

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 855 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 611 OF 2015

Pacific Mindware Engineering Private Limited

.....Petitioner /Transferor 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 Pacific Mindware Engineering Private Limited AND ESI Software (India) Private Limited AND their respective shareholders and creditors

Called for hearing

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

Mr. Ashish Mehta with Mr. A.A. Ansari, for Regional Director.

CORAM: B. P. COLABAWALLA, J.

DATE : 16th April, 2016

PC:

1. Heard the learned counsel for the Petitioner Company. None appears before the Court to oppose the Petition and to contravene averments made in the Petition.
2. The sanction of the Court is sought to a Scheme of Arrangement between Pacific Mindware Engineering Private Limited AND ESI Software (India) Private Limited AND their respective shareholders and creditors.
3. Learned Counsel for the Petitioner /Transferor Company submits that the Petitioner Company is presently engaged in the business of providing Information Technology enabled services and BPO services. The Transferee

Company is primarily engaged, inter alia, in development of computer software and provision of allied services.

4. The Rational for the Scheme is that Petitioner Company has two business divisions i.e. Distribution of Software License (GT Suite) division and Software Development and Engineering Services division. Each of the divisions of the Petitioner Company has tremendous growth potential and is at a stage where they require focused leadership and management attention. Hence, the Petitioner Company intends to re-organise the operations of different divisions and undertakings, to provide focused management attention and leadership required. In this regard, the Board of Directors of both the Companies are contemplating this arrangement, which would *inter alia* have the following benefits:

- i. The demerger will provide for the separate, dedicated management of the Software Development and Engineering Services division, which will lead to a more focused approach and will provide greater flexibility to the respective entities, to meet the needs for carrying out its operations, which would be in the best interests of the Transferor Company, its shareholders, creditors and all persons connected therein.*
- ii. The demerger will facilitate the entities' exploration of new avenues and would also enhance growth prospects for the people and organizations connected with them. The arrangement will unlock shareholder value and create long term value for all the other stakeholders.*
- iii. The demerger will also provide scope for independent collaboration and expansion without committing the existing organization in its entirety.*

5. The Petitioner Company has approved the said Scheme by passing the Board Resolution which is annexed to the Company Scheme Petition.

6. The learned Counsel for the Petitioner further states that, the Petitioner 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 orders passed in respective Company Summons for Directions.

7. The learned Counsel for the Petitioner further states that the Petitioner Company has complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Company through their Counsel 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 7th April, 2016 stating therein that save and except as stated in paragraph 6(a) & (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 of the said Affidavit, the Regional Director has stated that:

(a) That the Registered Office of the Transferee Company is situated in the State of Karnataka. Hence the Transferee Company has to file similar petition before the Hon'ble High Court of Karnataka for approving the said scheme.

(b) That the Deponent further submits that the tax issue arising if any 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.

9. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner states that Scheme has been sanctioned by the Karnataka High Court on 4th December 2015.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director are concerned, the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. 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 undertaking and clarification given by the Petitioner Company. The above undertaking is accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition is mad absolute in terms of prayer clause (a) of the Company Scheme Petition.

14. 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 receipt of the order.

15. Petitioner is 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 21 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.

16. The Petitioner to pay costs of Rs.10,000/- to the Regional Director. The Costs to be paid within four weeks from date of this Order.

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

18. 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.

(B. P. COLABAWALLA, J.)

CERTIFICATE

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

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