

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 13.01.2016

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Judgement delivered on: 03.02.2016

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CO.PET. 405/2015

NTT DATA GLOBAL DELIVERY SERVICES

PRIVATE LIMITED

.... Petitioner/ Transferee Company

WITH

NTT DATA OPTIMAL INDIA DELIVERY SERVICES

PRIVATE LIMITED

... Non-Petitioner/Transferor

Company

Through: Mr. Mukesh Sukhija, Advocate.

Through: Ms Aparna Mudiam, Asstt. ROC.

Mr Rajiv Behl, Adv. for the OL.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed by NTT Data Global Delivery Services Private Limited (i.e. the petitioner company) under Section 391 and 394 of the Companies Act, 1956 (hereafter referred to as the Act) for approval of the scheme of amalgamation (hereafter referred to as the scheme) with NTT Data Optimal India Delivery Services Private Limited (i.e. transferor company).

1.1 The registered office of the petitioner company is located within the territorial jurisdiction of this court. The registered office of the transferor company is located at Bangalore, within the jurisdiction of the High court of Karnataka.

1.2 The details with respect to incorporation and the petitioner's authorised, issued, subscribed and paid up capital have been set out in the petition.

1.3 The petitioner company was originally incorporated on 19.07.1989, under the name and style : Sriven Computer Solutions Private Limited. However, with effect from 01.07.1997, it got converted into a public company, and was, thus, known as Sriven Computer Solutions Limited.

1.4 Evidently, the petitioner company changed its name on four occasions after obtaining due approvals, before it acquired the current name. The details with respect to the same are as follows :-

S.No.	Existing name	Changed Name	Date
1.	Sriven Computer Solutions Limited	Metamor Global Solutions Limited	30.09.1997
2.	Metamor Global Solutions Limited	PSINet Consulting Solutions (India) Limited	22.11.2000
3.	PSINet Consulting Solutions (India) Limited	Signaltree Solutions (India) Limited	29.03.2001
4.	Signaltree Solutions (India) Limited	Keane India Limited	21.03.2002
5.	Keane India Limited	NTT Data Global Delivery Services Limited	27.01.2012

1.5 Thereafter, the petitioner company converted into a private limited company and a fresh Certificate of Incorporation dated 23.02.2015 was issued by the Registrar of Companies, NCT of Delhi and Haryana (in short, ROC). Thus, with effect from 23.02.2015 the petitioner company got converted into a private limited company and its name was changed to its present name viz., NTT Data Global Delivery Services Private Limited.

2. The transferor company, on the other hand, was incorporated on

25.09.2002, under the name and style : Optimal Solutions Integration (Software) Private Limited.

2.1 On 12.05.2014, the transferor company's name was changed, after obtaining due approvals of the concerned Registrar of Companies, to its present name i.e. NTT Data Optimal India Delivery Services Private Limited.

3. The copies of Memorandum and Articles of Association, as well as, the profit and loss account and the balance sheet as on 31.03.2014, have been filed by the petitioner company.

4. Copy of the Board of Directors' resolution dated 24.03.2015, concerning the petitioner company, whereby, the scheme has been approved, has also been filed with the petition.

5. The petitioner company has averred that there are no proceedings pending against it, under Sections 235 to 251 of the Act.

6. To recapitulate, the petitioner company had, in the earlier round filed a petition (i.e. the first motion), being: CA(M) No.93/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of only the shareholders and secured creditors, as it did not have any unsecured creditors. This court vide order dated 25.05.2015, having regard to the fact that all the shareholders and all the secured creditors of the petitioner company had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

7. The petitioner company, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 06.07.2015. Notices were accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL). Furthermore, citations were ordered to be

published. Accordingly, citations were published in the Delhi Editions of Business Standard (English) and Veer Arjun (Hindi), on 14.11.2015.

7.1 An affidavit dated 09.12.2015 demonstrating service of the petition on the RD and establishing publication of citation alongwith the newspaper extracts, was filed by the petitioner company.

8. Pursuant thereto, the RD filed its affidavit/report under Section 394 A of the 1956 Act. In the affidavit/report, the RD relied upon the general circular bearing no. 53/2011, dated 26.07.2011 and the circular bearing no. 1/2014, dated 15.01.2014. Based on the directions contained in the said, circulars, the RD, sent communications to the ROC and the Income Tax Department (I.T. Department) seeking their response to the scheme.

8.1 The affidavit/report of the RD adverts to the fact that it received information from the I.T. Department vide communication dated 11.09.2015 that there is a FBT demand, in the sum of Rs.1,63,825/-, for the assessment year 2006-2007, and similarly, a demand of Rs.909/- for the assessment year 2007-2008 qua the transferor company. Furthermore, it appears that the I.T. Department has also communicated to the RD that proceedings under Section 143(3) of the Income Tax Act, 1961 (in short the 1961 Act) are also pending qua the transferor company in respect of assessment years 2013-2014 and 2014-2015.

8.2 The RD, evidently, has also received information from the ROC vide communique dated 08.12.2015 which, inter alia, is indicative of the fact that the said authority has not received any complaint or objection from the shareholders, creditors, or any of the other stakeholders of either the petitioner company or the transferor company.

8.3 The ROC , on its part has indicated that the petitioner company should fulfil the formalities under sub regulation (c) of Regulation 7 of

the Foreign Exchange Management Act (Transfer or issue of security by a person resident outside India) Regulations 2000 [in short, the FEMA Regulations, 2000] and those prescribed in Form FC GPR. An averment has also been made by the ROC in its affidavit/report about compliances been made with the Reserve Bank of India (RBI) in consonance with the terms and conditions of the scheme.

8.4 This observation has been made in the background of the fact that under clause 5 of the scheme, each member of the transferor company is entitled to one (1) fully paid equity share of a face value of Rs.10 each in the petitioner company against 3390 equity shares of the face value of Rs.10/- in the transferor company.

8.5 Having regard to the nature of the business of the petitioner company and the transferor company, Foreign Direct Investment (FDI) to the extent of 100% is permissible under the automatic route. The ROC, thus, made the aforesaid observations with regard to the need to comply with the provision of Regulation 7 (c) of the FEMA Regulations, 2000 in view of the Non-Resident shareholders of the petitioner company being issued shares.

8.6 Furthermore, the ROC has averred based on the balance sheets of the financial year 2013-2014 and the auditors report appended thereto that there is, prima facie, no violation of the provisions of Section 295-297 of the Act either by the petitioner company or the transferor company.

8.7 The petitioner company in its rejoinder to the reports of the RD/ROC has accepted the fact that it is involved in the business of information technology enabled services, and therefore, it is allowed 100% FDI, under the automatic route. Furthermore, the petitioner company in its rejoinder has reiterated the assertions made in paragraph

5.3 of the scheme, which is that, on approval of the scheme, it shall comply with the provisions of the FEMA Regulations, 2000.

8.8 The petitioner company has also taken a stand in its pleadings that, in consonance with clause 6 of the scheme, it shall, follow the pooling of interest method to account for amalgamation as per Accounting Standard (A.S.) 14 as notified by the Government of India (GOI) under Section 133 of the Companies Act, 2013 (2013 Act).

8.9 Therefore, in so far as the RD's affidavit / report is concerned, it is clear that apart from insisting on compliance being made under the FEMA Regulations, 2000, there are no objections taken by it.

9. The OL, similarly has conveyed it has no objections to the scheme. The record shows that the petitioner company and the transferor company are engaged in the field of information technology including computers, software, systems and information technology enabled services sector. The petitioner company vide its letter dated 16.09.2015 has disclosed that its shareholders are Non-Resident entities. However, having regard to the fact that it is in the field of information technology and information technology enabled services, the petitioner company has asserted that 100% FDI under the automatic approval route is available to it. This has been confirmed by the ROC, as noticed above.

10. The petitioner company will thus, comply with all necessary requirements of law in this regard including filings, if any, which are required to be made with the RBI or any other statutory authority. Compliances as indicated in paragraph 5.3 of the scheme shall also be made by the petitioner company. There are, evidently, no other concerns raised by the RD.

10.1 In these circumstances, the concerns of the RD stand liquidated.

11. I may also note that the petitioner company has informed this court that in so far as the transferor company is concerned, the High Court of Karnataka vide order dated 08.09.2015 has already granted approval to the scheme subject to a further approval by this court.

12. To be noted, the scheme in clause 10 provides that all employees of the transferor company in service on the effective date, shall become the employees of the petitioner company on such date without any break or interruption in service and on terms and conditions as to remuneration, not less favorable than those subsisting in the transferor company, as on the said date.

13. Furthermore, as per clause 13 of the scheme, the transferor company shall stand dissolved without being wound up.

14. Accordingly, it is directed that the petitioner company will comply with the all provisions of the scheme and, in particular, those which are referred to hereinabove.

14.1. In any event, notwithstanding what is stated in the scheme, the petitioner company will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the transferor company. It is also made clear, that the Income Tax Authorities will be entitled to proceed against the petitioner company qua any liability which it would have fastened on to the transferor company for the relevant period, and that, which may arise on account of the scheme being sanctioned. This would take care of the demands, if any, which may arise against the transferor company to which reference has been made in paragraph 8.1 above.

14.2 Notwithstanding the above, if there is any deficiency found or, any violation committed of any provisions of the RBI Act and/ or FEMA

Regulations, 2000 or the 1961 Act or any other statute, the sanction granted by this court to the scheme will not come in the way of any of any action being taken in accordance with law, against the concerned persons, directors and officials of the petitioner company.

15. Resultantly, in view of the approval accorded to the scheme by the shareholders and creditors of the petitioner company and, given the fact, that the concerns of the RD, as indicated above, have been duly taken care of, in my opinion, there appears to be no impediment in the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioner company will, however, comply with all statutory requirements, as mandated in law. A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

16. Consequently, in terms of the provisions of Section 391 and 394 of the Act, and in consonance with the scheme, the entire undertaking, properties, rights and powers of the transferor company will stand transferred to and / or vest in the petitioner company without any further act or deed. Similarly, in terms of the scheme, all liabilities, claims and obligations of the transferor company shall stand transferred to the petitioner company without any further act or deed.

16.1 More particularly, upon the scheme coming into effect, the transferor company shall stand dissolved without having to follow the process of winding up.

16.2 It is made clear, that this order will not be construed as an order granting exemption from: payment of stamp duty or, taxes or, other penalties / charges, if any, 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.

17. Resultantly, the petition is allowed and disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 03, 2016

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