Company as there is no reduction in the amount payable to any of the Unsecured Creditors of the Petitioner Company and there is no diminution of liability in respect of unpaid share capital in the Petitioner Company. In view thereof, the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with in pursuance of order dated 3rd July 2015 passed in Company Summons for Direction No. 541 of 2015.

7. The learned Counsel appearing on behalf of the Petitioner Company states that the Petitioner Company has complied with all the statutory requirements as per the directions of this Court and they have filed the necessary affidavit of compliance in this Court. Moreover, the Petitioner Company also undertakes to comply with statutory requirements, if any, as required under the Companies Act, 1956 and/or Companies Act, 2013 and the Rules made thereunder, as may be applicable.

8. No objector has come forward to oppose the proposed reduction. Since the requisite statutory procedures has been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) and (b) of the Company Scheme Petition.

9. Petitioner Company to publish notices about registration of the order and minutes of reduction of equity share capital by the concerned Registrar of Companies, Maharashtra in the same newspapers i.e., 'Free Press Journal', in English language and translation thereof in 'Navshakti ' in Marathi language, both having circulation in Mumbai and also in the Maharashtra Government Gazette.

10. Filing and issue of drawn up order is dispensed with.

11. All concerned regulatory authorities to act on authenticated copy of order and the form of minutes annexed as Exhibit J to the Petition, duly authenticated by the Company Registrar, High Court, Bombay.

(S.C. GUPTE, J)