IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 641 OF 2014
WITH
COMPANY SUMMONS FOR DIRECTION NO. 641 OF 2014

In the matter of Companies Act, 1956 (1 of 1956)
And
In the matter of Sections 391 to 394 of the Companies Act, 1956 ;
And
In the matter of Scheme of Arrangement and Demerger between GlobeOp Financial Services (India) Private Limited and GlobeOp Financial Services Technologies (India) Private Limited And GlobeOp Holding Company (Mauritius) Private Limited and their respective shareholders and creditors.

GlobeOp Financial Services (India) Private Limited, a company incorporated under the provisions of Companies Act, 1956 having its registered office at 5th floor, Building No.16, Interface, Malad (West), Mumbai, Maharashtra – 400 064 … Petitioner Company

AND

COMPANY SCHEME PETITION NO. 642 OF 2014
WITH
COMPANY SUMMONS FOR DIRECTION NO. 642 OF 2014

In the matter of Companies Act, 1956 (1 of 1956)
And
In the matter of Sections 391 to 394 of the Companies Act, 1956 ;
And
In the matter of Scheme of Arrangement and Demerger between GlobeOp Financial Services (India) Private Limited and GlobeOp Financial Services Technologies (India) Private Limited And GlobeOp Holding Company (Mauritius) Private Limited and their respective shareholders and creditors.

GlobeOp Financial Services Technologies (India) Private Limited, a company incorporated under the provisions of Companies Act, 1956 having its registered office at Unit 2&3,4th Floor Office Level,Bldg.5&6 Mindspace, Airoli, Serene Properties Pvt.Ltd. SEZ, Airoli, Navi Mumbai Maharashtra – 400 064 … Petitioner Company

Mr.D.D. Madon, Senior Advocate i/b. Mr.Hemant Sethi for Petitioner.
Mr.Shyam Mehta, Senior Advocate with Ms.Madhubala Kajle for Regional Director.
Mr.Arvind Pinto for Income-tax Department / Revenue.

CORAM : S.C. GUPTE, J.

2 JULY 2015

P.C. :

The petitions seek sanction of a scheme of arrangement and demerger between between GlobeOp Financial Services (India) Private Limited ('GFSPL') and GlobeOp Financial Services Technologies (India) Private Limited ('GFSTPL') and GlobeOp Holding Company (Mauritius) Private Limited ('GHCPL') and their respective shareholders. The scheme envisages demerger of an undertaking of GFSPL and transfer of the same to GFSTPL with effect from the appointed date under Section 394 of the Companies Act, 1956. The scheme envisages that in consideration of transfer of the demerged undertaking, GHCPL, which is 100% holding company of GFSTPL (Resulting Company No.1) and which is described in the scheme as Resulting Company No.2, shall issue shares to the shareholders of the demerged company, namely, SS & C Technologies Holding (Europe) S.A.R.L., Luxembourg. The scheme provides for issue and allotment of 10 equity shares of GHCPL of USD 1 each fully paid up for every 61 equity shares of GFSPL of INR 1 each fully paid up in consideration of the demerger. In pursuance of an order passed by this Court on 14 August 2014 dispensing with convening and holding of the meetings of equity shareholders, and secured and unsecured creditors, the demergd company and the Resulting company have presented the present scheme petition for sanction of this Court under Sections 391 to 394 of the Companies Act, 1956.

2 The only opposition to this scheme is from the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. The opposition is mainly on the ground that having regard to the provisions of Section 394 of the Companies Act, only a transferee company can allot shares towards consideration of transfer, and not any other person, whereas for demerger and transfer of the undertaking of GFSPL in the present case, the shares have been allotted by GHCPL, which is a parent company of the transferee company, namely, GFSTPL. It is submitted that GFSTPL, which is the resulting company insofar as the demerger is concerned, is not issuing any shares and therefore, the scheme is not in consonance with the provisions of the Companies Act. Secondly, it is submitted that the scheme is also against the provisions of Income-tax Act, 1961 having regard to the definitions of 'demerger' and 'resulting company' contained in Section 2(19AA) and 2(41A) read with Section 2(19AAA) of the Income-tax Act. The Income-tax Department's Counsel is present on notice and also supports the objections raised by the Regional Director with reference to the provisions of the Income-tax Act.

3 In accompanying Scheme Petition Nos.99 of 2015 and 100 of 2015, which were heard along with the present scheme petition, this Court has considered and dealt with all the arguments, which were commonly advanced in the two matters, and this Court has clarified that the sanction of the scheme, as proposed by this Court, does not in any way bind the Income-tax Department to to take any particular view of the scheme of arrangement sanctioned by this Court insofar as the tax implications of the transaction are concerned. In the face of this clarification, which is also issued in the present scheme petitions, learned Counsel for Regional Director and Income-tax Department have no further objections to the scheme on the ground of non-compliance with the provisions of the Income-tax Act referred to above.

4 The main objection of the Regional Director, namely, non-

compliance with Section 394 of the Companies Act inasmuch as the transfer of shares is not by the transferee company in whom the demerged undertaking vests but by the parent company of the transferee company, has been dealt with in the companion Scheme Petition Nos.99 of 2015 and 100 of 2015. This Court has held that the consideration for transfer of an undertaking can come in the form of any legitimate consideration which the transferor is entitled to accept for contract of transfer and that the consideration in the form of shares issued by the parent company of the transferee is a valid consideration.

5 In the case of the present scheme petitions, the facts are more or less similar except that here the holding company of the transferee company, whose shares are issued to the shareholders of the transferor company, is a foreign company. It is submitted that Section 394(4)(b) provides that 'transferee company' does not include any company other than the company within the meaning of the Companies Act, though the transferor company may include any body corporate, whether a company within the meaning of the Companies Act or not. That makes no difference as far as the facts of, and issues arising in, this particular case are concerned. The transferee company, even in the present case, is an Indian company. It is only that its holding company, whose shares are allotted to the shareholders of the transferor company, is a foreign company and not a company within the meaning of the Companies Act. As explained in the order in the accompanying Company Scheme Petition Nos.99 of 2015 and 100 of 2015, the consideration may not necessarily come in the form of allotment of shares of a transferee company and it may well be in the form of shares of a holding company of the transferee company. There is no requirement of law that such holding company must be a company within the meaning of the Companies Act. As in the case of Company Scheme Petition Nos.99 of 2015 and 100 of 2015, there is no objection by the Regional Director that the scheme is opposed to public interest or in any other manner illegal or inappropriate. The objection of the Regional Director, thus, has no merit and the same is rejected.

6 In the premises, the scheme petitions are made absolute.

7 The Petitioner Companies are directed to lodge a copy of this order and Scheme, duly 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 receipt of the Order.

8 The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

9 The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai within four weeks from the date of the order.

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

11 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.)