

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

Argument heard on 31.05.2017
Order passed on 07.06.2017

**TP (HC)/30/CAA/2017
[Connected with CP No. 354 of 2016 and CA No. 491 of 2016]**

In the matter of Sections 391 r/w Sections 100 to 104 of the Companies Act, 1956
and the corresponding provisions of the Companies Act, 2013

AND

In the matter of Scheme of Arrangement between M/s. Royalsoft Services Limited
and their Shareholders

Represented by: P. H. Arvind Pandian, Senior Advocate

CORAM

ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL): ORAL

1. Under consideration is a Company Petition filed under section 391(2) r/w sections 100 to 104 of the Companies Act, 1956 which has been transferred from the Hon'ble High Court of Madras to this Tribunal and renumbered as TP(HC)/30/CAA/2017. By this Company Petition, M/s. Royalsoft Services Limited (hereinafter referred to as '**Petitioner Company**') seeks the sanction to the Scheme of Arrangement (in short, '**Scheme**') between the Petitioner Company and their shareholders under section 391 whereby it is proposed to reduce the issued, subscribed and paid up capital of the Petitioner Company by paying off part of the paid up capital of the company subject to the Election Option to be exercised by the shareholders of the company.

2. The Share Capital of the Petitioner Company as on 31st March, 2016 is as under:

Types of Share Capital	No. of Share Capital	Value in Rupees
Authorized Capital	50,00,000 equity shares of Rs. 10/- each	50,000,000
	1,00,000 Redeemable Preference shares of Rs. 100/- each 1,00,00,000/-	10,000,000
Total		60,000,000
Issued, Subscribed and Paid up share capital	30,00,000 equity shares of Rs. 10/- each	30,000,000
	Total	

3. At the outset, it is necessary to know the details of the scheme which needs determination. The Petitioner Company is a Public Unlisted Company having its registered No. 12 South Mada Street, Srinagar Colony, Saidapet, Chennai- 600015 and the Board of Directors vide its resolution dated 1st April, 2016 approved the said scheme of arrangement. The Petitioner Company is engaged in the Software Business & main objects of the company are to carry on the business to manufacture, develop and deal in Computer Software & Hardware of all kinds including application software and development of specific packages and to establish and run training centres, factories and showrooms for computer, software, hardware and other electronic products. The Hon'ble Madras High Court vide its order dated 30.03.2016 in CA No. 491 of 2016 directed to convene a meeting of the equity shareholders of the company which was complied with by the Petitioner Company. The total number of equity shareholders in the Petitioner Company is 3,985. There are Seven Unsecured Creditors including M/s. D. Muthunayanan & Co. and XS Real Properties Private Limited is the only Secured Creditor who has given NOC dated 1st April, 2016 in relation to the said scheme.

4. Shri Arvind Pandian, learned Senior Counsel appearing for the Petitioner Company submitted that the rational, reasons and circumstances that have necessitated the proposed scheme are that the Software Business performed by the Petitioner Company has been subject to severe competition in software industry. The performance of the company has been dwindling and the software business has incurred significant losses over the years resulting in no dividend being declared by the company and the business operations of the company are extremely unviable. Due to the significant losses suffered and the failure of software business, net worth of the company have completely eroded, resulting at the present book value of an equity share standing at a value of Rs. -11 (negative eleven rupees) per share. Due to the severe losses suffered by the Petitioner Company and there being no return on the investment made by the shareholders, the Board of Directors under the proposed restructuring exercise have provided a liquidity option to the shareholders by structuring an exit option for all the equity shareholders at a value of Rupee one for every four equity shares held in the petitioner company. Further, the said scheme provides an exit route to the shareholders who were vested with the option of either holding their investments or exercise the option of exiting the petitioner company at the price of Rupee one for every four equity shares of Rs. 10 each held in the petitioner company as per Clause 3.1 of the said Scheme. The learned counsel further submits that no investigation proceedings are pending against the Petitioner Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

5. Learned Counsel for the Petitioner Company further submitted that the equity shares of the company were listed with the Madras Stock Exchange, Ahmedabad Madras Stock Exchange & Coimbatore Madras Stock Exchange and the aforesaid stock exchanges have exited themselves from the Securities and Exchange Board of India (in short, 'SEBI'), thus the equity shares of the company remains Unlisted and Company does not require complying with the requirements of the Listing Agreement or any SEBI Rules/regulations. Also, the petitioner company has filed the Statutory Auditors Certificate dated 31st May, 2017 reflecting the number and amount of Creditors for the purpose of record.
6. To dispose of this petition as per the provisions of the Companies Act, 2013, the notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objection to the scheme under reference except a few objections raised by The Regional Director, Southern Region (In short, 'RD').
7. The RD in its Report Affidavit (for brevity, 'Report') dated 23.02.2017 submitted that as per records of ROC, Chennai, the Petitioner Company is regular in filing its statutory returns and no investigation is pending against the company, therefore, RD decided not to make any objection to the Scheme except for the observations made in Paras 8, 9, 10 and 11 of his report and submitted that the petition may be disposed of on merits. In Para 8 of the Report, RD submits that as per clause 3.2 of the scheme, the Company will give an option to the equity shareholders either to receive the cash payment or to retain their equity shareholders in the company and if any shareholders do not exercise either of the option, it will be deemed that they have exercised the option to receive cash payment under clause 3.2(b)(1) of the scheme and as per clause 3.6 of the scheme, the selective reduction is deemed to be in accordance with the provisions of section

391 r/w section 100 to 104 of the Companies Act, 1956 . Further in Para 9 of the said Report, it has been submitted by the RD that the substance of clauses 3.2 and 3.6 does not amount to Selective or Optional reduction but compulsory reduction of shares which will not be in the interest of the shareholders especially for those shareholders who have kept silent on the offer as they will also be divested of their shares against their will and placed a reliance on a landmark case passed by Hon'ble Bombay High Court in **SEBI Vs. Sterlite Industries (India) Ltd., 2003 113 CompCase 273 Bom** wherein it was held that though the Hon'ble High Court is not inclined to accept that a deemed or negative consent should not be permitted but it has made it clear that their order should not be understood to mean they have approved such a provision. In Para 10 of the said Report, it has been observed that Clause 3.4 of the Scheme proposes to transfer the unclaimed amount to the Investor Education and Protection Fund after 7 years u/s 125 of the Act, 2013 but the said section does not provide for transfer of such unclaimed amount to the IEPF. In Para 11 of the Report, it has been submitted that in Part V of the scheme, the company has proposed that on the scheme coming into effect, the status of the company shall be converted from a 'Public Limited Company' to 'Private Limited Company' without any further act or deed, therefore the petitioner company may be directed to comply with the provisions of the Act, 2013 and rules framed thereunder.

8. With regard to the objections made by the RD in his Report, the learned counsel submitted that it's not objections but observations as in last para of the Report, the RD has decided not to object in relation to the said scheme. Moreover, the learned counsel has relied upon a landmark judgement passed by the Hon'ble High court of Gujrat in **In Re: Gujrat Ambuja Exports Limited [2004] 118 CompCas 265 (Guj)** wherein it

was held that continuing with the company was exception rather than rule. Moreover, the scheme was found more in interest of shareholders inasmuch as it gives option to shareholders to continue or not to continue with company. Therefore observation of government that scheme was not in interest of small shareholders was not correct and the scheme was sanctioned. With regard to observation made in Para 10 of the Report of the RD, the counsel submitted that it is a practice as well as rule u/s 125 of the Companies Act, 2013 that unclaimed dividend is transferred to Investor Education & Protection Fund (in short, 'IEPF fund'). Therefore, in the interest of the shareholders, the petitioner company has proposed to open a dedicated bank account equivalent to the shares so reduced and propose to transfer the unclaimed amount in similar fashion to the IEPF fund and also submitted that they have no objections, if this Bench directs the company to transfer the unclaimed amount as deemed fit. With regard to Para 11 of the Report regarding conversion of its status from Public to Private Company, the learned counsel submitted that the petitioner company undertakes to comply with the provisions of the Act, 2013 and rules framed thereunder.

9. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Arrangement will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. Also, any intervention of the Official Liquidator is not required as the matter is nowhere connected to the liquidation process. The Appointed date of the said Scheme is 1st April, 2016. It is also pertinent to mention herein that on the last date of hearing, the counsel for Petitioner Company was directed to furnish an additional

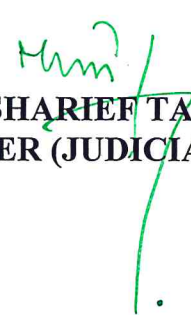
affidavit from an unsecured creditor to achieve the threshold of 90% of the value of the credit. The counsel has filed a memo dated 1st June, 2017 containing consent affidavits of creditors for an aggregate value of Rs. 3,41,41,321/- which constitutes 91.05% value of the outstanding debt.

10. There does not require any modification subject to the condition that the company shall furnish the information relating to Unclaimed Amount, if any, on its website as may be required and the petitioner company shall transfer the Unclaimed Amount, if any, after seven years to the IEPF Fund. The said Scheme of Arrangement appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under section 391 of the Companies Act, 1956. Taking into consideration all the above, the Company Petition is allowed and the scheme of arrangement annexed with the petition is hereby sanctioned which shall be binding on all the members, creditors and shareholders.
11. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if 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. The petitioner company is also directed to comply with the provisions of the Act, 2013 and rules framed thereunder for conversion of its status from that of 'Public Limited Company' to 'Private Limited Company'.
12. The Company to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme. The Petitioner Company do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

13. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14th December, 2016.

14. Accordingly, the Company Petition stands disposed of.


(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)