

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 503 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 385 OF 2015

**Pune Software Park Private Limited ... Petitioner/Transferor
Company**

IN THE MATTER of the Companies Act 1 of 1956

AND

IN THE MATTER of Sections 391 to 394 of the Companies Act, 1956;

AND

IN THE MATTER of Scheme of Amalgamation of Pune Software Park Private Limited (the "Transferor Company") with Capgemini India Private Limited (the "Transferee Company") and their respective Shareholders and Creditors.

Called for Hearing

Ms. Alpana Ghone, with Ms. Ankita Singh and Ms. Manali Kshirsagar i/b ALMT Legal, Advocates for the Petitioner.

Mr. D.P Singh i/b A.A. Ansari for Regional Director for Petition.

Mr. Vinod Sharma Official Liquidator, present.

CORAM: K. R. Shriram, J.

DATE : 26th February 2016

PC:

1. Heard learned counsel for the parties. No objector has come before the Court to oppose the Scheme and to controvert any averments made in the Petition.
2. The sanction of the Court is sought to a Scheme of Amalgamation between **Pune Software Park Private Limited**, Transferor Company with **Capgemini India Private Limited**, Transferee Company and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.
3. Learned Counsel for the Transferor Company states that the Transferor Company is carrying on all types of business to conduct, establish and operate technology parks to equip such parks with all facilities and infrastructure in their operation. Transferee Company is carrying on business of consultants, advisors and counselors and to provide consulting, advisory and counseling services in all sectors of industry, trade, business and commerce. The Transferor and Transferee Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.
4. Learned Counsel for the Transferor Company further states that, the Transferor Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in Company Summons for Direction and seeks sanction to the said proposed Scheme of Amalgamation.
5. Learned Counsel appearing for of the Transferor Company has stated that the Transferor Company has complied with all requirements as per directions of this

Court and it has filed necessary Affidavit of compliance in this Hon'ble Court. Moreover, Transferor Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956, the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 19th January 2016 in Company Scheme Petition No. 503 of 2015 stating 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 winding up.

7. The Regional Director has filed an Affidavit on 15th October 2015 stating therein that save and except as stated in paragraph 6(a) to 6(d) of the said Affidavit; it appears that the Scheme is not prejudicial to the interest of shareholders and public. Paragraph 6(a) to 6(d) of said Affidavit is as under :

“6 (a) Clause 15.2.5 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Standard-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5, etc.

- (b) *Clause 16.4 of the Scheme provides for insertion of a new object clauses in the Memorandum of Association of the Transferee company. In this regard, the Transferee company may be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.*
- (c) *It is respectfully submitted that 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 Transferor Company and Transferee Company.*
- d) *Clause 20 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorized to make any amendments to Scheme, if necessary, after the*

*Scheme is approved by the Hon 'ble High Court.
Such liberty shall not be exercised by Board of
Directors without obtaining prior approval from
the Hon'ble High Court. The Petitioner Company
may be directed to undertake to this effect."*

8. In response to paragraph 6(a) of the Affidavit of the Regional Director, it is submitted that since clause 15.2.5 of the Scheme provides for adjustment for differences in accounting policies between Transferor Company and the Transferee Company. The Petitioner Company undertakes that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with the other applicable Accounting Standards such as AS – 5. The said undertaking is accepted.

9. In response to paragraph 6 (b) of the Affidavit of Regional Director, since clause 16.4 of the Scheme provides for insertion of a new object clause in the Memorandum of Association of the Transferee Company, the Transferee Company, undertakes to comply with the provisions of sections 13(1), 13(6) read with section 15 of the Companies Act, 2013 read with the corresponding rules and corresponding to section 40 read with section 18 of the Companies Act, 1956, and shall file the amended copy of the Memorandum of Association with necessary forms with the Registrar of Companies.

10. Pursuant to the observations made in paragraph 6 (c) of the Affidavit of Regional Director, the Petitioner Company is bound to comply with all applicable

provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.

11. Paragraph 6 (d) of the Affidavit of Regional Director states that clause 20 of the Scheme provides for the modifications and amendment to the Scheme wherein the respective Board of Directors of the Transferor and Transferor Companies have been authorized to make any amendments to the Scheme, if necessary after the Scheme is approved by this Court. The Transferee and Transferor Companies undertake that the aforesaid liberty provided under clause 20 of Scheme shall not be exercised by the Board of Directors without obtaining prior approval of this Court.

12. The Learned Counsel for Regional Director on instructions of Mr. M. Chandnamutu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the clarifications and undertakings given by the Advocate for the Petitioner Company. The said undertakings are accepted.

13. The Learned Counsel for the Petitioner states that the Company Scheme Petition no. 758 of 2015 connected with Company Summons for Directions no. 728 of 2015 with Company Scheme Petition no. 759 of 2015 connected with Company Summons for Directions no. 729 of 2015 came to be approved by this Hon'ble Court by an order dated 18 December 2015, wherein the Scheme having being effective, the Authorized Share Capital of the Transferee Company stands increased. In view of the order dated 18th December 2015 passed by this Hon'ble Court the Learned counsel for the Petitioner seeks leave to amend clauses 16.2 and 16.3 in the Scheme.

14. Leave to amend granted. Amendment to be carried out within 2 weeks from today.

15. Clause 16.2 of the Scheme read as:

Pursuant to the Scheme becoming effective and consequent upon the Amalgamation of Transferor Company with Transferee Company, the authorized share capital of Transferee Company will be as under:

<i>Particulars</i>	<i>Amount (in Rs.)</i>
<u>Authorised share capital</u>	
<i>15,300,000 equity shares of Rs. 100 each</i>	<i>1,530,000,000</i>
<i>TOTAL</i>	

To be replaced by

“Pursuant to the Scheme becoming effective and consequent upon the Amalgamation of Transferor Company with Transferee Company, the authorized share capital of Transferee Company will be as under:

<i>Particulars</i>	<i>Amount (in Rs.)</i>
<u>Authorised share capital</u>	
<i>16,300,000 equity shares of Rs. 100 each</i>	<i>1,630,000,000</i>
<i>TOTAL</i>	

16. Clause 16.3 of the Scheme read as:

Upon the Scheme coming into effect, Clause 64 (V) of the Memorandum of Association of Transferee Company shall, without any further act or deed, be

replaced by the following Clause and the Transferee Company will not be required to pass any fresh resolution in this regard:

“The Authorised Share Capital of the Company is Rs. 1,530,000,000/- (Rupees One Hundred and Fifty Three Crores only) divided into 15,300,000 Equity Shares (One Crore Fifty Three Lakhs Equity Shares) of Rs. 100/- (Rupees Hundred only) each.”

To be replaced by

Upon the Scheme coming into effect, Clause 64 (V) of the Memorandum of Association of Transferee Company shall, without any further act or deed, be replaced by the following Clause and the Transferee Company will not be required to pass any fresh resolution in this regard:

“The Authorised Share Capital of the Company is Rs. 1,630,000,000/- (Rupees One Hundred and Sixty Three Crores only) divided into 16,300,000 Equity Shares (One Crore Sixty Three Lakhs Equity Shares) of Rs. 100/- (Rupees Hundred only) each.”

17. 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. None of the parties concerned have come forward to oppose the Scheme in this Court.

18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 503 of 2015 is made absolute in terms of prayer clauses (a) to (e).

19. The Petitioner 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 the order.

20. The Petitioner Company is directed to file a copy of this order along with 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 provisions of the Companies Act, 2013.

21. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

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

(K. R. Shriram, J.)

C E R T I F I C A T E

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

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