IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.31 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

Scope e-Knowledge 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 petitioners.

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 "KPO Business" of Quatrro Global Services Private Limited (Petitioner Company No.1) shall demerge into Scope e-Knowledge Solutions Private Limited (Petitioner Company No.II).

The main objects of the Quatrro Global Services Private Limited (Petitioner Company No.1) and Scope e-Knowledge 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 Scope e-Knowledge 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 Scope e-Knowledge 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.220 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 of the Scope e-Knowledge Solutions Private Limited (Petitioner Company No.II) were dispensed with. However, meeting of Equity Shareholder 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.220 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 Government of Haryana besides being uploaded on the official website of the Official Liquidator.

Pursuant thereof, 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 have stated that 5 foreign shareholders holds 140,04,12,259 shares representing 77.009% stake of paid up share capital of QGS India. Upon Scheme becoming effective foreign/non-residents will continue to hold 77.009% stake in QGS India. Further there is no foreign/non-resident shareholder in Scope Solution India. It is further stated by the petitioner companies that 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 Scope Solution India. The aforesaid investment is under automatic route as per Foreign Direct Investment Policy of Reserve Bank of India.*
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> *8.2 That the Deponent states that the Petitioner Companies vide para No.21 of their reply have 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.*
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> *8.3 That the Deponent states that the Petitioner Companies vide para no.22 of the reply*

have 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 states that AS-14 is not applicable on demerger of QGS KPO Business from Quatrro Global Services Private Limited into Scope e-Knowledge Solutions Private Limited (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.

9. That the deponent states that the Registrar of Companies vide para 25 of the report has stated that it has been mentioned in para 12 of the proposed Scheme inter alia that upon sanction of the Scheme, the name of the Resulting Company shall automatically stand changed without any further act or deed from Scope e-knowledge Solutions Private Limited to Scope e-Knowledge Centre Private Limited. In this regard, it is submitted that the concerned company may be directed to comply with the relevant provisions of the Companies Act, 2013 and Guidelines issued by the Ministry from time to time.

10.1 That the deponent states that the Registrar of Companies vide para 31 of the report has made following observations:

(i) The Scheme of arrangement envisages the demerger of QGS KPO Business Global Services P. Ltd. into Scope e-knowledge Solutions Private Limited. It is to be noted that there is no Valuation Report along with the Scheme assessing

the value of the said Business, states the corresponding Liabilities which shall stand transferred and enumerates the account of the same. In view of the above, unless the Valuation report is available, 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 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 (Demerged Company) and Scope Solutions India (Resulting Company.) 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, sales tax etc. relating to the QGS KPO 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 KPO 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."*

In response to the observations made by the Regional Director, an affidavit dated 23.4.2016 of 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 9, Para 11.1 to Para 12 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 10.1 of the Affidavit of the Regional Director read with Clause 31 of the report of the Registrar of Companies is concerned, it is submitted that :

3.1 The observation of Regional Director is as under:

"The Scheme Scheme of arrangement envisages the demerger of QGS KPO Business of Quatrro Global Services P. Ltd into Scope e- Knowledge 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, unless Valuation Report is available with the Regional Director, 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 10.1 of the Affidavit of the Regional Director read with the observations raised in Para 1 of clause 31 of the report of the Registrar of Companies is concerned, it is submitted that:

a) The Scheme provides for demerger of QGS KPO Business Undertaking of QGS India into Scope Solutions India.

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

Sr.No.	Name of Shareholder	Number of Shares held	% of shares held
1	Scope e-Knowledge Center Private Limited (Scope India - wholly owned subsidiary of QGS India	99,999	99.99
2	Vikas Talwar (Nominee of 1 0.001 Scope India)	1	00.01
	Total	100,000	100

c) The entire share capital of Scope Solution India is indirectly held by QGS India. The shareholders of QGS India hold business of Scope Solution India via Scope e-Knowledge Center Private Limited (a wholly owned subsidiary of QGS India). The *restructuring is within the subsidiary (Scope Solution 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 Scope 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 Scope 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 Scope 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. Further, the creditors and members of both the Petitioner Companies involved in the Scheme have given their consent to the scheme. 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 Scope 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 KPO Business to Scope Solutions India at their respective book values. The Petitioner Company further states that indicative/provisional Balance sheet attached as Annexure A to the Scheme provides an indication of assets and liabilities related to QGS KPO Business getting transferred to QGS India at book values pursuant to Scheme.

h) As mentioned above, as the restructuring is within the subsidiary and the holding company and the assets and liabilities 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 KPO Business Undertaking to Scope 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 7.2 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 Scope 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 KPO Business from QGS India into Scope 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". This does not in any way change the economic interest at the shareholders level.*

- *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 all 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 of 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 (Demerged Company) and Scope Solutions India (Resulting Company).

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 10.1 of the Affidavit of the Regional Director read with the observations raised in Para 3 of clause 31 the report of the Registrar of Companies is concerned, it is submitted that:

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

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

"1.5 "QGS KPO Business" or "the Demerged Undertaking" shall mean the Knowledge Process Outsourcing business division (i.e. intellectual and patents

analytics business and related business) of Quatrro Global Services Private Limited 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 KPO 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 KPO Business;

c) the specific loans and borrowings raised, incurred and utilized solely for the activities or operations of or pertaining to the QGS KPO 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 KPO 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 KPO 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 Scope 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 (Scope 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 KPO Business Undertaking being transferred to Scope 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 of 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 KPO 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 KPO 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 10.1 of the Affidavit of the Regional Director read with the observations raised in Para 4 of clause 31 the report of the Registrar of Companies is concerned, it is submitted that:

a) As stated above, the Scheme provides for transfer of all the Assets and liabilities of the QGS KPO Business undertaking from QGS India to Scope Solutions India not limiting the same to the statutory benefits but also the liabilities of the QGS KPO Business.

b) The clause 4.12 of the Scheme read as under:

"Upon the coming into effect of this Scheme and with effect from the Demerger Appointed Date, all existing and future incentives, unavailed 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 KPO Business to which QGS India is entitled to shall be available to and vest in Scope Solutions India. QGS India and Scope 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 has not received any observation/ comments from the Income Tax Authorities.*

e) *Further, the Demerged Company (QGS India) and Resulting Company (Scope Solutions India) undertakes to transfer all such statutory benefits / payments / liabilities related to the QGS KPO 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, authorised signatory of both the petitioner-companies, meet the queries/observations raised by the Regional Director.

It is further submitted by counsel for the Petitioner-Companies that no investigation proceedings are pending against the Petitioner-Companies 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 "KPO Business" of Quatrro Global Services Private Limited (Petitioner Company No.1) shall stand vested in the Scope e-Knowledge Solutions Private Limited (Petitioner Company No.II).

The Scheme shall be binding on the Quatrro Global Services Private Limited (Petitioner Company No.1) and Scope e-Knowledge 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