

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

T.P.NO. 215/2017

IN

CoP.NO. 287/2016

DATED: WEDNESDAY THE 7th DAY OF JUNE 2017

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956 AND OTHER
RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONG WITH THE
COMPANIES ACT, 1956**

AND

**IN THE MATTER OF SECTION 230 TO 232 OF THE COMPANIES ACT, 2013 AND
OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 ALONGWITH
THE COMPANIES ACT, 1956**

**AND IN THE MATTER OF
SCHEME OF ARRANGEMENT**

BETWEEN

GEOSANSAR ADVISORS PRIVATE LIMITED

AND

ATYATI TECHNOLOGIES PRIVATE LIMITED

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

T.P.NO. 215/2017 IN CoP.NO. 287/2016

1. Atyati Technologies Private Limited,
Ground Floor, No.99, Surya Park,
Electronic City Phase -I, Bengaluru
Karnataka-560100 -

PETITIONER/RESULTING COMPANY

- PARTIES PRESENT:**
1. Sh.Uday Shankar R.M., Advocate
UDAY SHANKAR ASSOCIATES,
Fortune Chambers, 1st floor
#8, Lalbagh Road, Richmond Circle
Bengaluru- 560027
Advocates for the Petitioner Company
 2. Ms.Sinchana M.R., Standing Counsel for Central Government
Advocate for the Regional Director

Heard on: 13.02.2017, 30.03.2017, 21.04.2017 and 27.04.2017,

O R D E R

Originally this Petition was filed before the Hon'ble High Court of Karnataka and it was numbered as Co.P. No.287/2016. Subsequently as per Notification No. GSR.1119 (E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said case is transferred to this Tribunal and renumbered as T.P No. 215/2017.

This Company Petition is filed on behalf of the Petitioner Company under Section 391-394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying to order for sanctioning the Scheme of Arrangement of Geosansar Advisors Private Limited (Demerged Company) to demerge its 'Banking Correspondent Services Undertaking' into Atyati Technologies Private Limited (Petitioner/Resulting Company) and shall be binding upon all the Shareholders of the Petitioner Company.

The averments made in the Company Application are briefly described hereunder:-

The Petitioner Company seeks an order for sanctioning the Scheme of Arrangement for the transfer of the 'Banking Correspondent Services Undertaking' of **GEOSANSAR ADVISORS PRIVATE LIMITED** (Demerged Company) into **ATYATI TECHNOLOGIES PRIVATE LIMITED** (Petitioner/Resulting Company). The Scheme of Arrangement is shown as **Annexure A**.

The Petitioner Company was incorporated on 29th March, 2006 as the Private Limited Company under the name, **ATYATI TECHNOLOGIES PRIVATE LIMITED**. The Registered office of the Petitioner Company is situated at Atyati Technologies Private Limited, Ground Floor, No.99, Surya Park, Electronic City Phase -I, Bengaluru Karnataka-560-100.

The Main objects of the Petitioner Company as set out in the Memorandum of Association inter alia, among others are as follows:

- i) To carry on the business of developing, packing, distributing, importing, selling, exporting, leasing, hiring or otherwise dealing in computer hardware, software, computer peripherals, computer parts, spare parts, accessories, data publishing and processing system, computer consumable, electronic communication, data, other automated and CAD devices.

- ii) To act as consultants, agents, advisors, developers and traders in computer programming, system development, system design, system architecture, computer aided designs, system implementation, data compilation and statistical analysis and to carry on the business of traders, developers, assemblers, repairers, importers, exporters of software packages, computer systems, computer peripherals, computer parts, computer consumables and electronic communication systems.

A Copy of Certificate of Incorporation, Memorandum and Articles of Association of the Petitioner/Resulting Company is shown as **Annexure B**.

The latest authorized share capital of the Petitioner Company as on the date of filing of the Company Application is Rs 19,91,00,000/- divided into 88,10,666 Equity Shares of Rs 10/- each, 32,21,334 Preference Shares of Rs.10 each and 7,87,800 Preference Shares of Rs.100 each. The issued, subscribed and paid up share capital is Rs.8,81,06,590/- divided into 88,10,659 Equity Shares of Rs.10/- each fully paid up. The copy of Audited Annual Accounts as on 31st March, 2016 and Unaudited Provisionals as on 31st August, 2016 are shown as **Annexure C & D** respectively.

The Demerged Company was incorporated on 28th April, 2008 as the Private Limited Company under the name and style of SPHERE ADVISORS PRIVATE LIMITED, Subsequently the name of the Company was changed to GAIA ADVISORS PRIVATE LIMITED on 19th December, 2008. Finally the name of the Company was changed to **GEOSANSAR ADVISORS PRIVATE LIMITED** on 14th December, 2011.

The registered office of the Demerged Company is situated at 161-162, Mittal Court, A Wing, Nariman Point, Mumbai 400021, Maharashtra, India.

The Main objects of the Demerged Company as set out in the Memorandum of Association inter alia among others are as follows:

- i) To carry on the business as consultants, advisors, facilitators and service providers in the field of management, marketing, secretarial administrator, accounting, technology, engineering and process planning to any person including but not limited to individual, trust, body corporate, private or public company, whether for profit or not, whether in India or abroad, in relation to

activities undertaken or intended to be undertaken by such entities and in this reared, to investigate, engage in research, collection and preparation of information and statistics relating to and type of business or industry, whether in India or abroad and submit reports on feasibility of new projects and/ or improvements to and/or expansion of existing projects.

- ii) To provide advisory of FMCC , Real Estate, Mining, Financial services, Retail
- iii) To provide services for promotion of financial inclusion and educate message but no limiting to BC/BF services and the large population in the unorganised sector to bring them in the main stream (capital, products and services) for enhancing their livelihood and have systematic economical stability, and to help/assist MFI's Banks, Insurance Companies, SHG's, pension Fund, Mutual Fund houses to identify financially excluded borrowers and fitment of activities and creating awareness about savings and other products and education.

The copy of Certificate of Incorporation and Memorandum & Articles of Association of the Demerged Company is shown as **Annexure F**.

The latest authorized share capital of the Demerged Company is Rs.25,00,00,000/- divided into 2,50,00,000 Equity Shares of Rs 10/- each. However, during the year the Company has made further allotment of Equity Shares based on which the issued, subscribed and paid up share capital is Rs.22,70,14,260/- divided into 22,701,426 Equity Shares of Rs.10/- each fully paid up. The copy of Audited Annual Accounts as on 31st March, 2016 and Provisional Balance Sheet as on 30th September, 2016 are shown as **Annexure G & H** respectively.

The Board of Directors of the Petitioner Company and the Demerged Company at their respective Board Meetings held on 29th September, 2016 passed a resolution approving and adopting the scheme of Arrangement respectively. Copy of Board Resolutions are shown as **Annexure E & J** respectively.

The Petitioner Company has filed C.A.No.684/16 before the Hon'ble High Court of Karnataka to dispense with the convening of meeting of Equity Shareholders and Unsecured Creditors of the Petitioner Company. The Hon'ble High Court of Karnataka vide order dated 1st December, 2016 allowed the Application and dispensed with convening meeting(s) of Equity Shareholders and Unsecured Creditors. Since, there were no Secured Creditors.

That the Petitioner Company filed the petition bearing Company Petition No. 287/2016 before the Hon'ble High Court for approving the scheme of Arrangement on 7th December, 2016 and upon notification the said Company Petition was transferred to this Tribunal.

Upon transfer of the said Company Petition vide order dated 13th February, 2017, the Registry was directed to issue notice(s) to Official Liquidator, Registrar of Companies, Regional Director and Income Tax Department and the Petitioner was directed to have an advertisement published in the Bangalore edition of "THE HINDU" and "THE UDAYAVANI" newspapers on or before 23rd February, 2017, stating the next date of hearing of the present petition on 30th March, 2017. A Memo dated. 1st March, 2017 has been filed regarding compliance of the same along with the copies of Paper Publication.

The Regional Director, Ministry of Corporate Affairs, South East Region represented by Registrar of Companies filed an **Affidavit on 19th April, 2017** making some observations and in furnishing explanation to the same, the Counsel for the Petitioner Company has filed Reply Affidavit **dated 20th April, 2017**. The observations made by Regional Director through Registrar of Companies and explanation given by Petitioner Company in reply by Affidavit are as follows:-

- i) The Notice dated 2nd March, 2017 was issued to the Income Tax Department as required by Ministry of Corporate Affairs General Circular No.-1/2014 dated 15th January 2014 giving 15 days' time to offer comments/ objections, if any. But no comments/objections have been received from the Income Tax Department till 10th April, 2017.
- ii) As per clause 3.2 of Part I of the Scheme, the authorised share capital of the resulting company is Rs.8,81,06,660/- divided into 88,10,666 equity shares of Rs.10/-each. The Paid up share capital of the Resulting Company is Rs.8,81,06,660/- divided into 88,10,666 equity shares of Rs.10/- each.

- a.) As per Clause 14.1 of Part II of the scheme, the Resulting Company shall issue 1(one) fully paid up equity shares of Rs.10/- each of the Resulting Company to the members of the Demerged Company for every 10(ten) fully paid up equity shares of Rs.10/- each of the Demerged Company. The authorised Share Capital of the Resulting Company may be insufficient to meet the requirement of the issue of the shares to the members of the Demerged Company in terms of clause 14.1 of Part-II of the Scheme.

In the reply Affidavit the Petitioner Company submits that it will undertake to increase the authorised Share Capital of the Company post the sanction of the scheme and thereafter issue the shares as per the scheme.

- iii) As per the Balance Sheet of the Resulting Company for the financial Year ended 31st March, 2017, an amount of Rs.2,92,27,834/- is shown under the Head "Long term Liabilities" at note 4 towards security deposit collected by the Company from the Business Correspondents. The Petitioner Company may submit the No Objection of the said depositors and also submit the permission/approval and No objection of the said depositors and also submit the permission/approval and No objection of Reserve Bank of India, in case the petitioner Company is carrying on the business of Non-Banking Finance Activity, for the proposed Scheme before the scheme is approved.

The Petitioner Company in its Reply Affidavit stated that, as per Rule 2(1)(xii)(c) of the Companies(Acceptance of Deposit) Rules, 2014, the security deposits collected from the agencies that render services to the Company and have been given for performance obligations and are exempt deposits and do not fall within the purview of Section 73 to 76 of the Companies Act, 2013. Further, the Business Correspondents who have given security deposits towards performance obligations cannot be classified as trade creditors. Lastly, these deposits will remain with the Resulting Company in its books post the sanction of the scheme of Arrangement where the Resulting Company continues to be in existence. Apart from this, it is clarified that the Petitioner Company is not NBFC and not carrying on any Non-Banking Financial Activities and Section 45-IA of the Reserve Bank of India Act, is therefore not

applicable and the same is also clarified in the clause xvi of the Auditor's Report. Further, it is stated in reply affidavit, the Companies object clause also does not have any activities that come within the definition of Non-banking Financial Company. Hence approval/NOC from RBI is also not necessary.

- iv) The Registered Office of the Transferor Company is situated in the State of Maharashtra. Therefore, approval of the Scheme by the Hon'ble National Company Law Tribunal, Bengaluru Bench may be subject to the orders of the Hon'ble National Company Law Tribunal, Mumbai Bench.

The authorised Signatory in his Reply Affidavit submits that the Hon'ble National Company Law Tribunal, Mumbai Bench has already sanctioned the scheme vide Order dated 13th April, 2017.

- v) Further, it is observed that there is a violation of Section 383A of the Companies Act, 1956, however, no Show Cause Notice has been issued so far.

It is further stated in reply affidavit that the Petitioner Company has already appointed a Company Secretary as on 1st October, 2016, hence there is no violation of Section 383A of the Companies Act, 1956. Copy of E-form with challan is enclosed as **Annexure A**, which has also been duly approved by the Registrar of Companies. In terms of past violation the Petitioner Company undertakes to get the same compounded post sanction of the Scheme of Arrangement.

After this Petition was transferred from the Hon'ble High Court of Karnataka then the Tribunal directed the Counsel for the Petitioner Company, whether Notice(s) to be issued to the authorities other than those to whom Notice(s) were already issued in pursuant to section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

The Counsel for the Petitioner Company has filed **Affidavit dated 20th April, 2017** of the Authorised Signatory of the Petitioner Company stating in Para (4) of the Affidavit that the Notice(s) to the required Statutory Authorities relevant to the scheme have been taken i.e. Regional Director Ministry of Corporate Affairs, South Eastern Region, Registrar of Companies, Karnataka and Assessment Officer Income Tax Department. Further notices are not required to be served upon, other than authorities mentioned above.

The Counsel for the Petitioner Company has filed **Memo dated 21st April, 2017** furnishing the Certificate of the Chartered Accountant stating that there is no specific accounting treatment specified for the Resulting Company in accounting standards prescribed under Section 133 of the Companies Act, 2013. Accordingly, they confirm that the accounting treatment contained in the aforesaid scheme is not in violation with applicable accounting standards as prescribed in Section 133 of the Companies Act, 2013.

After hearing the Counsel for the Petitioner Company and considering the material on record,

THIS TRIBUNAL DO FURTHER ORDER:

The Scheme of Arrangement for the transfer of the 'Banking Correspondent Services Undertaking' of Geosansar Advisors Private Limited (Demerged Company) into Atyati Technologies Private Limited (Petitioner/Resulting Company) is sanctioned subject to the compounding of the past violations of Section 383A of the Companies Act, 1956 as undertaken by the Petitioner Company in its Reply Affidavit dated 20th April, 2017.

While Approving the Scheme as above, it is further clarified that, this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, or any exemption under provisions of Income Tax Act or other applicable regulations or in respect to any permission/compliance with any other requirement which may be specially required under any law.

The Whole of the property, rights and powers of the 'Banking Correspondent Services Undertaking' of Geosansar Advisors Private Limited (Demerged Company) shall be transferred without further act or deed to the Petitioner/Resulting Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the Petitioner/Resulting Company for all the state and interest of the Demerged Undertaking therein but subject nevertheless to all the charges now affecting the same; and

All the liabilities including taxes and charges, if any, and duties of the Banking Correspondent Services Undertaking of the Demerged Company be demerged without further act or deed into the Petitioner/Resulting Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company; and

The Petitioner Company is directed to increase its authorised Share Capital to the extent sufficient for issuance of shares as per the scheme.

The Share Exchange Ratio shall be 'One Equity Share of the Petitioner/ Resulting Company of Rs.10/- each fully paid up for every Ten Equity Shares of the Banking Correspondent Services Undertaking of the Demerged Company of Rs.10/- each fully paid up.'

All the proceedings now pending by or against the Banking Correspondent Services Undertaking of the Demerged Company, if any, be continued by or against the Petitioner/Resulting Company; and

The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding.

The Resulting Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Arrangement to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the scheme of Arrangement i.e. 1st April, 2016.

The Banking Correspondent Services Undertaking of the Demerged Company or its authorised signatory is directed that after the completion of the process of Arrangement to handover the possession of the Books of Accounts and other relevant documents of the Banking Correspondent Services Undertaking of the Demerged Company to the Resulting Company for the purpose of section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply this Tribunal in the above matter for any directions that may be necessary.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 7th DAY OF JUNE, 2017