

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.428 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.318 OF 2016
Sellcraft Softech Private LimitedPetitioner/the Demerged Company.
AND
COMPANY SCHEME PETITION NO.516 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.579 OF 2016
Sellcraft Global Solutions Private
LimitedPetitioner/the Resulting Company

In the matter of the Companies Act I
of 1956.

AND

In the matter of Sections 391 to 394
read with Section 100 to 103 of the
Companies Act, 1956.

AND

In the matter of the Scheme of
Arrangement between:

Sellcraft Softech Private Limited.

AND

Sellcraft Global Solutions Private Limited.

AND

their Respective Shareholders.

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co, Advocate for the Petitioner
in both the Petition.

Mr.Dharmesh Joshi i/b Shri. Pankaj Kapoor for Regional Director in
both the Petitions.

CORAM: A.K.MENON, J

DATE: 6th OCTOBER, 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 read with Section 100 to 103 of the Companies Act, 1956, to a Scheme of Arrangement between Sellcraft Softech Private Limited and Sellcraft Global Solutions Private Limited and their respective shareholders for demerger of Manpower Services and Staffing Services and reduction of share capital of Sellcraft Global Solutions Private Limited.

3. The Learned Counsel for the Petitioner Companies states that the Demerged Company is presently carrying on business of Manpower Services, Staffing Services and Leasing of Property and the Resulting Company is formed recently to takeover the business of Manpower Services and Staffing Services of Sellcraft Softech Private Limited. It is yet to commence its business operations.

4. The Learned Counsel further states that the Board of Director of the Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioner in Company Scheme Petition No 516 of 2016 states that Scheme includes reduction and cancellation of Share Capital of the Resulting Company and the same shall be effected as integral part of the Scheme as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholders and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 8th July,2016 passed in C.S.D No 579 of 2016.

6. The Learned Counsel for the Petitioners further states that, Petitioner Companies has 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 respective Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies 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 Companies 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.

8. The Regional Director has filed his Affidavit on 27th September, , 2016 stating therein, save and except as stated in paragraphs 6(a) to (e) 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) *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.*
- b) *Registrar of Companies, in his report has mentioned that there is no amalgamation clause in the Memorandum of Association of Resulting Company. Deponent prays that Hon’ble Court direct the*

company to make amendment in the Memorandum of Association of the company.

- c) Petitioner in Clause no. 11 of Part II of the scheme inter alia has mentioned that with effect from the appointed date and upto and including the effective date the Demerged Company shall not utilize the profits or income, if any, for the purpose of declaring or paying dividend or for any other purpose in respect of the period falling on and after the appointed date, without the prior written consent of the Board of directors of the Resulting Company.*
- d) Petitioner in Clause no. 10 of Part II of the scheme inter alia has mentioned that the transferee company in respect of the Transferor Company, do the accounting in the books of accounts as mentioned therein. However, not mentioned about accounting standards/accounting policies adopted for accounting treatment. Deponent prays that the Hon'ble Court direct the company to mention accounting standards/accounting policies adopted for accounting treatment.*
- e) Petitioner company in Clause 16 of Part III inter alia has mentioned that upon the scheme coming into*

effect the name of the Demerged Company and Resulting Company shall stand changed to "Sellcraft Global Solutions Private Limited" and "Sellcraft Softech Private Limited" respectively without following the procedure laid down under the provisions of the Companies Act, 2013. However, approval of the scheme shall be deemed to be the approval for change of name.

Deponent prays that the Hon 'ble Court direct the petitioner companies to change the name in accordance with the provisions of the Companies Act, 2013 read with relevant rules guidelines etc.

9. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a) 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.

10. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the learned counsel submits that to amalgamate with another company is power of the Company and not an object of the company. The learned counsel further submits that when

there is statutory provision dealing with amalgamation of companies, no special powers in object clause of the memorandum of association of the company is necessary for its amalgamating with other companies. However the Petitioner Companies through its learned counsel undertakes that the Resulting Company shall comply with provisions of Section 13 of the Companies Act, 2013 in respect of amendment in Memorandum of Association of the Resulting Company and to file an amended copy of the Memorandum of Association alongwith the relevant forms with the concerned Registrar of Companies.

11. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(c) of his Affidavit is concerned, the Petitioner Companies through its learned counsel undertakes that the Demerged Company has not utilised nor it shall utilise the profits or income, if any, for the purpose of declaring or paying dividend or for any other purpose in respect of the period falling on and after the appointed date, without the prior written consent of the Board of directors of the Resulting Company.

12. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(d) of his Affidavit is concerned, the Petitioner Companies through its learned counsel undertakes that the Petitioner Companies shall make necessary disclosures of applicable accounting standards/accounting policies

adopted for accounting treatment in the audited financial statements.

13. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(e) of his Affidavit is concerned, the Petitioner Companies through its learned counsel undertakes to comply with the provisions of Section 13 of the Companies Act, 2013 in respect of filing necessary forms with the concerned Registrar of Companies for change of name.

14. The Learned Counsel for Regional Director on instructions of Ms P. Sheela, Joint 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 Petitioners. The above undertakings are accepted.

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.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.428 of 2016 filed by the Demerged Company are made absolute in terms of prayer clause (a) & (b) and Company Scheme Petition No.516 2016 filed by the Resulting Company are made absolute in terms of prayer clause (a) to (e).

17. The Petitioner Companies 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.

18. The Petitioners 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.

19. The Petitioners Companies 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. Petitioner in Company Scheme Petition No. 516 of 2016 to publish a notice of registration of order and form of minutes of reduction of capital annexed as Exhibit 'I' to Company Scheme Petition No.516 of 2016 by Registrar of Companies once each in the two local newspaper, viz, "The Economic Times" in English Language and translation thereof in "Maharashtra Times" in Marathi Language, both having circulation in Pune and also in the Maharashtra Government Gazette within 14 days of registration.

21. Filing and issuance of the drawn up order is dispensed with.
22. All concerned regulatory authorities to act on a copy of this order along with the Scheme and Form of Minutes annexed as Exhibit "I" to the Company Scheme Petition No.516 of 2016 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.

