

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 74 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 656 OF 2014

IN THE MATTER of the Companies Act 1956 (1 of 1956);

AND

IN THE MATTER of Sections 391 to 394 read with Section 100 of the Companies Act, 1956; (1 of 1956)

AND

IN THE MATTER of Scheme of Arrangement
Between Cyfast Enterprises Private Limited and its
Shareholders.

Cyfast Enterprises Private Limited

..... Petitioner Company

Called for hearing:

Mr. Gauraj Shah i/b. M/s. Kanga & Company, Advocates for the Petitioner.

Mr. A. Yadav i/b. Mr. A.A. Ansari for the Regional Director.

CORAM: S.C. Gupte J.

DATE: 3rd July 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor has the Petitioner Company contravened any averments made in the Petition.

2. The sanction of the Court is sought to a Scheme of Arrangement between Cyfast Enterprises Private Limited and its Shareholders under Section 391 to 394 read with section 100 of the Companies Act, 1956.
3. The Learned Counsel for the Petitioner Company states that the Petitioner Company at present is not engaged in any business or manufacturing activity and its income comprises of interest on fixed deposits with banks and dividend from mutual fund investments. The Learned Counsel for the Petitioner submits that it is therefore proposed by the Petitioner Company to bring down its paid-up capital to a reasonable level by redeeming all the Preference Shares held by AFL Private Limited and by cancellation of 27,50,000 Equity Shares of the Petitioner Company held by AFL Private Limited and its nominee.
4. The Learned Counsel for the Petitioner Company further 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 orders passed in the Summons for Direction.
5. The Learned Counsel appearing on behalf of the Petitioner Company states that the Petitioner Company has complied with all the requirements as per directions of this Court and that the Petitioner Company has 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 and 2013 the Rules made thereunder which are applicable. The said undertaking is accepted.
6. The Regional Director has filed an Affidavit on 12th June 2015 stating therein that save and except as stated in para 6. (a) and (b), it appears that the Scheme is not prejudicial to the interest of shareholders and public.

(6). That the Deponent further submits that :

- (a) As the Scheme provides for repayment of paid up equity share capital by cash, the provision of Section 101(2)(3) of the Companies Act, 1956 is attracted. It is

therefore suggested that the word “And Reduced” be suffixed to the name of the Petitioner Company.

(b) It is observed that, redemption of unit of mutual fund, repayment of capital to shareholders may attract capital gain tax. In this regard, 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.

7. The Learned Counsel appearing on behalf of the Petitioner Company states that in respect of paragraph 6(a) of the Affidavit of the Regional Director, is concerned the Petitioner Company through its Counsel undertakes to add the words “And Reduced” to the name of the Petitioner Company for a period of two years from the date of this Order.
8. The Learned Counsel appearing on behalf of the Petitioner company further states that in respect of paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel agree and confirm that the Petitioner Company is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of the Scheme will be met and answered in accordance with law.
9. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Learned Counsel for the Petitioner Company. The undertaking given by the Petitioner Company is accepted.
10. 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.

11. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition is made absolute in terms of prayers (a) to (f).
12. Petitioner Company is 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.
13. The Petitioner Company to pay costs of Rs. 10,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
14. Filing and issuance of the drawn up order is dispensed with.
15. All concerned regulatory authority 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.)