IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 558 OF 2015
WITH
COMPANY SUMMONS FOR DIRECTION NO. 415 OF 2015

CCI Integrated Logistics Private Limited

…Petitioner/the Resulting Company

In the matter of the Companies Act of 1956.

AND

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

AND

In the matter of the Scheme of Arrangement between:
CCI Logistics Limited

AND

CCI Integrated Logistics Private Limited

AND

their Respective Shareholders.

Called for Hearing

Mr. Ashish Parwani, i/b Rajani, Singhania & Partners, Advocate for the Petitioner Company

Ms. Nisha N.Valani, i/b A.A Ansari for Regional Director

CORAM: S. C. GUPTE, J
DATE: 30th October, 2015

PC:

1. Heard learned counsel for parties. None appears before the Court to oppose the Scheme and nor any party has controverted any averments made in the Company Scheme Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of Companies Act, 1956 to a Scheme of Arrangement between CCI Logistics Limited (Demerged Company) and CCI Integrated Logistics Private Limited (Petitioner/Resulting Company).

3. The learned Advocate for the Petitioner Company states that the registered office of the Demerged Company is in Calcutta, West Bengal. The Demerged Company has filed Company Petition with the Hon'ble High Court of Judicature at Calcutta, which will be listed for final hearing in due course.

4. The learned Advocate for the Petitioner Company states that the Petitioner Company is engaged in the business of logistics solutions including supply chain management for clients in India and abroad and to provide integrated logistic service and the business clearing and forwarding agents, couriers and cargo handlers and the Demerged Company is engaged in the business of business of logistics and distribution providing services in the verticals of (i) Warehousing & Distribution, (ii) Transportation, and (iii) Customs Clearance.

5. The learned Advocate for Petitioner Company further states that the Warehousing, Custom Clearance and Freight & Forwarding Division of the Demerged Company shall stand transferred to and vested in or deemed to have been transferred to or vested in the Resulting Company. The proposed arrangement would *inter-alia* facilitate focussed management attention, provide leadership vision, facilitate efficiency in operations due to individual specialization, provide greater leveraging due to financial independence and facilitate strategic/ financial investment. It would facilitate the business considerations and factors peculiar to the respective businesses to be evaluated more effectively and adequately by the respective companies leading to growth and development.

6. The Petitioner Company has approved the said Scheme of Arrangement by passing the Board Resolution, which is annexed to the Company Scheme Petition.

7. The Learned Advocate for the Petitioner states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in the captioned Company Summons for Direction.

8. The Learned Advocate appearing on behalf of the Petitioner has stated that they have complied with all requirements as per directions of this Court and they have filed necessary

Affidavits of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the rules made thereunder whichever is applicable. The said undertaking is accepted.

9. The Learned Advocate on behalf of the Petitioner Company states that, pursuant to the observation made by the Regional Director, Eastern Region in Company Petition no. 512 of 2015 filed by the Demerged Company with respect to accounting treatment/ adjustments to be made in the books of accounts of the Demerged Company under the Scheme of Arrangement, Petitioner Company seeks leave of this Court to amend the scheme by adding a new Clause10.1.2A and Clause 10.1.2B after existing Clause 10.1.2 and before existing Clause 10.1.3 which says:

"10.1.2A CCI Logistics shall upon the Scheme becoming effective, record the deletion of the assets and liabilities of the Demerged Undertaking transferred to and vested in CCI Integrated Logistics pursuant to this Scheme at their respective book values as appearing in its books as at the close of business of a day immediately preceding the Appointed Date. Upon the Scheme becoming effective, books of accounts of CCI Logistics shall reflect the assets and liabilities of the Remaining Undertaking, after vesting of the Demerged Undertaking at book values unto CCI Integrated Logistics.

10.1.2B The excess of the book value of the assets over the value of the liabilities of the Demerged Undertaking of CCI Logistics transferred to and *vested in CCI Integrated Logistics pursuant to this Scheme shall be accounted for and dealt with in the books of CCI Logistics in its General Reserves."*

10. The Regional Director has filed his affidavit dated 27th October, 2015 stating therein that save and except as stated in paragraphs 6 (a) to (e) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (e) of the said Regional Director has stated that

"6 *That the Deponent further submits that,*

(a) With reference to clause 9.1.3 of the scheme, it is submitted that, the surplus if any arising out of transfer of capital assets from Demerged Company to Resulting Company be credited to Capital Reserve Account if Resulting Company in as much as the reserve arising out of transfer of capital assets is not a revenue reserve, that part of the reserve shall not form part of free reserve of Resulting Company. Hence, it is suggested that such reserve be credited to Capital Reserve Account of Resulting Company..

(b) That the Registered Office of the Demerged Company is situated in the State of West Bengal. Hence the Demerged Company has to file similar petition before the Hon'ble High Court of Kolkata for approving the said scheme.

(c) Clause No 13 and 14 of the scheme provides for splitting the authorized capital of Demerged Company and transferring Rs 3 crores from the authorized capital of Demerged Company to Resulting Company and consequently the authorized capital of Resulting Company will be increased by Rs 3 crores. There is no

provision for cancelling such authorized capital and then transferring to Resulting Company and hence clause no 13 and 14 of the scheme be deleted.

(d) *As the authorized capital of the Resulting Company is not sufficient to issue new shares to the shareholders of Demerged Company, Hence before allotment of shares Resulting Company shall increase its authorized share capital suitably and comply with the provisions of section 94/07 of the Companies Act, 1956 corresponding to section 61/64 of the Companies Act, 2013, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.*

(e) *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"*

11. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his Affidavit is concerned in relation to relation to Clause 9.1.3 of the Scheme of Arrangement, the Petitioner Company undertakes that the surplus if any arising out if the transfer of capital assets from the Demerged Company to the Petitioner Company shall be credited to the Capital Reserve Account of the Petitioner Company and shall not form part of the free reserve of the Petitioner Company.

12. So far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned in relation to registered office of the Demerged Company, the counsel for the Petitioner Company states that the Demerged Company has filed Company Petition being Company Petition No. 512 of 2015 with the Hon'ble High Court of Judicature at Calcutta which will be listed for final hearing in due course and the implementation of the Scheme is subject to sanction of the Scheme by the Hon'ble High Court of Judicature at Calcutta.

13. So far as the observation made by the Regional Director in paragraph No. 6(c) and 6(d) of his Affidavit is concerned, the counsel for the Petitioner Company states that the Petitioner Companies have decided not to pursue splitting and merging the authorized share capital of the Demerged Company with the authorized share capital of the Resultant Company as contemplated under the Scheme of Arrangement and consequently, there would not be any reduction of authorized share capital of the Demerged Company or any increase in authorized share capital of the Petitioner Company under the Scheme of Arrangement. The learned counsel further undertakes that the Petitioner Company will pay necessary fees and stamp duty as applicable for the purpose of increasing its authorised share capital in order to issue new shares under the Scheme of Arrangement. The Petitioner Companies shall seek leave of the Hon'ble Court of Bombay and Hon'ble Court

of Calcutta, respectively to amend the Scheme of Arrangement by deleting entire Clause 13 and Clause 14 of Part –V of the Scheme of Arrangement and consequently shall replace the same with the following:

"***13 INCREASE IN AUTHORIZED SHARE CAPITAL OF CCI INTEGRATED LOGISTICS***

13.1 CCI Integrated Logistics shall, if required, increase its authorised share capital in order to issue and allot the New Shares to the shareholders of CCI Logistics as set out in this Scheme.

14 PAYMENT OF NECESSARY FEES AND STAMP DUTY

14.1 CCI Integrated Logistics shall comply with provisions of Sections 94/97 of the Companies Act, 1956 corresponding to Sections 61/64 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary fees and stamp duty as applicable on the said forms for any increase of its authorised share capital."

14. So far as the observation made by the Regional Director in paragraph No. 6(e) of this Affidavit is concerned in relation to any tax issue arising out of the Scheme of Arrangement, the Petitioner Company states that this Scheme shall be subject to final decision of Income Tax Authority and the approval of the same by this 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 arrangement. However, the Petitioner Company shall have liberty to exercise all its legal rights under applicable laws including, under Income Tax Act, 1961 and/or under equity in the event the Petitioner Company is not satisfied with the order/adjudication done by the Income Tax Authority (ies) in the aforesaid matter.

15. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submissions made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

16. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they agree with the amendments sought by the Petitioner Company as mentioned in paragraphs 9 and 13 hereinabove, in view thereof leave to amend the Scheme including all consequential amendments are granted. Amendments to be carried out within four weeks from the date of the order.

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

18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.558 of 2015 filed by the Transferor Company are made absolute in terms of prayer clauses (a) to (f).

19. The Petitioner Company to lodge a copy of this order and the Scheme of Arrangement 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 this Order.

20. The Petitioner Company is directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement 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.

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

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

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

(S.C. GUPTE, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of the original signed Order.

Uploaded by: S. Gawde
Stenographer