

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI

CSP NO. 1039 OF 2017

Under Section 230-232 of the
Companies Act, 2013

In the matter of Scheme of
Arrangement between BUREAU
VERITAS CONSUMER PRODUCTS
SERVICES (INDIA) PRIVATE LIMITED,
the Demerged Company and BUREAU
VERITAS (INDIA) PRIVATE LIMITED,
the Resulting Company.

BUREAU VERITAS (INDIA) PRIVATE LIMITED

....Petitioner/ the Resulting Company

Judgement/ order delivered on 25th January, 2018

Coram:

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

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

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M
Chunawala i/b M/s. Rajesh Shah & Co., Advocate for the
Petitioner.

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

ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Arrangement between BUREAU VERITAS

CONSUMER PRODUCTS SERVICES (INDIA) PRIVATE LIMITED, the Demerged Company and BUREAU VERITAS (INDIA) PRIVATE LIMITED, the Resulting Company.

2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Arrangement between BUREAU VERITAS CONSUMER PRODUCTS SERVICES (INDIA) PRIVATE LIMITED, the Demerged Company and BUREAU VERITAS (INDIA) PRIVATE LIMITED, the Resulting Company.
3. The Petitioner Company has approved the said Scheme of Arrangement by passing the Board Resolution which is annexed to the Company Scheme Petition.
4. The Learned Advocate appearing on behalf of the Petitioner states that the Petition has been filed in consonance with the Order passed in their Company Scheme Application Nos. 787 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and it has filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Company undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioner states that The Demerged Company currently is engaged in various businesses activities operating from various locations. The Demerged Company is desirous of hiving off the Chennai Undertaking. The Resulting Company is engaged in the related business activities and it would, therefore, be advantageous to combine the activities and operations related to Chennai Undertaking into Resulting Company for

synergistic linkages. The reorganization is proposed to be achieved by way of a demerger of the Chennai Undertaking from the Demerged Company to the Resulting Company. The proposed demerger of Chennai Undertaking will facilitate bifurcation of businesses in a well-diversified manner. The benefit of synergies and management focus will translate into steady cash flows and long term growth opportunities for the Resulting Company. With the aforesaid objectives, it is proposed to demerge "Chennai Undertaking" of BVCPS into BVIPL pursuant to a Scheme of Arrangement and Reconstruction under Sections 230 to 232 and all other applicable provisions of the Companies Act, 2013. The Demerged Company will continue its interest in the Remaining Undertaking.

7. The Regional Director has filed a Report on 18th day of December, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

"IV. The observations of the Regional Director on the proposed Scheme to be considered are as under:

- 1. The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal 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 the Income Tax Authority is binding on the Petitioner Company.*
- 2. As per the reply of Petitioner companies and the scheme both the companies are wholly owned subsidiary of Bureau Veritas SA which is common shareholder in both the companies. And therefore, petitioners to send notice*

to RBI under Section 230(5) of the Act 2013 for inviting objections within 30 days.

3. *It is submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities. In this regard petitioner has to submit the proof of serving the notice to Income Tax Authorities as per the provision of the Section 230(5) of the Act, 2013.*
4. *Petitioner companies not submitted admitted copy of the Petition, Minutes of order of the Hon'ble NCLT, Chairman's Report of the meeting. In this regard petitioner to undertake submit the same for the record of Regional Director.*
5. *Certificate stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 read with Rules not submitted. In this regard petitioners to undertake to submit the same.*
6. *Petitioner Resulting Company have to undertake to submit copy of the Affidavit duly notarized under section 230 (2) of the Companies Act, 2013.*
8. So far as the observation in paragraph IV (1) of the Report of the Regional Director is concerned, this Tribunal directs the Petitioner Company to comply with the said observation. Accordingly, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company / Resulting Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement will be met and dealt with in accordance with law. The said undertaking is accepted by this Tribunal.
9. So far as the observation in paragraph IV (2) of the Report of the Regional Director is concerned, as far as notice to the Reserve Bank of India is concerned, Petitioner Company respectfully submits that the Petitioner Company is engaged in

the business of providing training and creating awareness in the field of engineering and management systems, and to carry on the business of Inspection, testing and analysis. As per para 5.2 a) of Consolidated FDI Policy of 2017 issued by Department of Industrial Policy and Promotion, any sector / business activity not listed in the FDI Policy FDI ('Foreign Direct Investment') is permitted up to 100% under automatic route. Business Activity of the Petitioner Company is not falling under any of the sector specific cap listed in the FDI Policy. Accordingly, business activities of the Petitioner Company falls under automatic route hence they are not required to give notice to the Reserve Bank of India. It further submits that on issue of issuance of shares to foreign shareholder, Reserve Bank of India regulations gives general permission stating that, once the scheme of Arrangement has been approved by the Hon'ble Tribunal in India, the Transferee Company/ Resulting Company is allowed to issue shares to the shareholders of the Transferor Company/ Demerged Company resident outside India. The Petitioner Companies further undertake to comply with the applicable provisions of RBI with respect to issue of shares to the foreign shareholder.

10. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company states that the proof of serving notice upon the Income Tax Authorities dated 9th day of August, 2017, have been submitted with the office of Regional Director on 29th day of September, 2017. The said proof of serving notice upon Income Tax Authorities have been again submitted with the Regional Director on 22nd day of December, 2017 for their record. The said explanation is found to be satisfactory.
11. As far as the observation made in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company states the copy of the

Petition, Minutes of Order of the Hon'ble NCLT and Chairman's Report of the meeting have been submitted with the Regional Director on 9th day of November, 2017. The said copy of the Petition, Minutes of Order of the Hon'ble NCLT and Chairman's Report of the meeting have been again submitted with the Regional Director on 22nd day of December, 2017 for their record. The said explanation is found to be satisfactory.

12. As far as the observation made in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company states the certificate of statutory auditor certifying the accounting treatment proposed in the Scheme is in conformity with the accounting standard prescribed under section 133 of the Companies Act, 2013, was forming part of the Company Scheme Application dated 20th day of July, 2017 as Exhibit-G1. Copy thereof have been submitted with the Regional Director on 29th day of September, 2017. The said certificate of statutory auditor certifying the accounting treatment proposed in the Scheme have been again submitted with the Regional Director on 22nd day of December, 2017 for their record. The said explanation is found to be satisfactory.
13. As far as the observation made in paragraph IV (6) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company states the Affidavit duly notarized under section 230 (2) of the Companies Act, 2013 was forming part of the Company Scheme Application dated 20th day of July, 2017. Copy thereof have been submitted with the Regional Director on 29th day of September, 2017. The said Affidavit duly notarized under section 230 (2) of the Companies Act, 2013 as appended to Company Scheme Application have been again submitted with the Regional Director on 22nd day of December, 2017 for their record. The said explanation is found to be satisfactory.

14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law including but not limited to Companies Act, 2013; Income Tax Act; Accounting Standards and various other applicable statutory acts and is not contrary to public policy.
16. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 1039 of 2017 is made absolute in terms of prayers clause (a) to (d) thereof.
17. Petitioner is directed to lodge 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 physical copy, as per the relevant provisions of the Companies Act 2013.
18. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
19. The Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of the Order.
20. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai.

Sd/-
V. Nallasenapathy
Member (T)

Sd/-
B. S. V. Prakash Kumar
Member (J)