

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on:08.12.2016
Judgment pronounced on:19.12.2016

CO.PET. 654/2016

IN THE MATTER OF:-

GIESECKE & DEVRIENT INDIA PRIVATE LIMITED

...Petitioner/Demerged Company

AND

GIESECKE & DEVRIENT MS INDIA PRIVATE LIMITED

...Petitioner/Resulting Company

Through: Mr. R. Jawahar Lal and Mr.
Sanjeev Jain, Advocates for the
Petitioners.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. This joint Petition filed has been filed under Sections 391(1), 393 and 394 read with Sections 100 to 103 of the Companies Act, 1956 (hereinafter referred to as the 'Act') by the Petitioners seeking sanction of this Court to the proposed Scheme of Arrangement and Demerger (hereinafter referred to

as the 'proposed scheme') between Giesecke & Devrient India Private Limited (hereinafter referred to as the 'Demerged Company') and Giesecke & Devrient MS India Private Limited (hereinafter referred to as the 'Resulting Company').

2. The registered offices of the Petitioners are situated at National Capital Territory of Delhi and therefore, this Court has the necessary jurisdiction to adjudicate the present petition.

3. The Demerged Company was originally incorporated under the Act, on 21.06.2001, with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Giesecke & Devrient (India) Private Limited. Thereafter, the Demerged Company shifted its registered office from the State of Maharashtra to NCT of Delhi and obtained a certificate, dated 22.06.2004, in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi. Thereafter, the Demerged Company changed its name to its present name and obtained a fresh certificate of incorporation dated 05.08.2005, in this regard.

4. The present authorized share capital of the Demerged Company is Rs.3,10,00,000/- divided into 3,10,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the Demerged Company is Rs.2,16,16,000/- divided into 2,16,160 equity shares of Rs.100/- each.

5. The Resulting Company was incorporated under the Companies Act, 2013, on 17.03.2016 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.

6. The present authorized share capital of the Resulting Company is Rs.3,10,00,000/- divided into 3,10,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the Resulting Company is Rs.1,00,000/- divided into 1,000 equity shares of Rs. 100/- each.

7. Copies of the Memorandum and Articles of Association of the Petitioners have been filed on record with the joint application, being Company Application (M) no.70 of 2016, earlier filed by the Petitioners. The audited financial statements, as on 31.03.2015, of the Demerged Company alongwith the report of the auditors, have also been duly filed. The same are on record. It has been submitted on behalf of the Petitioners, that since the Resulting Company has been recently incorporated, therefore, its accounts have not been audited and a copy of the unaudited accounts of the Resulting Company, as on 31.03.2016, have been placed on record.

8. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and detailed out in the present petition. It has been submitted on behalf of the Petitioners that the proposed scheme, *inter alia*, provides for demerger of the Mobile Security Business of

the Demerged Company and its merger into the Resulting Company. It is claimed that the proposed demerger would provide focused attention for growth of the Mobile Security Business and attract required investments for growing that business. It is further claimed that the proposed scheme is expected to bring in greater business focus and enhance shareholders' value.

9. So far as the share exchange ratio is concerned, the proposed scheme provides that, upon coming into effect of the proposed scheme, the Resulting Company shall issue and allot equity shares to the shareholders of the Demerged Company in the following ratio:

"01 equity share of Rs.100/- each of the Resulting Company, credited as fully paid up, for every 01 equity share of Rs.100/- each held in the Demerged Company."

10. It has been averred on behalf of the Petitioners that there are no proceedings pending against them, as on the date of filing of the present petition, under Sections 235 to 251 of the Act (including their corresponding sections of the Companies Act, 2013).

11. The Board of Directors of the Petitioners in their separate meetings held on 22.03.2016, have unanimously approved the proposed scheme. Copies of the resolutions passed at the meetings of the Board of Directors of the Petitioners have been placed on record.

12. To recapitulate, the Petitioners had in the earlier round filed Company Application (M) no.70 of 2016, whereby a prayer was sought to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and, if thought fit, approve, with or without modification, the proposed scheme. This Court, vide order dated 19.07.2016, allowed the said application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the Petitioners.

13. The Petitioners have thereafter filed the present petition, seeking sanction to the proposed scheme. Vide order dated 03.08.2016, notice in the present petition was directed to be issued to the Regional Director, Northern Region. Furthermore, citations were directed to be published in the Delhi Edition of the newspapers, namely, “Statesman” (English) and in “Jansatta” (Hindi). Affidavit of service and publication, dated 20.09.2016, has been filed by the Petitioners, showing compliance regarding service on the Regional Director and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper clippings, regarding publication carried out on 13.09.2016 have also been filed alongwith the said affidavit.

14. In response to the notices issued in the present petition, Mr. Narendra Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate

Affairs has filed his report by way of affidavit, dated 01.12.2016, not raising any objection to the proposed scheme. However, the Regional Director has stated therein that a valuation report with respect to how the 'Mobile Security Business' of the Demerged Company is being segregated from their 'Bank Note Business', carried out in pursuance of the Reserve Bank of India's 'Clean Note Policy', has not been furnished. In this behalf, it is stated therein that the Regional Director is seeking comments of the Reserve Bank of India. Further, by way of said affidavit dated 01.12.2016, it is prayed for by the Regional Director that the Petitioners may be directed to furnish their post demerger financial statements.

15. In response to the aforementioned observations of the Regional Director, the Demerged Company has filed a rejoinder by way of an affidavit, dated 03.12.2016, of Mr. Ujjwal Chakraborty. It has been stated in the said affidavit dated 03.12.2016 that, the 'Bank Note Business' of the Demerged Company is only related to trading of Currency Verification and Processing Systems ("CVPS") and annual maintenance thereof, and is not related to the handling of currency notes. It is further stated that, the business of trading in such CVPS machines is freely permissible, and does not require any prior approval and/or is not a restricted activity by the Reserve Bank of India. It is further stated that, by way of proposed scheme, demerger is only being sought of the 'Mobile

Banking Business’ of the Demerged Company and not the ‘Bank Note Business’ thereof, which will not be affected in any manner whatsoever, and that the valuation report with respect to the segregation of the same has already been filed by the Petitioners with the Regional Director as part of the Petitioner’s response to Regional Director’s letter no.6/137/T-1/2016/5130, dated 29.09.2016. The Petitioners have also filed their provisional post demerger financial statements as Annexure-3 to the said affidavit dated 03.12.2016. In view of the aforesaid, the observations made by the Regional Director stands satisfied.

16. No objection has been received to the proposed scheme from any other party. The Petitioners, vide separate affidavits dated 07.12.2016, have submitted that no objection has been received to the proposed scheme, pursuant to the citations published in the newspapers on 13.09.2016.

17. Considering the approval accorded by the equity shareholders and creditors of the Petitioners to the proposed scheme and the affidavit filed by the Regional Director, Northern Region not raising any objection to the proposed scheme, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme. The Petitioners will comply with the statutory requirements in accordance with law. Upon the sanction becoming effective from the appointed

date of the proposed scheme i.e. 01.04.2016, the Demerged Undertaking (as defined in the proposed scheme) of the Demerged Company shall stand merged in the Resulting Company.

18. A certified copy of the order, sanctioning the proposed scheme, be filed with the ROC within 30 days from the date of receipt of the same.

19. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the sanction granted by this Court to the scheme will not come in the way of action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the Petitioners.

20. It is made clear, that this order shall not be construed as an order granting exemption, inter alia, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

21. The representative of the Regional Director, Northern Region prays that costs of at least Rs.1,00,000/- should be paid by the Petitioners keeping in view the fact that the matter has involved examination of extensive records. Learned counsel for the Petitioners states that the same is acceptable to him. The Petitioners shall deposit a sum of Rs.1,00,000/- by way of costs, in the Delhi

High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

22. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

SIDDHARTH MRIDUL, J

DECEMBER 19, 2016

ap/dn

