

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 310 OF 2017
And
CSP NO 311 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Section 391 to 394 of the Companies Act, 1956 (corresponding sections 230 to 232 of the Companies Act, 2013) read with sections 100 to 103 and other applicable provisions of the Companies Act, 1956 (corresponding section 66 of the Companies Act, 2013);

AND

In the matter of Scheme of Arrangement between Free A Billion Private Limited ("the Demerged Company") and Netcore Solutions Private Limited ("the Resulting Company") and their respective Shareholders

Free A Billion Private Limited.....Petitioner/Demerged Company

And

Netcore Solutions Private Limited.....Petitioner/Resulting Company

Called for Hearing

Judgment/Order delivered on 19th July, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V .Nallasenapathy Hon'ble**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. Ramesh Golap, Assistant Director in the office of Regional
Director

Per: **B.S.V. Prakash Kumar, Member (J)**

Order

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between Free A Billion Private Limited and Netcore Solutions Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioners states that the Demerged Company is *inter-alia* engaged in providing services in digital media space, including data analytics, business consultancy and other information technology services and project managing media campaigns. The Resulting Company is engaged in offering solutions for enterprise communication and digital marketing.
4. The rationale for the scheme is that the Scheme of Arrangement is expected to provide greater efficiency in operations and increased focus and attention to each of the businesses of the Demerged Company, attribution of appropriate risk and valuation to different businesses based on their respective risk return profile and cash flows on an optimal consolidation basis, greater visibility on the performance of business based on the commercial focus for various markets, opportunities for strategic partnership and flexibility of fund raising capability for future growth and expansion and create a structure geared to take advantage of growth opportunities, and the businesses and activities of the respective undertakings will be carried on more economically, conveniently and advantageously and the same will have beneficial results for the companies, their shareholders and all concerned. Further, the balance sheet of the Demerged Company needs restructuring to reflect the future prospects of the Demerged Company in the most appropriate manner by adjusting the issued, subscribed and paid-up equity share capital of the Demerged Company and using the same for writing off the accumulated losses reflected in the Profit and Loss Account of the Demerged Company.
5. The Demerged Company and Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.
6. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies is accepted.
7. The Regional Director has filed an Affidavit on 12th day of April, 2017 stating therein, save and except as stated in paragraph IV (1) to (5), it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph IV of the said affidavit, it is stated that:-

1. *The tax implication if any arising out of this scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of Income Tax Authority is binding on the petitioner Company.*

2. *The Petitioner Companies have submitted the proof of serving notice, upon the Income Tax Authorities dated 02.03.2017 & 17.03.2017 for comments. This Directorate has also issued a reminder letter to the Income Tax Department dated 06.04.2017*

3. *Petitioner in clause 13 of the scheme regarding Accounting treatment mentioned that Notwithstanding the above, the Board of Directors of both companies, is authorized to account for any of these balances in any manner whatsoever, as may be deemed fit, in accordance with the prescribed Accounting Standards issued by The Institute of Chartered Accountants of India and generally accepted accounting principles, as applicable to NSPL.*

In this regard it is submitted that the petitioner has not adopted any accounting standard for the accounting treatment mentioned in the clause and therefore has to clarify as to why Board is empowered to as above.

4. *Petitioner in clause 12 of the scheme inter alia has mentioned that any question that may arise as to whether any staff, workman or employee belongs to or does not belong to the Demerged Undertaking, shall be decided mutually by Board of Directors of the Demerged Company and the Resulting Company as the case maybe or committee(s) thereof.*

In this regard petitioner has to undertake to protect the interest of the employees of the Demerged undertaking.

5. *Petitioner in clause 4 of the scheme inter alia mentioned regarding reorganisation of share capital for reducing face value of paid up equity shares of FABPL from Rs. 22,09,00,000/- to Rs 2,09,00,000/- and equity shares shall be consolidated into 20,90,000 fully paid up equity shares of Rs 10/- each. Further Petitioner inter alia mentioned in clause 6 of the scheme inter alia has mentioned that upon effectiveness of Scheme, in consideration for the demerger of the Demerged undertaking, the Resulting Company shall, issue and allot 4660 Equity Shares of the face value of Rs. 10/- each of the Resulting Company credited as fully paid-up to the equity shareholders of the Demerged Company in proportion to the equity shares held in the Demerged Company.*

In this regard, Petitioner has to clarify why shares are allotted on proportionate basis and undertake to comply with Accounting Standard.

8. As far as the observations made in paragraph IV(1) and (2) of the affidavit of Regional Director is concerned, the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

9. In so far as observations made in paragraph IV(3) of the Affidavit of Regional Director is concerned, it is submitted that the Petitioner Companies have obtained certificate from the statutory auditors certifying that the accounting treatment given in the Scheme is in conformity with the Accounting Standards issued under the Companies Act, 2013. Accordingly, the Petitioner Companies through their Counsel undertakes that in addition to the accounting treatment given in the Scheme, the Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with the accounting standards, such as AS-5 etc.
10. In so far as observations made in paragraph IV(4) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel undertake to protect the interest of employees of the Demerged undertaking in terms of the Clause 12 of the Scheme. The Counsel for the Petitioners further submit that on the Scheme becoming operative, all staff, workmen and employees of the Demerged Company working for the Demerged Undertaking, who are in service as on the Effective Date shall be deemed to have become staff, workmen and employees of the Resulting Company, with effect from the Appointed Date, without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Resulting Company shall not be less favorable than those applicable to them with reference to their employment with the Demerged Company on the Effective Date.
11. In so far as observations made in paragraph IV(5) of the Affidavit of Regional Director is concerned, the Petitioner Companies submit that pursuant to demerger of the Demerged undertaking under the Scheme, the Resulting Company is required to issue shares to the shareholders of the Demerged Company proportionately under Section 2(19AA) of the Income-tax Act, 1961. Further, the Petitioner Companies through their Counsel undertake that in addition to the accounting treatment given in the Scheme, the Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with the accounting standards.
12. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 310 of 2017 and 311 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
15. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.

16. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
17. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai.
18. Costs to be paid within four weeks from the date of receipt of order.
19. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
20. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)