

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 758 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 728 OF 2015

Capgemini India Private Limited

....Petitioner/ Transferee Company.

WITH

COMPANY SCHEME PETITION NO. 759 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 729 OF 2015

Capgemini Business Services (India) Private Limited

....Petitioner/ Transferor Company.

IN THE MATTER of the Companies Act 1 of 1956

AND

IN THE MATTER of Scheme of Amalgamation
of Capgemini Business Services (India) Private
Limited with Capgemini India Private Limited and
their respective Shareholders and Creditors.

Called for hearing

Ms. Alpana Ghone, with Ms. Ankit aSingh and Manali Kshirsagar i/b ALMT Legal,
Advocates for the Petitioners in both Petitions.

S. Ramakantha, Official Liquidator, present in CSP No. 759 of 2015.

M.S. Chunawala i/b A.A. Ansari for Regional Director in both Petitions.

CORAM: K. R. Shriram, J.

DATE : 18th December 2015

PC:

1. Heard learned counsel for the parties. No objector has come before the Court to oppose the Scheme and to controvert any averments made in the Petition.
2. The sanction of the Court is sought to a Scheme of Amalgamation between **Capgemini Business Services (India) Private Limited**, Transferor Company with **Capgemini India Private Limited** Transferee Company and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.
3. Learned Counsel for the Petitioners states that the Transferor Company is carrying on all types of Business Process Outsourcing activities and Transferee Company is carrying on business of consultants, advisors and counselors and to provide consulting, advisory and counseling services in all sectors of industry, trade, business and commerce. The Transferor and Transferee Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The learned Advocate for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed

in respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

5. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and the Transferee Company 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, the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 24th November 2015 in Company Scheme Petition No. 759 of 2015 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit on 08th December 2015 stating therein that save and except as stated in paragraph 6(a) to 6(d) of the said Affidavit, it appears that the Scheme does not appear to be prejudicial to the interest of shareholders and public. Paragraph 6(a) to 6(d) of said Affidavit is as under :

“6 (a) The Shares of Transferor company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company has to comply with the provisions of FEMA/ RBI regulations as applicable in this regard.

- (b) *Clause 16.6 of the Scheme provides for insertion of a new object clauses in the Memorandum of Association of the Transferee company. In this regard, the Transferee company may be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.*
- (c) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. Th approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company.*
- d) *Clause 21 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon 'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the*

Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect."

8. In response to paragraph 6(a) of the Affidavit of the Regional Director, it is submitted that since the shares of the Transferor Company are held by foreign body corporates, while giving effect to the Scheme, the Transferee Company undertakes to comply with all the provisions of FEMA/ RBI regulations as applicable in this regard. The said undertaking is accepted.

9. In response to paragraph 6 (b) of the Affidavit of Regional Director, since clause 16.6 of the Scheme provides for insertion of a new object clause in the Memorandum of Association of the Transferee Company, the Transferee Company, undertakes to comply with the provisions of sections 13(1), 13(6) read with section 15 of the Companies Act, 2013 read with the corresponding rules and corresponding to section 40 read with section 18 of the Companies Act, 1956, and shall file the amended copy of the Memorandum of Association with necessary forms with the Registrar of Companies.

10. Pursuant to paragraph 6 (c) of the Affidavit of Regional Director, the tax implication, if any arising out of the Scheme is subject to the final decision of the Income Tax Authorities. The approval of the Scheme by this Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company.

11. Paragraph 6 (d) of the Affidavit of Regional Director states that clause 21 of the Scheme which provides for the modifications and amendment to the Scheme wherein the respective Board of Directors of the Transferor and Transferor Companies have been authorized to make any amendments to the Scheme, if necessary after the Scheme is approved by this Court. The Transferee and Transferor Companies undertake that the aforesaid liberty provided under clause 21 of Scheme shall not be exercised by the Board of Directors without obtaining prior approval of this Court.

12. The Learned Counsel for Regional Director on instructions of Mr. M. Chandnamutu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the clarifications and undertakings given by the Advocate for the Petitioner Company. The said undertakings are accepted.

13. 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 have come forward to oppose the Scheme in this Court.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 758 of 2015 and 759 of 2015 are made absolute in terms of prayer clauses (a), (b) and (d) and Company Scheme Petition No. 758 of 2015 is made absolute in terms of prayer clauses (a) and (b) read with aforesaid clarification as provided in clauses 9 to 12

15. The Petitioner Companies to lodge a copy of this order and the 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 the order.

16. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Amalgamation 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, 2013.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition No. 759 of 2015 to pay cost of Rs 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

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

(K. R. Shriram, J.)

C E R T I F I C A T E

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

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