IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 683 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 634 OF 2015

Siemens Technology And Services Private Limited

…………Petitioner/Demerged Company

AND

COMPANY SCHEME PETITION NO. 684 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 635 OF 2015

Siemens Healthcare Private Limited

………..Petitioner/Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956) and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between SIEMENS TECHNOLOGY AND SERVICES PRIVATE LIMITED ("Demerged Company") And SIEMENS HEALTHCARE PRIVATE LIMITED ("Resulting Company") and their respective shareholders and creditors

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mr. Udayan. A. Shah, i/b Mr. A. A. Ansari for Regional Director.

CORAM: S.C.GUPTE, J.
DATE: 16th OCTOBER 2015

P.C. :-

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013 , to the Scheme of Arrangement between SIEMENS TECHNOLOGY AND SERVICES PRIVATE LIMITED, Demerged Company and SIEMENS HEALTHCARE PRIVATE LIMITED, Resulting Company and their Respective shareholders and creditors.

3. The learned Counsel for the Petitioner states that the Demerged Company is primarily engaged in software development, consultancy, corporate finance audit, management consulting, investor relations, financial services, business process outsourcing operations and contract centre services (IT enabled services) mainly to its group companies. The Resulting Company is yet to commence its business.

4. The circumstances and/or reasons and/or grounds that necessitated and/or justified the Scheme of Arrangement and the advantages thereof, inter alia, Demerged Company has among others, a Corporate Technology division which provides services globally to group companies in research, software development and product maintenance. To enable business to grow and achieve its full potential, the Healthcare

Unit of Corporate Technology in India needs concentrated efforts and focus, and hence the Management of Demerged Company thought it fit to segregate the Healthcare Unit of Corporate Technology in India into a separate company, Resulting Company. This will help the Corporate Technology division and other businesses division of Demerged Company to grow independently with better focus and focused operations.

5. The Petitioner Companies approved the said Scheme by passing the Board Resolution in their respective meetings and which are annexed to the respective Company Scheme Petition.

6. The learned counsel for the Petitioners state that Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

7. Counsel appearing on behalf of the Petitioners 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, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 and Companies Act, 2013 and the Rules made there under, as may be applicable. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 9th October, 2015 in the above Petition stating therein that save and except as stated in

paragraph 6 of the said Affidavit, it appears that the scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that:-

"That the Deponent further submits that:-

a) *Shareholders of the Demerged Company are foreign body corporate. Hence for allotment of new shares to the shareholder of the Demerged Company, the Resulting Company may be directed to comply with FEMA/RBI regulations as applicable in this regard.*

b) Clause 6 of the Scheme provides for transferring part of the authorized amounting to Rs. 30,000,000/- to the Resulting Company and consequently the capital of the demerged company is reduced to that extent. There is no provision for cancelling such authorized capital and then transferring to Resulting Company and hence clause no 6 of the scheme be deleted.

c) *The present authorized capital of the Resulting Company is not sufficient to issue fresh 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 94/97 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.*

d) 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) of the Affidavit of the Regional Director is concerned, the Resulting Company through its Counsel undertakes to comply with FEMA/RBI regulations as may be applicable, while allotting new shares to the shareholders of the Demerged Company.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Resulting Company through its Counsel states that they will comply with the Regional Directors observation and amend the Scheme by deleting the clause 6 of the Scheme. Thus the Petitioner Companies seek leave to amend the Scheme accordingly.

11. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Resulting Company through their Counsel undertakes that before allotment of shares to the shareholders of Demerged Company, Resulting Company shall increase its Authorized share capital suitably and comply with provisions of section 94/97 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 fees and stamp duty as applicable on the said forms.

12. In so far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Petitioner Company undertakes that tax implications if any arising out of the Scheme shall subject to final

decision of the Income Tax Authority and approval of the Scheme by the 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 Scheme of Arrangement.

13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandnamuthu Joint Director 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 Resulting Company. The said undertakings are accepted.

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. None of the parties concerned has come forward to oppose the Scheme.

15. Leave to amend the Scheme by deleting clause 6 of the Scheme as mentioned in paragraph no. 9 herein above is granted. Amendment to be carried out within two weeks from the date of the Order.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 683 of 2015 filed by the Demerged Company is made absolute in terms of prayers clauses (a) to (c) and Company Scheme Petition No. 684 of 2015 filed by the Resulting Company is made absolute in terms of prayer clause (a) to (d) of the Petition.

17. The Petitioner Companies to lodge a copy of this order and the Scheme 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. Petitioner is directed to file 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 law.

19. The Petitioners in both the Company Petitions to pay costs of Rs.10,000/- each 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 authorities to act on a copy of this order along with Scheme and form of minutes duly authenticated by the Company Registrar, High Court, Bombay.

(S C GUPTE, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.