

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.429 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.285 OF 2016

CLIENTIS SOFT TECHNOLOGIES PRIVATE LIMITED

.....Petitioner/the Resulting Company

In the matter of the Companies Act, 1 of 1956
and other relevant provisions of the Companies
Act, 2013;

AND

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

AND

In the matter of Scheme of Arrangement between
BELLSOFT INDIA SOLUTIONS PRIVATE
LIMITED (the Demerged Company) and
CLIENTIS SOFT TECHNOLOGIES PRIVATE
LIMITED (the Resulting Company)

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co, Advocate for the Petitioner
Company.

Anand O Singh i/b Shri. Pankaj Kapoor for Regional Director in the Petition.

CORAM: A.K.MENON, J

DATE: 22nd September, 2016

PC:

1. Heard learned counsel for parties. None appears 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 of the Companies Act, 1956, to a Scheme of Arrangement between BELLSOFT INDIA SOLUTIONS PRIVATE LIMITED (the Demerged Company) and CLIENTIS SOFT TECHNOLOGIES PRIVATE LIMITED (the Resulting Company).
3. The Learned Counsel for the Petitioner Company states that the Demerged Company has been *inter alia* carrying business as manufacturers, traders, assemblers and the Transferee Company has been engaged in business as software developers, software resellers.
4. The Learned Counsel for the Petitioner states that the Board of Director of the Petitioner Company has approved the said Scheme of Arrangement by passing the Board Resolution which is annexed to the Company Scheme Petition.

5. The Learned Counsel for the Petitioner states that, the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Direction.

6. The Learned Counsel appearing on behalf of the Petitioner have stated that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and rules made there under whichever is applicable. The said undertaking is accepted.

7. The Regional Director has filed his Affidavit on 20th September, 2016 stating therein, save and except as stated in paragraphs 6(a) to (d) it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent further submits that:-

a) It has been observed that, under the Scheme Training Division of the Demerged Company is going to merge in the Resulting Company, on

going through the main object of the Resulting Company, it is observed that objects of Training Division have not been given in its main objects. Therefore the Petitioner Company is required to alter its main objects after complying with the provisions of Section 13 of the Companies Act, 2013 and Rules made thereunder.

- b) It has been observed from the Scheme, the authorized share capital is found insufficient to issue equity shares to the shareholders of the Demerged Company. The company is compulsorily required to increase its share capital to enable itself to issue shares by filing requisite e-forms and fees with the Registrar of Companies, Mumbai.*
- c) That the Deponent further submits that the Tax implications 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.

d) New shares to be issued by the Resulting Company to the foreign entity as they are major shareholder of the Demerged Company and hence RBI approval under FEMA may be required.

8. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his Affidavit is concerned, The learned counsel submits that in the Scheme, the Training Division of the Demerged Company is going to merge in the Resulting Company and on going through the main object of the Resulting Company, it is observed that objects of Training Division have not been given in its main objects. Therefore the learned counsel for the Petitioner submits that the Company will alter its main objects after complying with the provisions of Section 13 of the Companies Act, 2013 and Rules made thereunder.

9. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(b) is concerned the Petitioner Company through its learned counsel undertakes that the authorized share capital is found insufficient to issue equity shares to the shareholders of the Demerged Company. The

company will increase its share capital to enable itself to issue shares by filing requisite e-forms and fees with the Registrar of Companies, Mumbai.

10. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(c) of his Affidavit is concerned, the Petitioner Company submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all other acts.

11. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(d) of his Affidavit is concerned, the Petitioner Company submit that new shares to be issued by the Resulting Company to the foreign entity as they are major shareholder of the Demerged Company, the Petitioner Company will take RBI approval under FEMA, if required.

12. The Learned Counsel for Regional Director on instructions of Mr. Kamal Harjani Deputy Director, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions and undertakings given by the Petitioner. The above 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.429 of 2016 filed by the Resulting Company is made absolute in terms of prayer clause (a) to (c) subject to sanctioning of the Scheme of Arrangement by Bombay High Court, Goa Bench in respect of Company Petition filed by BELLSOFT INDIA SOLUTIONS PRIVATE LIMITED, the Demerged Company.

15. The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court, 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 this order.

16. The Petitioner are directed to file/lodge 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 Companies Act 1956/2013, whichever is applicable.

17. 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.

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

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

(A. K. MENON J)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.