IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 403 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 856 OF 2015

In the matter of Companies Act I of 1956;

And

In the matter of Sections 391 read with Sections 100 to 103 of the Companies Act, 1956;

And

In the matter of Scheme of Arrangement between Sodexo Food Solutions India Private Limited and its Equity Shareholders.

Sodexo Food Solutions India)
Private Limited)
a Company registered under the)
provisions of Companies Act, 1956)
and having its Registered Office at)
1st Floor, Gemstar Commercial)
Complex, Ramchandra Lane)
Extension, Kanchpada, Malad (West),)
Mumbai 400 064)
in the State of Maharashtra.) ...Petitioner Company

Called For Hearing:

Coram: A. K. Menon, J.

Dated: 6th October, 2016

Ms. Khooshnum R. Daviervala and Mr. Yazdi P. Jijina i/b. Mulla & Mulla & Craigie Blunt & Caroe, Advocates for the Petitioner Company.

Mr. Chirag J. Shah for the Regional Director

MINUTES OF THE ORDER

1. Heard counsel for the Petitioner. No objector has come before the Court to oppose the Scheme of Arrangement between Sodexo Food Solutions India Private Limited and its Equity Shareholders nor has any party controverted any averments made in the Petition.

2. The sanction of the Court has been sought for Buy-back of equity shares and simultaneous issuance of preference shares of Sodexo Food Solutions India Private Limited, the Petitioner Company, under Section 391 read with Sections 100 to 103 of the Companies Act, 1956, as approved by the shareholders holding 100% shares in the Petitioner Company by issuing consent letters in writing agreeing to the Scheme of Arrangement.

3. Learned Counsel for the Petitioner submits that Article 11 of the Articles of Association of the Company authorizes the Company to buy-back its equity shares and Article 4A of the Articles of Association of the Company authorizes the Company to issue preference shares. As per the Scheme duly approved by the Shareholders, the Petitioner Company shall purchase not more than 1,50,00,000 (One Crore Fifty Lakhs) Equity Shares of Rs.10/- each fully paid-up, representing 75% of the total issued, subscribed and paid up share capital of the Company as on Effective Date for a consideration of Rs.9.69 (Rupees Nine and Paise Sixty Nine only) ('Consideration') per Equity

Share, being the fair value per share based on the valuation report received from an independent valuer viz. M/s. N. K. Sureka & Company, Chartered Accountants, or for such other consideration as may be required under the Foreign Exchange Management Act 1999. As per the Scheme duly approved by the Shareholders, the Petitioner Company shall simultaneously with the purchase of the Equity Shares issue 1,50,00,000 0.5% Compulsorily Convertible Preference Shares of face value of Rs.10/- each to those shareholders who have made valid applications for the Preference Shares. The said Preference Shares will be issued simultaneously with the purchase of the Equity Shares so that at no stage the Company's paid-up share capital will be reduced or be deemed to have been reduced and the Petitioner Company is not required to add the words "And Reduced" as suffix to its name. In view of the averment made in paras 13 and 14 of the Affidavit in Support of the Company Summons for Direction dated 12th October, 2015 it is further stated that there are no Secured Creditors and that the rights of the Unsecured Creditors are not affected. Hence the holding of meetings of the Secured and Unsecured Creditors was dispensed with vide order dated 27th November, 2015 passed in the Company Summons for Direction No. 856 of 2015.

4. The Counsel appearing on behalf of the Petitioner states that they have complied with all the statutory requirements as per the directions of this Court and they have filed necessary Affidavit of

Compliance in the Court. Moreover, Petitioner Company undertakes to comply with statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder, whichever is applicable. The Undertaking is accepted.

5. The Regional Director has filed an Affidavit dated 4th October, 2016 and made following observations in para 6 :

"6. *That the Deponent further submits that,*

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. *Petitioner in Clause No. 4.1 of the Scheme Upon the scheme becoming effective the Petitioner Company shall purchase not more than 1,50,00,000 (One Crore Fifty Lakhs) Equity shares of Rs.10/- each fully paid-up, representing 75% of the total issued, subscribed and Paid up Share Capital of the company for a consideration of Rs.9.69 being the fair value per share based on the valuation report received from the* *independent valuer or for such other consideration as may be required under the Foreign Exchange Management Act, 1999. In case Equity shares tendered by the shareholders exceed 75% then the company shall purchase equity shares on proportionate basis restricting the purchase to 75%.*

Deponent prays that the Hon'ble Court may direct the petitioner company to undertake to comply the requirements of Foreign Exchange Management Act, 1999. Copy of letter served to concerned regulator is required in this matter.

c. *Name of shareholders of the petitioner company are as under:*

SODEXO SA 4,99,9900 (24.99950%)

SODEXO SERVICES ASIA PTE LTD 15000000 (75%)

SOFINSOD SAS 100 (.00050%)

Since the shareholders are foreign companies/foreigner, compliance of RBI Act r.w concerned rules and regulations are required. Copy of letter served to the regulators are required in this matter.

d. *The company undertakes to pay necessary stamp duty as may be payable under law on increase in the share capital.*

Deponent prays that the petitioner company may be asked to comply the provisions of the Act, 2013 for increasing the capital of the company.

e. *The compliance of the provisions of Companies Act, 2013 r.w. rules required for issuing preference shares to outsiders is required.*

Hon'able Court may direct the Company to make the compliance of the provisions of Companies Act, 2013 r.w. Rules."

6. So far as the observation made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Company is bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met with and answered in accordance with law. So far as the observation made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Company undertakes to comply with the requirements of Foreign Exchange Management Act, 1999 and send a letter to the concerned regulator with regard to this Order. So far as the observation made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Company undertakes to comply with the RBI Act read with concerned rules and regulations and send a letter to the concerned regulator with regard to this Order. So far as the observation made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Petitioner Company undertakes to comply with the provisions of the Companies Act, 2013 for increasing the Capital of the Company. So far as the observation made in paragraph 6(e) of the Affidavit of Regional Director is

concerned, the Petitioner Company undertakes to comply with the provisions of Companies Act, 2013 read with rules required for issuing preference shares to outsiders.

7. The Learned Counsel for Regional Director on instructions of Ms. P. Sheela, Joint Director – Legal 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 Advocate for the Petitioner Company. The said undertaking is accepted.

8. None of the parties concerned have come forward to oppose the proposed Scheme of Arrangement. Since the requisite statutory procedure has been fulfilled, the Petition is made absolute in terms of prayer clauses (a), (b) and (c).

9. The 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 Act.

10. The Petitioner to pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the Regional Director within a period of four weeks from the date of this order.

11. All concerned regulatory authorities to act on a copy of this order and the Form of Minutes duly authenticated by the Company Registrar, High Court, Bombay.

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

(A. K. Menon, J.)

CERTIFICATE

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

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