

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 781 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 657 OF 2016
RELIANCE CAPITAL LIMITED

....Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO 782 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 658 OF 2016
RELIANCE COMMERCIAL FINANCE LIMITED

....Petitioner/Transferee Company

In the matter of the 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 Arrangement

BETWEEN

Reliance Capital Limited

AND

Reliance Commercial Finance Limited

AND

Their respective shareholders and creditors

Called for hearing

Mr. Janak Dwarkadas, Senior Counsel, Ms. Alpana Ghone, Counsel, Mr. Rajesh Shah and Mr. Ahmed M Chunawala i/b Rajesh Shah & Co., Advocate for the Petitioners in the Petition.

Mr. P.S. Gujar i/b Pankaj Kapoor, for Regional Director.

CORAM: S. C. Gupte, J.

DATE: 9th December, 2016

PC:

1. Heard Learned Counsel for the parties.
2. The sanction of the Court is sought under Sections 391 to 394 and other relevant provision of the Companies Act, 1956, to the Scheme of Arrangement between Reliance Capital Limited, the Transferor Company and Reliance Commercial Finance Limited, the Transferee Company and their respective shareholders and creditors (“the Scheme”).
3. The Learned Counsel for the Petitioners states that the Transferor Company is a Systemically Important Non-deposit Taking Non Banking Financial Company (“NBFC-ND-SI”) registered with the Reserve Bank of India (“RBI”). It is listed on both the BSE Limited and the National Stock Exchange of India Limited. RCap has interests in asset management and mutual funds, life and general insurance, commercial and home finance, stock broking, wealth management services, distribution of financial products, asset reconstruction, proprietary investments and other activities in financial services. The Transferee Company is a wholly owned

subsidiary of the Transferor Company. The Transferee Company is a Non Banking Financial Company (“NBFC”) registered with RBI. The rationale for the Scheme is that as all operating businesses of the Transferor Company, except the Commercial Finance business, are held in its wholly or majority owned subsidiaries. Accordingly, to align the overall operating structure, it is proposed to transfer the Transferred Undertaking of the Transferor Company into a Wholly Owned Subsidiary. This will also facilitate the treatment of the Transferor Company as a Core Investment Company (“CIC”) in terms of applicable RBI regulations.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies had approved the said Scheme by passing Board Resolutions, which were annexed to the Company Scheme Petitions.

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

6. 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 affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if

any, as required under the Companies Act, 1956 / 2013 and Rules made there under whichever are applicable. The said undertaking is accepted.

7. The Regional Director has filed an Affidavit on 8th day of December, 2016, stating therein that save and except as stated in paragraph 6, it appears according to Regional Director, that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, it is stated that:-

“That the Deponent further submits that, 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 High 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 petitioner company.

8. As far As far as observations made in paragraph 6 of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that they will comply with all applicable provisions of the Income Tax Act and all income tax issues arising out of the Scheme will be met and answered in accordance with law. The said undertakings of the Petitioner Companies are accepted.

9. Mr. Shailesh Mehta, a shareholder of the Transferor Company holding one equity share in the Company had appeared at the time of admission of the Petition and objected to the admission of the Petition. By order dated 27th October, 2016, the

petition was admitted. Mr. Mehta was given liberty to object to the Scheme at the time of final hearing. Learned Counsel for the Petitioners states that Mr. Mehta was served with a copy of the petition on 26th October, 2016. On 25th November, 2016, Mr. Mehta appeared and sought an adjournment for filing his affidavit of objection. Learned Counsel for the Petitioners states that Mr. Mehta has not filed any Affidavit. Learned Counsel for the Petitioner has relied upon order of this Court in Company Petition No. 296 of 2009 wherein, the Court refused to grant time to the Objector for filing his Affidavit of Objection as according to Rule 34 of the Company Court Rules the same has to be filed at least two court working days in advance. At the court convened meeting held on 10th September, 2016, Mr. Shailesh Mehta had submitted a letter to the Chairman of the meeting raising certain objections. The said letter is annexed to the Chairman's Report. The Learned Counsel for the Petitioners states that Mr. Mehta's objection was regarding alleged change in the date of the meeting from 4.9.2016 to 10.09.16. Learned Counsel for the Petitioners points out that by order dated 25.8.2016, this court has clarified that the meeting was to be held on 10.9.2016. There is therefore, no discrepancy in the date of court convened meeting. The Learned Counsel for the Petitioners states that the meeting has been convened as per orders of this Court and with due compliance of law. Besides the aforesaid objection, Mr. Mehta has not raised any other substantial objection at the court convened meeting. In view of the fact that the issue pertaining to the date of the Court Convened Meeting has been clarified by order dated 25.8.16, the said objection is not sustainable and therefore disregarded.

10. 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.

11. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 781 of 2016 is made absolute in terms of prayer clauses (a) and (c) and the Company Scheme Petition No. 782 of 2016 is made absolute in terms of prayer clauses (a) and (c).

12. The Petitioner Companies to file an authenticated copy of this order and the Scheme 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.

13. The Petitioner Companies are directed to file an authenticated 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, 2013.

14. The Petitioner Company in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of this Order.

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

16. All concerned regulatory authorities to act on authenticated copy of this order along with Scheme.

(S.C.Gupte J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.