IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 369 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 202 OF 2016

Capgemini India Private Limited............ Petitioner Company

AND

COMPANY SCHEME PETITION NO. 370 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 203 OF 2016

IGATE Global Solutions Limited .... Petitioner Company

In the matter of the Companies Act, 1956;

AND

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

AND

In the matter of Scheme of Amalgamation of Capgemini India Private Limited with IGATE Global Solutions Limited and their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi and Mr. Ajit Singh Tawar i/b Hemant Sethi & Co., Advocates for the Petitioners.

Mr. Vinod Sharma, Official Liquidator, present in the Company Scheme Petition No. 369 of 2016.

Ms. Priya V. Sankpal, i/b Mr. Pankaj Kapoor, Regional Director in both the Company Scheme Petitions.

CORAM: A. K. MENON, J.
DATE: 29th SEPTEMBER 2016

1. Heard Counsel for the parties. No objector has come before the Court to oppose the Scheme and neither party has contravened any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 and any other relevant provisions of the Companies Act, 1956 and Companies Act, 2013, to the extent notified and applicable, to the Scheme of Amalgamation of Capgemini India Private Limited with IGATE Global Solutions Limited and their Respective Shareholders.

3. Learned Counsel for the Petitioner states that the Transferor Company is primarily engaged in the business of software development, providing information technology related consulting, technology and outsourcing services and information technology enabled back office support services and the Transferee Company is engaged in the business of providing information technology and information technology enabled services. The equity shares of the Transferee Company are not listed on any stock exchange in India.

4. Learned counsel for the Petitioner states that the amalgamation would result into many benefits including operational efficiency and cost minimization, synergies of operations, enhancement of future business potential and will benefit all its stake holders.

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

6. The learned Counsel for the Petitioners further states that, Petitioner companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.

7. The learned Counsel appearing on behalf of the Petitioners has stated that the Petitioners has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the

Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.

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

That the Deponent further submits that,

(a) *Registrar of Companies, Pune has reported as per Para No. 18 of the Scheme, that upon coming into effect of the scheme, the Transferee Company will continue the business of the Transferor Company on the same lines as carried on by the Transferor Company. For the said purpose, upon coming into effect the object clause of MOA will deemed to be amended without requiring any further approval of shareholders of the Transferee Company under Section 13 of the Companies Act, 2013. In this regard, Registrar of Companies propose that above change may be allowed only after complying with the provisions of Section 13 of the Companies Act, 2013 and the rules made thereunder.*

(b) *Registrar of Companies, Pune has reported as per Para No. 19 of the scheme, that upon coming into effect of the scheme, the name of the Transferee Company shall be changed to M/s. Capgemini India Limited. In this regard Registrar of Companies propose that above changes may be allowed only after complying with the provisions of Section 4 / 13 of the Companies Act, 2013 and the rules made thereunder.*

(c) *New shares to be issued by the Transferee Company to the shareholders of the Transferor Company, who are foreign entity(ies) M/s. Cap Gemini SA and M/s. Capgemini America Inc. and Hence RBI approval under FEMA may be required.*

(d) *It is observed from the affidavit filed by Shri Percy Kaikobad, Vice President of the Transferee Company that two cases bearing CC No.*

86 of 2011 for the offences committed under Section 391-394 of the Companies Act, 1956 and 406, 409, 418 & 420 of the Indian Penal Code, 1860 and 421 of 2010 for the offence committed under Section 391-394 r/w of the Companies Act, 1956 are lying pending before the Special Court for Economic Offences, Bangalore.

(e) 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 Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Company.

9. So far as the observation in paragraph 6(a) of the Affidavit of the Regional Director is concerned, through its Counsel, the Transferee Company clarifies that the proposed amendment to Memorandum of Association as per Paragraph 18 of the scheme is already approved by the Shareholders of the Petitioner Company and further undertakes to comply with the Section 13 of the Companies Act, 2013 with regard to filing of relevant E-form and the amended copy of the Memorandum of Association with the Registrar of Companies.

10. So far as the observation in paragraph 6(b) of the Affidavit of the Regional Director is concerned, through its Counsel, the Transferee Company clarifies that the change of name of the Transferee Company and proposed amendment to Memorandum of Association as per Paragraph 19 of the scheme is already approved by the Shareholders of the Petitioner Company and further it undertakes to comply with the Section 4 & 13 of the Companies Act, 2013 with regard to filing of relevant E-form and the amended copy of the Memorandum of Association with the Registrar of Companies.

11. So far as the observation in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Transferee Company through its Counsel clarifies that the issuance of shares to shareholders of the Transferor Company being foreign entities would fall under the Automatic route as prescribed by RBI, therefore no separate approval is required while issuing shares to foreign shareholders of the Transferor Company, but compliances, as applicable, shall be duly made.

12. So far as the observation in paragraph 6(d) of the Affidavit of the Regional Director is concerned, the Transferee Company through its Counsel submits that the said proceedings before the Special Court Economic Offence, Bangalore will continue against the Transferee Company and the same will not in any way be affected by the present scheme of amalgamation as the same are pending against the Transferee Company which will continue to remain in existence even after approval of the Scheme by High Court.

13. So far as the observation in paragraph 6(e) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel states that it is bound to comply with all applicable provisions of the Income Tax Act, 1961 read with Income Tax Rules, 1962 issued in that behalf.

14. The Counsel for the Regional Director on instructions from Mr. Kamal Harjani, Deputy Director in the office of Regional Director stated that they are satisfied with the undertakings and clarifications given by the Petitioner Companies. The said undertaking & clarifications given by the Petitioner Companies are accepted.

15. The Official Liquidator has filed his report on 6th September, 2016 in the Company Scheme Petition No. 369 of 2016 stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions filed by the Petitioner Companies are made absolute in terms of prayer (a) of the respective Company Scheme Petition.

18. 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 receipt of the Order.

19. The Petitioner Companies are directed to file a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along

with INC – 28 in addition to physical copy as per the relevant provisions of the Companies Act, 2013/1956.

20. The Petitioner Companies in both the Company Scheme Petitions to pay costs of INR 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 369 of 2016 to pay cost of INR 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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 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.
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