

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COMPANY PETITION NO. 2526 OF 2018

In the matter of Companies Act, 2013;

And

In the matter of the Sections 230 to 232 of the
Companies Act, 2013 and other applicable provisions of
the Companies Act, 2013;

And

In the matter of the Scheme of Arrangement
between CWT India Private Limited ("Transferor
Company") and Tixigo Tourism Services (India)
Private Limited ("Transferee Company") and their
respective shareholders.

CWT India Private Limited
CIN: U63040MH1998PTC115025,)
a company incorporated under the Companies Act, 1956 and)
having its registered office at Unit No.2, Raheja Centre,)
Ground Floor, Free Press Journal Marg, Nariman Point,)
Mumbai 400 021, Maharashtra)

.... **First Petitioner (Transferor Company)**

Tixigo Tourism Services (India) Private Limited)
CIN: U63000MH2018FTC307022, a company incorporated)
under the Companies Act, 2013 and having its registered)
office at Unit No.2, Raheja Centre, Ground Floor,)
Free Press Journal Marg, Nariman Point,)
Mumbai 400 021, Maharashtra)

.. **Second Petitioner (Transferee Company)**

Order delivered on: 27th day of September 2018.

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Shailesh Shukla with Arjun Perikal, Advocates i/b J. Sagar & Associates

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard the learned counsel for the parties. No objections have come before this Tribunal to oppose the Scheme and no party has controverted any averments made in the Petition.
2. The Learned Counsel appearing for the Transferor and the Transferee Company state that the Petition has been filed to seek sanction to the Scheme of Arrangement between Transferor Company and Transferee Company and their respective shareholders ('Scheme') pursuant to the provisions of Sections 230 – 232 and other relevant provisions of the Companies Act, 2013. The Transferor Company and the Transferee Company are together referred to as Petitioner Companies.
3. The present Scheme provides for demerger and transfer of operating a global service centre which services the Carlson Wagonlit Travel group ("**GSC Business**"), the Demerged Undertaking of CWT India Private Limited (**Demerged Company** or Transferor Company or the **First Petitioner Company**) to Tixigo Tourism Services (India) Private Limited (**Resulting Company** or Transferee Company or **Second Petitioner Company**) and various other matters consequential to the demerger or otherwise internally connected therewith. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company is engaged in the business of (i) providing travel management services to corporate clients ("**Legacy Business**"); (ii) operating a global service centre which services the Carlson Wagonlit Travel group ("**GSC Business**"); and (iii) certain back office functions ("**Back-office Functions**"). The Second Petitioner Company has been incorporated with the main objects of carrying on business of tourist and travel agents and allied services.
4. The rationale for the Scheme is to achieve the following benefits:
 - i. The separation of the GSC Business, by way of the Scheme, including its business, undertaking and investments from First Petitioner will lead to significant benefits for the Legacy Business,

the Back-office Functions as well as the GSC Business/demerged undertaking, enabling the business activities comprised in all three businesses to be carried out by a separate and independent management with greater focus, attention and specialization for sustained growth. The Demerger will enable First Petitioner to be customer-facing entity offering exclusively customer-facing products and other allied offerings to its customers.

- ii. The Demerger will enable both Petitioners to achieve and fulfil their respective objectives more efficiently and economically, with focused management and utilization of resources and talent, and for administrative convenience.
 - iii. The Scheme does not have any adverse effect on either the shareholders, the employees or the creditors of First Petitioner Company. The financial position of Petitioners shall not be adversely affected by the Scheme. The Petitioners will continue to remain financially stable and be able to meet and pay their debts as and when they arise. The Boards of Directors of Petitioner Companies believe that the Scheme would enure to the benefit of all the stake holders.
5. The Board of Directors of the Petitioner Companies have approved the said Scheme by passing their respective board resolutions, which are annexed to the Petition.
 6. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed by this Tribunal in the Company Scheme Application No. 231 of 2018 and that the above Company Scheme Petition filed in this Tribunal is in consonance with the orders passed in the Company Scheme Application.
 7. The Learned Counsel appearing for the Petitioner Companies has stated that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder. The said undertakings are accepted.

8. The Regional Director has filed his Report dated September 25, 2018, inter alia, stating therein that this Tribunal may consider the observations made at serial no. IV (a) to (g) and pass such other order or orders as deemed fit. The observations made by the Regional Director in paragraph IV (a) to (g) of the Report are, for sake of ready reference, reproduced hereunder:

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- (a) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 must serve notices to concerned authorities which are likely to be affected by Compromise or Arrangement. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
- (b) *In addition to compliance of (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.,*
- (c) *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
- (d) *Petitioner companies have not submitted a copy of the admitted petition along with minutes of the order for the admission of the petition. In this regard, the Petitioner must undertake to submit the same for the record of Regional Director.*
- (e) *As per Clause 1.3 of the Scheme, Appointed Date means April 1, 2018 or such other date as may be approved by the NCLT. References in this Scheme becoming "operative" or "coming into operation" shall mean the Appointed Date. In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.*
- (f) *It is observed that both Demerged Company as well as Resulting Company have foreign/non-resident shareholders. The Resulting Company must observe the FEMA guidelines for allotment of shares to the shareholder of the Transferor Company in Transferee Company.*

(g) Petitioner in the clause 7.1.2 of the scheme has inter alia mentioned that the difference i.e., the excess or shortfall, as the case may be, of the value of transferred assets over the transferred liabilities pertaining to the Demerged Undertaking and demerged from the Demerged Company pursuant to the Scheme shall be adjusted to the reserves of the Demerged Company.

The Deponent prays that the above difference shall be adjusted to the Capital Reserves instead of reserves of the Demerged Company."

9. As regards observation in paragraph IV (a) of the said Report is concerned, the Petitioner Companies through the Learned Counsel submit that the Petitioners had served notice to the concerned authorities which are likely to be affected by compromise or arrangement as provided under section 230 (1) of the Companies Act, 2013. The Petitioners through their counsel undertakes that sanction of the scheme will not deter such authorities to deal with any of the issues arising after giving effect to the scheme and the decision of such authorities shall be binding upon the Petitioners as per law.
10. As regards observation in paragraph IV (b) of the said Report is concerned, the Petitioner Companies through their Counsel undertake to comply with AS 5 (IND AS-8) and other Indian Accounting Standards etc. as applicable.
11. As regards observation in paragraph IV (c) of the said Report is concerned, the Petitioner Companies through their Counsel submit that the Scheme enclosed to the Company Scheme Application and the scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.
12. As regards observation in paragraph IV (d) of the said Report is concerned, the Petitioner Companies through their Counsel undertake to serve a copy of the admitted petition along with minutes of the order for the admission of the Petition upon the Regional Director for their records.
13. As regard observation in paragraph IV (e) of the said Report is concerned, the Counsel for the Petitioner Companies, confirm that in terms of provisions of Section 232(6) of the Companies Act, 2013 the appointed date for the Scheme shall be April 1, 2018.

14. As regard observation in paragraph IV (f) of the said Report is concerned, the Petitioner Companies through their Counsel undertake that the Petitioner Companies shall observe the FEMA guidelines for allotment of shares to the shareholders of the Transferor Company in Transferee Company including foreign/non-resident shareholders.
15. As far as the observation in paragraph IV (g) of the said Report is concerned, the Petitioner Companies through their Learned Counsel undertake to comply with the excess or shortfall, as the case may be, of the value of transferred assets over the transferred liabilities pertaining to the Demerged Undertaking and demerged from the Demerged Undertaking pursuant to the Scheme shall be adjusted to the capital reserves of the Demerged Company.
16. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
17. The Petitioner Companies have further given an undertaking to the Regional Director not to transfer the authorised share capital of the Demerged Company to the Resulting Company in terms of Clause 5 of the Scheme. Accordingly, clause 5 of the scheme shall not be given effect on the scheme becoming effective.
18. 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.
19. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 2526 of 2018 filed by the Petitioner Companies is made absolute in terms of prayer clauses (a) and (b) of that Petition.
20. The Petitioner Companies to lodge certified copy of this order along with the sanctioned Scheme attached thereto with the concerned Collector of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified copy of this order.
21. The respective Petitioner Companies are directed to file a certified copy of this order along with a copy of the sanctioned Scheme, with the concerned Registrar of Companies, electronically, along with e-form INC 28 within 30 days of receipt of certified copy of this order along with the sanctioned Scheme.

22. The Petitioner Companies to individually pay costs of the Company Petition of INR 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
23. All concerned authorities to act on certified copy of this order along with the sanctioned Scheme, duly certified by Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
24. Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modifications that may be necessary.

SD/-

V.NALLASENAPATHY
MEMBER (TECHNICAL)

SD/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)