IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 785 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 788 OF 2014

CMS INFO SYSTEMS PRIVATE LIMITED

………… Petitioner / the Demerged Company

AND

COMPANY SCHEME PETITION NO. 786 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 789 OF 2014

CMS IT SERVICES PRIVATE LIMITED

………… Petitioner / the Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956) or any corresponding provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 read with Section 78 (corresponding notified Section 52 of Companies Act, 2013) and Section 100 to 103 of the Companies Act, 1956 or any corresponding provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between CMS Info Systems Private Limited and CMS IT Services Private Limited and their Respective Shareholders and Creditors

Called for Hearing

Mr. Hemant Sethi i/b M/s Hemant Sethi & Co., Advocates for the Petitioners in all the Petitions.

Mr. C. J. Joy with Mr. Parag Vyas, i/b Mr. H.P Chaturvedi for Regional Director in both the Company Scheme Petitions.

CORAM: S.J. Kathawalla, J.

DATE: 23rd January, 2015

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 read with Section 78 (corresponding notified Section 52 of Companies Act, 2013) and Sections 100 to 103 of the Companies Act, 1956 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Arrangement between CMS Info Systems Private Limited and CMS IT Services Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 785 of 2014 is presently engaged in the business of Cash and ATM Management Services, Financial Card Management, Print and Digital Solutions and IT Infrastructure Support, Trading of IT equipment(s) and training services and Petitioner in Company Scheme Petition No. 786 of 2014 was incorporated with an intention to carry on the complete life cycle of IT like Infrastructure, consulting, managed services and high availability services including trading in products & providing training and coaching services and print & digital solutions.

4. The rationale of the Scheme of Arrangement inter-alia is that segregation of Demerged Undertaking would lead to unlocking of value of both the businesses for the benefit of all the stakeholders. At present a distinct management teams are in put in place to run

the Demerged Undertaking and Remaining Undertaking. Restructuring of businesses would enable the respective management teams to concentrate on each of the businesses, deploy the available resources in the optimal manner and chart out a separate growth path for creating long term suitable value for their stakeholders. Restructuring would result in focused management attention to the respective businesses and eliminate any conflict of interest in the growth strategies. Restructuring would result into operational efficiencies as the businesses have different sets of requirements for infrastructure and employees and segregation of the same would lead to better and effective utilization of infrastructure and employees.

5. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned advocate for the Petitioner states that the Scheme includes reduction of 0.01% Optionally Convertible Cumulative Redeemable Preference Shares Capital and utilization of Securities Premium Account of the Demerged Company which shall be effected as an integral part of the Scheme hence, the procedure prescribed under section 101(2) of the Companies Act, 1956 was dispensed with in pursuance of order dated 31st October, 2014 passed in Company Summons for Direction No. 788 of 2014. The learned advocate for the Petitioner further submits that the Scheme also includes cancellation of equity share capital of the Resulting Company held by the Demerged Company and which shall also be effected as an integral part of the Scheme, hence the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 31st October, 2014 passed in Company Summons for Direction No. 789 of 2014.

7. The learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

8. The learned Advocate 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 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

9. The Regional Director has filed an Affidavit dated 21st day of January, 2015 stating therein that save and except as stated in paragraph 6 (a) and 6(b) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

   In paragraph 6(a) and paragraph 6(b) of the said affidavit, it is stated that:

   a) It is observed that the Resulting Company is a wholly owned subsidiary of Demerged Company. Further, as per the provisions of Income-tax Act the assets and liabilities are required to be transferred on book value basis. Under the facts and circumstances of the case there is no justification for issuing equity shares by the Resulting Company to the shareholders of Demerged Company in fair value basis. Consequently, the premium likely to be accounted by the Resulting Company is not *in order, in as much as the Resulting Company will not release any cash by way of securities premium on exchange of shares. In view of the above, clause 5.1, 11.2 and 11.4 of the scheme to be modified. In this regard both the companies have agreed in principle to issue the shares on face value and consequently there won't be creation of any securities premium in the books of account of Resulting Company on exchange of new shares. In this regard petitioner company vide its letter dated 13/01/2015 have given their clarification, copy of the same annexed hereto and marked as Exhibit 'D-1' & 'D-2'. Therefore, it is suggested that the petitioner company may be advised to make necessary correction/amendment in the scheme suitably.*

b) 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.

10. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel clarifies that the shares to be issued by the Resulting Company shall be at face value as against the fair value as currently provided. Further the Transferee Company shall credit to its share capital account the aggregate face value of the shares issued by it pursuant to Clause 5.1 of the Scheme.

11. The counsel for the Petitioner further submits that the surplus of the (a) the value of assets over (b) the value of liabilities transferred pursuant to the Scheme as reduced by the share capital recorded in Clause 11.2 of the scheme and after considering cancellation of share capital as per Clause 11.3 of the Scheme shall to the extent of amount of Securities Premium reduced in the books of the Demerged Company as per Clause 12.4 of the Scheme and be credited to Securities Premium Account in the books of the Resulting Company and balance, if any, shall be credited to Capital Reserve Account.

12. As far as the observations raised by the Regional Director in paragraph 6(b) of his Affidavit, the Petitioner Companies through their Counsel submits that the Petitioners are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with applicable income tax provisions.

13. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions given by the Petitioner Companies. The said undertakings given by the Petitioners are accepted.

14. The learned Counsel appearing on behalf of the Petitioner in Company Scheme Petition No. 785 of 2014 submits that the Petitioner vide its' shareholders approval through an Extraordinary General Meeting held on 24th December, 2014 has changed its name from "CMS Info Systems Private Limited" to "CMS Info Systems Limited" by converted itself from a

private company to public company. The Counsel appearing on behalf of the Petitioners seeks leave to amend the Scheme by deleting word “Private” from its name wherever appearing in the Scheme and all consequential amendments maybe granted. In view thereof leave to amend Scheme and all consequential amendments may be granted. In view thereof leave to amend scheme and all consequential amendments are allowed. Amendment to be carried out within three weeks from today. Re-verification of the Petitions are dispensed with.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 785 of 2014 and 786 of 2014 filed by the Demerged Company and the Resulting Company respectively are made absolute in terms of prayer clauses (a) to (d) of the respective Petition.

17. 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.

18. 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 relevant provisions of the Companies Act 2013.

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

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 (O. S.), Bombay.

(S.J. Kathawalla. J.)