IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.30 of 2016 (O&M)
Date of Decision: 09.05.2016

IN THE MATTER OF :

Company Petition under Sections 391 & 394 read with Section 100 to 104 of the Companies Act, 1956.

AND

IN THE MATTER OF:

THE SCHEME OF ARRANGEMENT OF:

Quatrro Global Services Private Limited

. . . . Petitioner Company No.1

AND

Quatrro Business Support Solutions Private Limited

. . . . Petitioner Company No.II

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN.

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Present: - Ms.Munisha Gandhi, Sr. Advocate, with
Mr.Deepak Suri, Advocate,
for the petitioner.

Mr.Deepak Aggarwal, Advocate, with
Mr.D.K. Singh, Official Liquidator.

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RAKESH KUMAR JAIN, J.

This petition is filed under Sections 391 & 394 read with Section 100 to 104 of the Companies Act, 1956 [for short 'the Act'], duly supported by affidavits of the petitioner-Companies, seeking sanction of the Scheme of Arrangement [for short 'the Scheme] vide which "FPO Business" of Quatrro Global Services Private Limited (Petitioner Company No.1) shall demerge into Quatrro Business Support Solutions Private Limited (Petitioner Company No.II).

The main objects of the Quatrro Global Services Private Limited (Petitioner Company No.1) and Quatrro Business Support

Solutions Private Limited (Petitioner Company No.II) are detailed in their respective Memorandum and Articles of Association, which are annexed with the petition as Annexures P-3 and P-6, respectively.

The registered office of the Quatrro Global Services Private Limited (Petitioner Company No.1) and Quatrro Business Support Solutions Private Limited (Petitioner Company No.II) is at Gurgaon.

The Board of Directors of Quatrro Global Services Private Limited (Petitioner Company No.1) and Quatrro Business Support Solutions Private Limited (Petitioner Company No.II) have approved the Scheme in their respective meetings held on 01.12.2015. Their resolutions are annexed with the petition at Annexures P-2.

Earlier the petitioner-Companies had approached this Court by way of CP No.222 of 2015 in which vide order dated 08.12.2015, convening of meetings of the Secured and Unsecured Creditors of Quatrro Global Services Private Limited (Petitioner Company No.1) and Equity Shareholders and Unsecured Creditors of the Quatrro Business Support Solutions Private Limited (Petitioner Company No.II) were dispensed with. However, meeting of Equity Shareholders of the Quatrro Global Services Private Limited (Petitioner Company No.1) was directed to be held on 23.1.2016 for which, the Chairman and Co-chairman were appointed. The Chairman of the said meeting has submitted his report on the basis of which CP No.222 of 2015 was disposed of on 01.02.2016.

On presentation of this petition, notice was issued to the Regional Director, Ministry of Corporate Affairs, New Delhi. It was also ordered that a notice be published in the newspapers, namely, "Financial Express" (English) and "Jansatta" (Hindi) both Delhi/NCR

Edition and in the Official Gazette of the Government of Haryana besides it being uploaded on the official website of the Official Liquidator. Pursuant thereto an affidavit of publication dated 09.3.2016 has been filed.

The Official Liquidator has filed the representation/affidavit dated 13/18.4.2016 of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi in which following parawise observations have been made:-

> "*8.1 That the Deponent states that the Petitioner-Companies vide para No.18 of the reply stated that 5 foreign shareholders holds 140,04,12,259 shares representing 77.009% stake of paid up share capital of QGS India. It is further stated that there is no foreign/non-resident shareholder in QBS Solution India. Further pursuant to Scheme becoming effective, Foreign/Non-Resident shareholders to hold 14, 004,124 shares representing 77.009% stake of the paid up Share Capital of QBS Solutions India. It is stated that the aforesaid investment is under automatic route as per Foreign Direct Investment Policy of RBI.*
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> *8.2 That the Deponent states that the Petitioner Companies have vide para No.21 of their reply has stated that the Petitioner Companies and their respective directors represent and confirm that no prosecution proceedings against the company and its directors have either been instituted or pending before any Court on account of any violation of laws such as the Companies Act, 1956, FEMA, IPC, SEBI Act, RBI Act, etc.*

8.3 *That the Deponent states that the Petitioner Companies have vide para no.22 of the reply furnished the details of Income Tax dues that have not been deposited on account of dispute with the Tax authorities.*

8.4 *That the Deponent states that the Petitioner Companies have vide para No.34 of the reply stated that AS-14 is not applicable on demerger of QGS FPO business from QGS India into QBS Solutions India. Hence, the accounting treatment on the books of QBS Solutions India (i.e. the Resulting Company) is as per Clause 10 of part B of the Scheme. However, the Petitioner Companies have not furnished certificate from the statutory auditors of Transferee Company that the Accounting Treatment proposed is not in violation of AS issued by the Central Government.*

8.5 *That the Deponent states that the Petitioner Companies have vide para No.36 of the reply stated that the amount of loan to be transferred from the Demerged Company to the Resulting Company shall be subject to approval/confirmation from the financial institution.*

9. *That the Deponent states that the Registrar of Companies, Delhi & Haryana vide his additional report dated 11.3.2016 has made following observations:*

(i) The Scheme of arrangement envisages the demerger of QGS FPO Business from Quatrro Global Services Private Limited to Quatrro Business Support Solutions Private Limited.

It is to be noted that there is no Valuation Report along with the Scheme which has assessed the value of the said Business, states the corresponding Assets and Liabilities which shall stand transferred *and enumerates the accounting treatment of the same. In view of the above, the Scheme is incomplete and the manner and scope of Demerger is not available for examination.*

(ii) Explanation to Paragraph 1.5 of the Scheme states that whether any particular asset or liability pertains or does not pertain to the Demerged Undertaking or whether it arises out of the activities or operations of the Demerged Undertaking shall be decided by mutual agreement between the Board of Directors of QGS India and QBS Solutions.

As this does not specify Assets and Liabilities of the Demerged Company which shall be transferred upon sanction of the scheme, the Petitioner may be directed to delete the same from the Scheme and clearly state the Assets and Liabilities being transferred in accordance with a valuation done by an Independent Valuer in this regard.

(iii) Paragraph 4.12 of the Scheme states that statutory benefits including in respect of Income-tax (including and not limited to advance income tax and tax deducted at source), excise (including Modvat/Cenvat). Customs, VAT, sales tax etc. relating to the QGS FPO Business to which QGS India is entitled to shall be available to and be vested in QGS India. In the scheme the extent of such statutory liabilities relating to the QGS FPO Business is not specified. Comments regarding the same may be called from the respective Regulatory Authorities, viz, Income Tax, Service Tax, Customs Authorities, etc.

10.1 That the deponent states that the Petitioner Companies in their further clarification dated

07.04.2016 have, inter alia, stated that as the restructuring is within the subsidiary and the holding company and the assets are transferred at the book values as per the accounting treatment provided in clause 10 of the Scheme, there is no requirement for the petitioner companies to obtain valuation report for the transfer of the assets and liabilities relating to the QGS FPO Business to QBS Solutions India. Further, there will be no loss of economic interest in the hands of shareholders of QGS India. Copy of reply dated 07.04.2016 as marked is Exhibit-E for kind perusal of the Hon'ble Court.

In response to the observations made by the Regional Director, an affidavit dated 23.4.2016 by Amitabh Johri, authorised signatory of both the petitioner-companies as mentioned in their respective Board Resolutions, has been filed in which following explanations/averments have been made:

"1. That it is submitted that Para 1 to Para 8.3, Para 8.5, Para 10.1 to 11 are only observations as given in the Affidavit submitted by the Regional Director and therefore, does not require any comment.

2. That as far as the observations raised in Para 8.4 of the Affidavit of the Regional Director is concerned, it is submitted that:

The Petitioner Company has obtained certificate from the Statutory Auditors which states that the accounting treatment provided in the clause 10 of the Scheme is outside the purview of the Accounting Standards as specified under Section 133 of the Companies Act, 2013, read with Rule 7 of the Companies (Accounts) Rules, 2014 and the accounting treatment as provided in the Scheme is in conformity with the Generally Accepted Accounting Principles.

The certificate from the statutory auditors is attached herewith as "Annexure-1"

3. That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with additional report of the Registrar of Companies is concerned, it is submitted that :

3.1 The observation raised by Regional Director is as under:

"The Scheme of arrangement envisages the demerged of QGS FPO Business from Quatrro Global Services P. Ltd to Quatrro Business Support Solutions P. Ltd..

It is to be noted that there is no Valuation Report along with the Scheme which has assessed the value of the said Business, states the corresponding Assets and Liabilities which shall stand transferred and enumerates the accounting treatment of the same. In view of the above, the Scheme is incomplete and the manner and scope of Demerger is not available for examination."

That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with the observations raised in Para 1 of additional report of the Registrar of Companies is concerned, it is submitted that:

a) The Scheme provides for demerger of QGS FPO Business of QGS India into QBS Solutions India.

b) The Shareholding pattern of the QBS Solution India is as under:

Sr.No.	*Name of Shareholder*	*Number of Shares held*	*% of shares held*
1	*Quatrro Global Services Pvt. Ltd. (QGS India)*	*99,999*	*99.99*
2	*Vikas Talwar (Nominee of QGS*	*1*	*0.001*

	India)		
	Total	*100,000*	*100*

c) *The entire share capital of QBS Solution India is directly held by QGS India. The shareholders of QGS India hold business of QBS Solution India via QGS India. The restructuring is within the subsidiary (QBS Solutions India) and the holding company (QGS India).*

d) *Pursuant to demerger of undertaking as mentioned in Clause 9 of the Scheme from QGS India to QBS Solutions India, the shares shall be issued to the shareholders of the QGS India such that the shareholders of QGS India become the shareholders of QBS Solutions India in the same proportion in which they were holding shares in QGS India.*

e) *The object of the Scheme is to allow the shareholders of QGS India to own the shares of QBS Solutions India directly rather than indirectly through QGS India. Thus, the purchase consideration is being issued directly to the shareholders of QGS India pursuant to the Scheme which has been approved by the Board of Directors vide the Board Resolution dated December 1, 2015. The clause 9, 10 and 11 of the RoC report also acknowledges the fact that the consent of the creditors and members of the Demerged Company and the Resulting Company were obtained.*

f) *The Petitioner Company has obtained a fairness/valuation report for* *issuance of shares pursuant to demerger. Further, the Petitioner Company has already submitted valuation report to the office of RD in Annexure C vide letter dated February 15, 2016. As per valuation report following share exchange ratio is fair and reasonable:*

"1 (One) fully paid up equity share of face value of Re 1 (Rupee One Only) each in QBS Solutions India shall be issued and allotted for every 100 (One Hundred) equity shares held in QGS India"

g) *The Petitioner Company further submits that pursuant to the scheme of demerger, QGS India shall transfer all the assets and liabilities relating to the QGS FPO Business to QBS Solutions India at their respective book values.*

h) *As mentioned above, as the restructuring is within the subsidiary and the holding company and the assets are transferred at the book values as per the accounting treatment provided in clause 10 of the Scheme, there is no requirement for the petitioner companies to obtain valuation report for the transfer of assets and liabilities relating to the QGS FPO Business to QBS Solutions India. Further, there will be no loss of economic interest in the hands of shareholders of QGS India and the share exchange ratio as per valuation report is determined on "relative values" rather than the "absolute values.*

i) *Further the clause 6.2 of the fairness opinion/ valuation report mentions that:*

- *"Upon the draft Scheme becoming effective, the shareholders of QGS India would be entitled to the same proportion of shares of QBS Solutions India which they currently own directly in QGS India. The swap ratio would not have any impact on the ultimate value of the shareholder of QGS India and the proposed demerger of QGS FPO Business from QGS India into QBS Solutions India will be value neutral to the shareholders of QGS India.*
- *The swap ratio and the number of shares to be allotted pursuant to demerger is of no relevance since there will be no loss of economic interest in the hands of shareholders of QGS India. Accordingly, for the purpose of recommending a swap ratio, we are not attempting to arrive at the absolute values of shares of each company. Our exercise is to work out relative values of shares.*
- *Thus, in determining the share swap ratio, we have chosen the methodology, which would fairly state the "relative values" of the shares rather than the "absolute values".*
- *In the light of the above and on a consideration of all the relevant factors and circumstances as discussed and outlined hereinabove earlier in this report, in our opinion, we believe that the following share*

exchange ratio as decided by the Board of Directors for the proposed demerger is fair and reasonable."

j) Further, from the various judgments, the position in law is well settled that once the exchange ratio of the shares to be allotted to the shareholders has been worked out by a recognised firm of chartered accountants who are experts in the field of valuation and the same has been accepted by the Board of Directors and the shareholders of both the companies, the Court is not required to substitute its exchange ratio, especially when the same has been accepted by the overwhelming majority of the shareholders of the two companies. The various Courts judgments which have held are Miheer H. Mafatlal vs Mafatlal Industries Ltd (AIR 1997 SC 506), Reliance Petroleum Vs. Unknown, [2003] 46 Comp. SLC 38 GUJ, EITA India Ltd. Re, AIR 1997 Cal 208,.

k) Further, the Petitioner Company had obtained Valuation Report and is attached herewith as "Annexure 2"

3.2 The observation raised by the Regional Director is as under:

"Explanation to Paragraph 1.5 of the Schemes states that whether any particular assets or liability pertains or does not pertain to the Demerged Undertaking or whether it arises out of the activities or operations of the Demerged Undertaking shall be decided by mutual agreement between

the Board of Directors of QGS India and QBS Solutions.

As this does not specify Assets and Liabilities of the Demerged Company which shall be transferred upon sanction of the Scheme the Petitioner may be directed to delete the same from the Scheme and clearly state the Assets and liabilities being transferred in accordance with a valuation done by an Independent Valuer in this regard"

That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with the observations raised in Para 3 of the additional report of the Registrar of Companies is concerned, it is submitted that:

a) The Scheme provides for demerger of entire QGS FPO Business of QGS India into QBS Solutions India, which includes all assets and liabilities of QGS FPO Business.

b) The Paragraph 1.5 of the Scheme read as under:

"1.5 "QGS FPO Business" or "the Demerged Undertaking" shall mean the Financial Process Outsourcing business division of QGS India along with all the assets, interests, liabilities, employees, approvals, licenses, contracts, business, track record, activities and operations and rights and powers pertaining or related to such QGS FPO

Business, in particular including the following:

a) all assets (along with related investments) wherever situated, tangible or intangible, including all current assets, deposits including accrued interest, loans and advances together with all present and future liabilities (including contingent liabilities) appertaining or relatable thereto;

b) all the liabilities, including contingent liabilities, present or future, which arise out of the activities or operations relating to the QGS FPO Business;

c) the specific loans and borrowings raised, incurred and utilized solely for the activities or operations of or pertaining to the QGS FPO Business;

d) liabilities, other than those referred to in sub- clauses (b) and (c) above, being the amounts of general or multipurpose borrowings of QGS India, allocated to the QGS FPO Business in the same proportion in which the value of the assets (ignoring the revalued amount) transferred in the demerger under this Scheme bear to the total value of the assets of

QGS India immediately before giving effect to this Scheme; (the liabilities in (b), (c) and (d) above are collectively referred to as the "Assumed Liabilities")

e) any and all intellectual property rights, know-how and confidential information pertaining to or used in connection with the QGS FPO Business which is owned by or licensed to QGS India, including but not limited to, patent, designs, trademarks, service marks, trade dress, copyrights, moral rights, brands and domain names, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

f) any and all permits, rights, entitlements, allotments, approvals, consents, concessions, exemptions, liberties, advantages, no-objection certificates, certifications, registrations, trade names, trademarks, service marks, copyrights, domain *names, easements, goodwill, licences, tenancies, offices, sales tax credits, income tax credits, privileges and benefits of all contracts, agreements, and all other rights including lease rights, licences, powers and facilities of every kind and description whatsoever pertaining to the said Demerged Undertaking;*

g) *any and all earnest monies and/or security deposits, payment against warrants or other entitlements in connection with or relating to the said Demerged Undertaking;*

h) *all employees employed by QGS India pertaining to the Demerged Undertaking as on the Effective Date;*

i) *any and all debts, borrowings, guarantees, assurances, commitments, obligations and liabilities, whether fixed, contingent or absolute, asserted or unasserted, present or future, whether secured or unsecured, pertaining to the said Demerged Undertaking;*

j) *all books, records, files, papers, directly or indirectly relating to the Demerged Undertaking;*

k) *any other asset / liability which is deemed to be pertaining to the Demerged Undertaking by the Board of QGS India but* *excluding any of the foregoing relating to the Remaining Business of QGS India.*

Explanation: Whether any particular asset or liability, pertains or does not pertain to the Demerged Undertaking or whether it arises out of the activities or operations of the Demerged Undertaking shall be decided by mutual agreement between the Board of Directors of QGS India and QBS Solutions India"

c) *It is evident from above that all assets and liabilities related to the undertaking shall be transferred to QGS India pursuant to Scheme. The explanation to clause 1.5 of the Scheme enables the Board of Directors of the demerged company (QGS India) and resulting company (QBS Solutions India) to decide on whether a particular asset or liability needs to be transferred or retained. For eg: There could be intra group transactions between the demerged undertaking and resulting company which are required to be cancelled pursuant to demerger. The indicative list of assets and liabilities related to QGS FPO Business Undertaking being transferred to QBS Solutions India are already* *provided in Annexure A to the Scheme.*

d) *Further, we humbly request the Honorable High Court that as the Scheme is between the entities of the same group and it does not result into any value loss to any of the petitioner companies and/or its shareholders, the explanation to clause 1.5 to the Scheme should be retained.*

3.3 The observation raised by the Regional Director is as under:

"Paragraph 4.12 of the Scheme states that statutory benefits including in respect of income-tax (including and not limited to advance income tax and tax deducted at source), excise (including Modvat/ Cenvat). Customs, VAT, sales tax etc. relating to the QGS FPO Business to which QGS India is entitled to shall be available to and be vested in QGS India. In the scheme the extent of such statutory liabilities relating to the QGS FPO Business is not specified. Comments regarding the same may be called for from the respective Regulatory Authorities, viz, Income Tax, Service Tax , Customs Authorities etc."

That as far as the observations raised in Para 9 of the Affidavit of the Regional Director read with the observations raised in Para 4 of additional report of the Registrar of Companies is concerned, it is submitted that:

a) *With respect to above observation, we submit that, as stated above, the Scheme provides for transfer of all the Assets and liabilities of the QGS FPO Business from QGS India to QBS Solutions India not limiting the same to the statutory benefits but also the liabilities of the QGS FPO Business.*

b) *The Paragraph 4.12 of the Scheme read as under:*

"4.12 Upon the coming into effect of this Scheme and with effect from the Demerger Appointed Date, all existing and future incentives, un-availed credits and exemptions, benefit of carried forward losses and other statutory benefits, including in respect of income tax (including and not limited to advance income tax and taxes deducted at source), excise (including Modvat / Cenvat), customs, VAT, sales tax, service tax etc relating to the QGS FPO Business to which QGS India is entitled to shall be available to and vest in QBS Solutions India. QGS India and QBS Solutions India shall be entitled, wherever necessary, to revise their returns filed under various laws, as may be applicable, including returns filed under the Income Tax, Wealth Tax, Commercial Tax/ Trade Tax/ Sales Tax/ VAT, Entry Tax, Central Excise laws,

and also, without limitation, the TDS/TCS certificates".

c) *Currently based on the General Circular No.1/2014,F.No.2/2014 dated 15th January, 2014 issued by Ministry of Corporate Affairs, Government of India, the Regional Director is required to send notices only to the Income tax Department. There is currently no provision under the law to send notices to other authorities such as Customs, Service Tax Authorities, etc.*

d) *Further, the office of the Regional Director till date the date of RD Affidavit has not received any observation/ comments from the Income Tax Authorities.*

e) *Further, the Demerged Company (QGS India) and Resulting Company (QBS Solutions India) undertakes to transfer all such statutory benefits / payments / liabilities related to the QGS FPO Business undertaking subject to the provisions of the respective statutes and also undertakes to discharge all the statutory liabilities as and when they become due in the normal course of business viz, Income Tax, Service Tax, Custom Authorities, etc. Further, the petitioner companies wish to submit that there are no overdue payments to any of the authorities as of date."*

The above-stated explanations submitted by Amitabh Johri meets the queries raised by the Regional Director.

It is further submitted by counsel for the petitioner-Companies that no investigation proceedings against the petitioner-Companies are pending under Sections 235 to 251 of the Act.

For the reasons mentioned hereinabove, on the consideration of all the relevant facts, the procedural requirements contemplated under Sections 391 & 394 of the Act, the relevant Rules and on due consideration of the report of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, the Scheme of Arrangement is hereby sanctioned and as a result thereof, the assets and liabilities of the "FPO Business" of Quatrro Global Services Private Limited (Petitioner Company No.1) shall stand vested in the Quatrro Business Support Solutions Private Limited (Petitioner Company No.II).

The Scheme shall be binding on the Quatrro Global Services Private Limited (Petitioner Company No.1) and Quatrro Business Support Solutions Private Limited (Petitioner Company No.II), their respective Equity Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

A notice of the order be published in the newspapers, namely, "Financial Express" (English), "Jansatta" (Hindi) both

Delhi/NCR Edition and in the Official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

09.05.2016
Vivek