IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 677 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 483 OF 2015

Nimbus BPM Consulting Private Limited ....Petitioner Company

With

COMPANY SCHEME PETITION NO. 678 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 484 OF 2015

Staffware Business Process Management India Private Limited ....Petitioner Company

With

COMPANY SCHEME PETITION NO. 679 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 485 OF 2015

TIBCO Software India Private Limited ....Petitioner Company

In the matter of Companies Act, 1956 (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 Nimbus BPM Consulting Private Limited ("Transferor Company-I") and Staffware Business Process Management India Private Limited ("Transferor Company-II") with TIBCO Software

India Private Limited ("Transferee Company") and their respective shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. Atul S. Singh i/b Mr. A.A. Ansari for Regional Director.

Mr. Vinod Sharma, Official Liquidator Present

CORAM: K. R. Shriram, J.

DATE: 26th February, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 the Scheme of Amalgamation of Nimbus BPM Consulting Private Limited ("Transferor Company-I") and Staffware Business Process Management India Private Limited ("Transferor Company-II") with TIBCO Software India Private Limited ("Transferee Company") and their respective shareholders.

3. The Learned Counsel for the Petitioners states that the Petitioner Companies in Company Scheme Petition no. 677 & 678 of 2015 are presently engaged in the business of software development and related

services whereas the Petitioner Company in Company Scheme Petition no. 679 of 2015 is presently engaged in the business of software development and all activities connected with software business.

4. Learned Counsel for the Petitioners states that the Scheme will result into following benefits namely the amalgamation will enable pooling of resources of the companies involved in amalgamation to their common advantage, resulting in more productive utilization of the said resources and achieving economies of scale resulting into cost and operational efficiencies, which would be beneficial for all the stakeholders; bring synergies in procurement, manufacturing, administration and marketing operations; facilitate inter-unit transfer of resources among different units that would in turn result into operational synergies; help combining the administrative and marketing functions of the entities involved and consequently result into more efficient functioning of the merged entity in a cost effective manner; expected to increase the financial strength of the companies enabling further growth and development of the Transferee company; simplification of the holding structure of different entities of TIBCO group in India; bring greater management focus and would help in achieving uniform corporate policies and faster/effective decision making and its implementation; help avoiding duplication of regulatory and procedural compliances and consequently result into saving of time, resources and cost involved in such compliances; post

amalgamation, the Transferee Company will have better financial and operational prospects and shall be beneficial and in the best interests of the shareholders, creditors, employees of the companies involved and all concerned.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the 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 has stated that the Petitioner Companies have 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 undertakes 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 Official Liquidator has filed his report on 25th January, 2016 stating therein 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 by this Court.

9. The Regional Director has filed an Affidavit on 7th December, 2015 stating therein, save and except as stated in paragraphs 6 (a) to (d) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (d) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) With reference to clause 13.1.3 of the scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to goodwill account of Transferee Company.

(b) Clause 14.3 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 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 other applicable Accounting Standard such as AS-5 etc.

(c) The equity share capital of both the Transferor and Transferee Company are held by foreign body corporate as its shareholders. Hence for allotment of new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI regulations as applicable in this regard.

(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."

10. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes that surplus, if any arising out the scheme shall be credited to Capital Reserve Account of Transferee Company and the deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

11. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes to comply and follow the

accounting treatment such as AS-14, AS-5 and other applicable accounting standards which are necessary in connection with the scheme.

12. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director, the petitioner through their counsel submits that the Transferee Company shall comply with the provisions of FEMA, RBI regulations as may be applicable.

13. As far as observations made in paragraph 6 (d) of Affidavit of the Regional Director, the Petitioners clarifies that the approval of the Scheme by this Court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with law.

14. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies 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. 677 of 2015 to 679 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petition.

17. The Petitioner Companies are directed to lodge a copy of this order and 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 receipt of the Order.

18. Petitioners are directed to file a copy of this order along with a copy of the Scheme 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 in Company Scheme Petitions No. 677 of 2015 to 679 of 2015 to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioners in Company Scheme Petition No. 677 of 2015 & 678 of 2015 to pay cost of Rs.10,000/-

each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

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

(K. R. Shriram, J.)

CERTIFICATE

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

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