IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 317 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 217 OF 2016

Accenture Services Private Limited … Petitioner / Transferor Company

WITH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 318 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 218 OF 2016

Accenture Solutions Private Limited … Petitioner / Transferee Company

In the matter of:
The Companies Act, 1956 and the Companies Act, 2013;

AND

In the matter of:
Sections 391 to 394 of the Companies Act, 1956 and the notified provisions of the Companies Act, 2013;

AND

In the matter of:
Scheme of Amalgamation of Accenture Services Private Limited With Accenture Solutions Private Limited And their respective shareholders and creditors

CALLED FOR HEARING

Mr. Janak Dwarkadas, Senior Advocate, along with Mr. Rohan Rajadhyaksha, Advocate i/b AZB & Partners, Advocates for the Petitioners in both Petitions.

Mr. Vinod Sharma, Official Liquidator, present in Company Scheme Petition No. 317 of 2016.

Mr. Aniruddha A. Garge i/b Shri. Pankaj Kapoor for the Regional Director in both the Petitions.

Coram: - A. K. Menon, J

Dated: - 20th October, 2016

P. C.:

1. Heard learned counsel for the parties. No objector has come before the Court to oppose the Scheme nor has any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Accenture Services Private Limited with Accenture Solutions Private Limited, and their respective shareholders and their creditors.

3. Learned Counsel for the Petitioners states that the Transferor Company is a private limited company and is, *inter alia*, engaged in the business of delivering information technology/ information technology enabled services and primarily delivers services to other Accenture group companies outside India. The Transferee Company is a private limited company and a wholly-owned subsidiary of the Transferor Company and is, *inter alia*, engaged in the business of business process outsourcing (BPO) activities from India, including debt collection.

4. Learned Counsel appearing on behalf of the Petitioners states that the following is the background and the rationale of the Scheme:
   a. The Transferor Company is a part of the Accenture group which is a global multinational group engaged in delivering a broad range of management consulting, technology, and outsourcing services to clients in nearly all geographic areas around the globe. The Transferor Company is a subsidiary of Accenture Services Mauritius Limited (‘ASML’), a company incorporated under the laws of Mauritius.

b. The Accenture group of companies adopted a global entity reduction program to identify and eliminate (through liquidations and mergers), entities which do not serve a useful purpose or whose operations could be combined with those of other companies in the group towards the end of achieving operational efficiency and cost minimization through the reduction in the number of legal entities around the world that make up the Accenture group.

c. In the financial year 2011-12, Accenture group acquired the Zenta group of companies, a multinational group engaged in delivering a range of business process outsourcing (BPO) services. The Indian operations of the Zenta group were run by two Indian entities, Zenta Private Limited (i.e., the Transferee Company) and Zenta Knowledge Services Private Limited (ZKSPL).

d. At the time of acquisition of the Zenta group in the financial year 2011-12, the Transferor Company acquired the shares of the Transferee Company and ZKSPL from its then shareholders; subsequent to which the Transferee Company and ZKSPL became wholly owned subsidiaries of the Transferor Company. Post such acquisition, and consistent with the Accenture group global entity reduction program, ZKSPL was merged into the Transferor Company.

e. The Transferor Company and the Transferee Company are two Accenture group companies operating in India and providing similar and complimentary services to other Accenture overseas group companies. Since no useful purpose is being served in continuing with two separate legal entities and consistent with the Accenture group global entity reduction program, it is Accenture's preference to amalgamate these two entities in India such that the business of the Transferor Company and the Transferee Company can be combined conveniently and carried out in conjunction more advantageously to achieve operational efficiency and cost minimization.

f. The Transferee Company is currently registered with and holds debt collection licenses in thirty-two U.S. States. Under these licenses, and a number of exemptions, waivers and bonds secured in other U.S. States, the Transferee Company can provide offshored regulatory debt collection BPO activities from India across the entire U.S. (except two U.S. States). It is submitted that the Transferee Company is the only Accenture group entity in India to hold these licenses and based on legal advice obtained under applicable U.S. laws, it is advised that under the current U.S. legal regime, the licensing requirements to perform such regulated debt collection activities are very complex, time-consuming and unpredictable for a non-U.S. business entity. Further, the applicable U.S. laws do not permit transfer or assignment of such licenses and in many U.S. States, such licenses would be nullified upon a change of control event where the Transferee Company does not survive. Therefore, in the event the Transferee Company is merged into the Transferor Company, the said licenses would be nullified. However, if the Transferor Company is merged into the Transferee Company, there would be no legal impediment under applicable U.S. State laws from a licensing perspective so long as the Transferee Company remains licensed, registered and/or bonded to perform regulated debt collection activities across the U.S. (except two U.S. States). Accordingly, the Board of Directors of the Transferor Company and the Transferee Company have considered and decided that in order to utilize the benefits of the licenses held by the Transferee Company without any disruption of business, operationally, it is commercially prudent to amalgamate the Transferor Company with the Transferee Company.

g. In the circumstances it is considered desirable and expedient to amalgamate the Transferor Company with the Transferee Company in the manner and on the terms and conditions stated in the Scheme.

h. The fair value of the Transferor Company and the Transferee Company are far in excess of their book values and liabilities. The combined entity post amalgamation will continue to have a positive net worth in its books. The amalgamation will lead to the formation of a larger and stronger entity having greater capacity for conducting its operations more efficiently and competitively.

i. The shares held by the Transferor Company in the Transferee Company shall be cancelled without issue and allotment of any new shares in lieu thereof to any person whatsoever. Such cancellation of shares is only consequential to the amalgamation and will rationalise and adjust the relationship between capital and assets suitably.

j. The Scheme is proposed to the advantage of the Transferor Company and the Transferee Company and will have beneficial results for the said companies, their shareholders and all concerned.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioners have passed respective resolutions for approval of the Scheme of Amalgamation which are annexed to the respective Petitions.

6. Learned Counsel for the Petitioners further states that the Petitioners have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

7. Learned Counsel appearing on behalf of the Petitioners have 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, the Petitioners undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956/ 2013 and the rules made thereunder whichever is applicable. The undertaking is accepted.

8. The Official Liquidator has filed his report on September 21, 2016 in Company Scheme Petition No. 317 of 2016 and has stated therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without being wound-up.

9. The Regional Director has filed an affidavit on October 7, 2016 stating therein that save and except what is stated in paragraphs 6 (a) to (i) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. Paragraphs 6 (a) to (i) of the said affidavit read as under:-

(a) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The 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 petitioner Company.

(b) The petitioner in clause 16 of the has not mentioned regarding the AS that would be adopted in case of difference in accounting policy while adopting accounting treatment. Deponent prays that the Hon'ble Court may direct the company to undertake to comply applicable accounting standards including AS-5.

(c) *ROC has observed that from the page 309 (Exhibit-H) of the scheme paper that certified true copy of Board Resolution dated 15.12.2015 doesn't appeared to be true & original because the Board Resolution dated 15.12.2015 approving the scheme which was filled before ROC is different. The difference is that Board Resolution filled before Hon'ble High Court not containing reference to section 100 to 104 & 78 of C.A. 1956. Deponent prays that the Hon'ble Court may direct the company to file the correct resolution of the Board before passing any orders.*

(d) *The Board of the transferee company (in which capital reduction is to be made) vide their resolution dated 15.12.2015 (as attached to the scheme papers) has passed resolution for approving the amalgamation, including with a resolution to call an EGM of the transferee company to pass special resolution approving the reduction of securities premium account u/s. 78, 100 to 104 of the C.A. 1956. However, the scheme do not provide for such mandatory compliance of provisions of C.A. 1956 for reduction of share capital and utilisation of share premium in the nature of reduction of capital. Deponent prays that the Hon'ble Court may direct the company to modify the scheme to include as approved by the board for reduction of the capital.*

(e) *Since the transferor company is falling under the jurisdiction of software technology Parks of India as is evident from the note 24(c) of the balance sheet as at 31.03.2015 of the transferor company, it may obtain necessary approval from STPL as well for the scheme. Deponent prays that the Hon'ble Court may direct the company to undertake to obtain necessary approval.*

(f) *Transferee company need to increase the authorised share capital as applicable and pay the applicable fee/stamp duty as applicable on increase of authorised share capital of the* *transferee company so as to enable it to allow NEW SHARES. Deponent prays that the Hon'ble High Court may direct the company to undertake to comply with the provisions of the Companies Act, 2013 for increasing the capital.*

(g) *Roc has observed that as per the disclosure in the note of the Balance Assets 31/03/2015 the company is predominantly and outsourcing unit catering to adventure group & thereof no reportable geographical segments. But the scheme provides for the rationale vide para No. II (f) that the transferee company is currently registered with and holds debt collection licenses in 32 US states, that which signify that either the said licenses are recently acquired & were not obtained as at 31/3/2015 as no separate segment results for such debt collection business was reported under segment reporting in the B/S as at 31/03/2015 or segment reporting was not done. Deponent prays that the Hon'ble Court may direct the company to undertake to and comply the provisions of the Companies Act*

(h) *Petitioner in clause 14 of the scheme inter alia has mentioned that in order to carry on the activities currently being carried on by the Transferor Company, upon coming into effect of the Scheme, the main objects in the memorandum of association of the Transferor Company shall be added to the main objects of the memorandum of association of Transferee Company, to the extent such objects are not already covered by those of the Transferee Company. Deponent prays that the Hon'ble Court may direct the company to undertake to comply with the provisions of the Companies Act for alteration of the Memorandum of Association.*

(i) *The shareholders of Transferor Company are foreign entities & foreigners. Deponent prays that the Hon'ble Court may direct the* *company to undertake to comply the provisions of the RBI Act, FEMA guidelines etc.*

10. In response to the affidavit filed by the Regional Director, the Petitioners herein have, on October 13, 2016, filed a counter-affidavit setting out paragraph wise responses to the observations of the Regional Director.

11. In response to paragraph 6(a) of the affidavit of the Regional Director, it is submitted that the Scheme has been drawn up to comply with the conditions relating to "Amalgamation" as specified under Section 2(1B) and other relevant provisions of the IT Act. It is further submitted that upon the Scheme coming into effect, the Income Tax Authority shall have the power to scrutinize the tax return filed by the Transferee Company. The Transferee Company undertakes to comply with the provisions of the IT Act, and subject to applicable laws, to comply with the decisions of the Income Tax Authority. The said undertaking is accepted.

12. In response to paragraph 6(b) of the affidavit of the Regional Director, it is submitted that upon the Scheme becoming effective, the Transferee Company undertakes to comply with the applicable accounting standards including AS – 5 and accounting policies as mentioned in Clause 16 (vii) of the Scheme. The said undertaking is accepted.

13. In response to paragraph 6(c) of the affidavit of the Regional Director, it is submitted that the Transferor Company had inadvertently filed an incorrect attachment of the Board Resolution approving the Scheme of Amalgamation with the Ministry of Corporate Affairs, Registrar of

Companies, Mumbai through e-form MGT-14 (SRN G00865113). The Transferor Company has on October 5, 2016 filed revised e-form MGT 14 (SRN G13593702) attaching the correct Board Resolution as was attached to the Company Summons for Direction No. 217 of 2016 and Company Scheme Petition No. 317 of 2016 filed by the Transferor Company with the Hon'ble Bombay High Court. The said revised e-form MGT 14 has been duly approved by the Ministry of Corporate Affairs, Registrar of Companies, Mumbai on October 5, 2016. Accordingly, the said defect has been rectified and in view thereof, the objection of the Regional Director does not survive.

14. In response to paragraph 6(d) of the Affidavit of the Regional Director, it is submitted that the resolution referred to in paragraph 6(d) of the Affidavit of the Regional Director merely contained enabling language, permitting the authorized persons to call and convene an extra ordinary general meeting of the Transferee Company, and no such meeting was convened or held because such meeting was not required to be convened or held under law. It is further submitted that the provisions of Section 78 of the Companies Act, 1956 deal only with the creation and utilization of the securities premium account. The Scheme of Amalgamation does not provide for any creation or utilization of the securities premium account of the Transferor Company and/or the Transferee Company. It is therefore submitted that there is no legal requirement or obligation for compliance with the provisions of Section 78 of the Companies Act, 1956 in the present case.

15. The Learned Counsel for the Petitioners, in relation to Sections 100-104 of the Companies Act, 1956, submitted that the said provisions are not applicable in the present case for the following reasons:

a. The Transferor Company holds the entire share capital of the Transferee Company. Pursuant to the Scheme of Amalgamation, the Transferor Company will stand dissolved and all investments (including shares) held by the Transferor Company will be transferred to the Transferee Company.

b. Section 67 of the Companies Act, 2013 (corresponding to Section 77 of the Companies Act, 1956) imposes a restriction on purchase by a company of its own shares. In view of such restriction, consequent to the merger, the Transferee Company cannot hold its own shares (which are currently held by the Transferor Company). Accordingly, the shares held by the Transferor Company in the Transferee Company cannot continue by virtue of the amalgamation and dissolution of the Transferor Company. To that effect, Clause 6.1 of the Scheme of Amalgamation provides that upon the Scheme becoming effective, all shares held by the Transferor Company in the share capital of the Transferee Company as on the Effective Date shall stand cancelled without any further act or deed, and that the said cancellation of existing share capital of the Transferee Company shall be effected as an integral part of the Scheme.

c. The cancellation of existing share capital of the Transferee Company does not amount to reduction of share capital under Sections 100 - 104 of the Companies Act, 1956 since the said cancellation will take place by virtue of operation of law and is an automatic effect of the amalgamation. The extinguishment of shares in all cases does not necessarily result in reduction of share capital. The Scheme of Amalgamation contemplates the transfer of assets and liabilities of the Transferor Company to the Transferee Company and does not involve any release of assets. In such a case the provisions of Sections 100-104 of the

Companies Act, 1956, will not be applicable. This argument has been upheld by this Hon'ble Court in the matter of ***M/s EOC Tailor Made Polymers India Private Limited [2005 Vol 107(2) Bom. L. R. 520]*** wherein it was held that "*…the provisions under section 101 would not apply in a case where there is a reduction in the share capital of the company by virtue of amalgamation of two companies and in case where the transferor company held shares in the transferee company. In view of the aforesaid position in law, I find that there is no merit in the objection raised by the Regional Director in the present case. I accordingly make both petitioners absolute in terms of prayer cls. (c) to (f)*". The Hon'ble Madras High Court in the case of ***Asian Investments Ltd [(1992) CC 517]*** and the Hon'ble Calcutta High court in ***Mcleod and Co. and Ors. vs. S.K. Ganguly and Ors [(1975) CC 563]*** have also held that it is not necessary to follow the prescribed procedure of sub-section (2) of section 101 of the Companies Act 1956 in cases where reduction of share capital is automatic by virtue of operation of law.

16. In view of the above, the objection of the Regional Director in paragraph 6(d) of the Affidavit is not well founded and hence does not survive.

17. In response to paragraph 6(e) of the Affidavit of the Regional Director, it is submitted that pursuant to the Scheme of Amalgamation becoming effective, the existing STPI related registrations and licenses held by the Transferor Company shall be transferred to the Transferee Company. The process prescribed by the STPI in relation to obtaining no-objection certificate for merger/transfer of STPI licenses requires submission of a copy of the High Court order approving the Scheme of Amalgamation and the relevant acknowledgement copy of the forms filed with the

Registrar of Companies to make the Scheme effective. The application form to be filed with the STPI authorities evidences that the approval of the High Court to the Scheme of Amalgamation is an act which must precede the filing of the application with the STPI authorities seeking approval for transfer of the STPI related registrations and licenses. The Transferee Company undertakes to obtain necessary approvals from the relevant authorities with respect to the transfer of STPI registrations and licenses currently held by the Transferor Company and comply with applicable laws in relation thereto. The said undertaking is accepted.

18. In response to paragraph 6(f) of the Affidavit of the Regional Director it is submitted that any increase in its Authorized Share Capital of the Transferee Company would require approval from the Ministry of Corporate Affairs, Registrar of Companies. If the increase in the Authorized Share Capital is included as part of the Scheme of Amalgamation, the Transferee Company would not be able to make relevant filings with the Ministry of Corporate Affairs, Registrar of Companies, Mumbai until the Scheme is made effective. In such a case, the Transferee Company would not be able to increase its Authorised Share Capital on the Effective Date. The Transferee Company is desirous of allotting new shares to the shareholders of the Transferor Company pursuant to the Scheme of Amalgamation on or immediately after the Effective Date. To achieve the said purpose, the process relating to increase in the Authorized Share Capital has not been included as part of the Scheme and the Transferee Company intends to duly complete the said process after approval by the Hon'ble Court of the Scheme and prior to the Effective Date. The Transferee Company undertakes that, prior to the Scheme becoming effective, it shall increase its authorized share capital at least to the extent as may be required for allotment of new shares to the shareholders of the Transferor Company

pursuant to the Scheme. The Transferee Company further undertakes to pass necessary resolutions and make relevant filings with the Ministry of Corporate Affairs, Registrar of Companies, Mumbai to give effect to such increase in authorized share capital. The Transferee Company further undertakes to pay necessary stamp duty and filing related fees as may be payable under applicable laws and regulations. The said undertaking is accepted.

19. In response to paragraph 6(g) of the Affidavit of the Regional Director, it is submitted that under the Accounting Standard 17 issued by the Institute of Chartered Accountants of India, which is mandatorily required to be followed by the Transferee Company, there is no requirement to disclose separate segment reporting for the US debt collection licenses. Therefore, the objection of the Regional Director with respect to separate segment reporting is not well founded and hence does not survive. To the extent applicable, the Transferee Company undertakes to comply with the provisions of the Companies Act, 2013. The said undertaking is accepted.

20. In response to paragraph 6(h) of the Affidavit of the Regional Director, the Transferee Company undertakes to comply with the provisions of the Companies Act, 2013 for alteration of its Memorandum of Association. The said undertaking is accepted.

21. In response to paragraph 6(i) of the Affidavit of the Regional Director, the Transferee Company undertakes to comply with the provisions of the Foreign Exchange Management Act, 1999 and the guidelines issued thereunder, and other applicable laws at the time of issuance of shares

by the Transferee Company to the non-resident shareholders of the Transferor Company. The said undertaking is accepted.

22. The Learned Counsel of Regional Director on instructions of Mrs. P. Sheela, Joint Director Inspection 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 appearing for the Petitioners. All the abovementioned undertakings are accepted.

23. 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. No other party has come forward to oppose the Scheme in the Court.

24. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 317 of 2016 filed by the Transferor Company is made absolute in terms of the prayer made under sub-clauses (a) to (d) of Clause 35 and the Company Scheme Petition No. 318 of 2016 filed by the Transferee Company is made absolute in terms of the prayer made under sub-clauses (a) to (d) of Clause 34.

25. The Transferee Company 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 receipt of the Order.

26. The Petitioners are directed to file 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 relevant provisions of the Companies Act, 1956/ 2013, which ever is applicable.

27. The Petitioners to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 317 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

29. All authorities concerned 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.

(A. K. Menon, J)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer