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IN THE HIGH COURT OF DELHI

COMPANY PETITION NOS.6/2008

Date of decision: 25th July, 2008.

In the matter of
The Companies Act, 1956:

And

**Petition under Sections 391 and
394 of the Companies Act, 1956**

Scheme of Amalgamation of:

Heartland Delhi Transcription and Services Pvt. Ltd.

.. Transferor Company No. 1/
Petitioner in CP 5/2008

Heartland Bangalore Transcription and Services Pvt. Ltd.

.. Transferor Company No. 2/

WITH

Heartland Information and Consultancy Services Pvt. Ltd.

.. Transferee Company/
Petitioner in CP 6/2008

**Through Ms. Pooja M. Saigal,
Advocate, for the petitioners
Ms. Manisha Tyagi, Advocate for
the Official Liquidator**

GITA MITTAL, J (Oral)

For orders see CP 5/2008.

Dasti
←

July 25, 2008

Gita Mittal
GITA MITTAL, J

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**Through Ms. Pooja M. Saigal,
Advocate, for the petitioners
Ms. Manisha Tyagi, Advocate for
the Official Liquidator**

GITA MITTAL, J (Oral)

1. These petitions have been filed by the Transferor Company No. 1 and the transferee company under section 391 and 394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of M/s. Heartland Delhi Transcription

and Services Pvt. Ltd. (hereinafter referred to as the 'petitioner/transferor company No. 1') and Heartland Bangalore Transcription and Services Pvt. Ltd. (hereinafter referred to as the 'transferor company No. 2') with Heartland Information and Consultancy Services Pvt. Ltd. (hereinafter referred to as the 'petitioner/transferee company').

2. The registered offices of the transferor company No. 1 and the transferee company are situated at New Delhi which is within the jurisdiction of this court. The registered office of the transferor company No. 2 is situated at Bangalore which is outside the jurisdiction of this court.

3. The transferor company no. 1 was incorporated on 2nd of August, 2000 as a private limited company. The authorized share capital of the transferor company No. 1 as on 31st March, 2007, as certified by their Chartered Accountants, was Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the transferor company No. 1 was Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each fully paid up. The audited Financial Accounts of the transferor company No. 1 as on 31st March, 2007 have been placed on record. The Memorandum and Articles of Associations have also been placed on record.

4. The transferee company was incorporated on the 22nd of May, 1998 as a private limited company. The authorized share capital of the transferee company as on 31st March, 2007, as certified by their Chartered Accountants, is Rs.5,00,000 divided into 50,000 equity shares of Rs.10/- each. The issue, subscribed and paid up capital of the transferee company is Rs.1,27,800/- divided into 12,780 equity shares of Rs.10/- each fully paid up. The audited Financial Accounts of the transferee company as on 31th March, 2007 have been placed on record. The Memorandum and Articles of Associations have also been placed on record.

5. The Scheme of Amalgamation has been placed on record. The salient features of the scheme are detailed in the petition and in the accompanying affidavit. It is submitted that the transferor companies No. 1 & 2 and the transferee company are in related and similar business and the proposed amalgamation would augment their common purpose. The proposed Scheme of Amalgamation would strengthen and consolidate the position of the transferee company to develop and concentrate on the core competency. It will have a strong financial and operational structure and will be capable of resource mobilization and financial consolidation necessary to withstand the new competitive environment. The amalgamated

company will have the benefits of synergy and stability of operations and would help to achieve economies of scale through efficient utilization of resources and facilities. ①

6. So far as the share exchange ratio is concerned, the Scheme provides that upon amalgamation of the 'Transferor Companies' into 'transferee company' pursuant to the Scheme of Amalgamation, the transferee company shall issue and allot the shares to the equity shareholders of the Transferor Companies in the following manner:-

“One equity share(s) of the face value of Rs.10/- each of the transferee company credited as fully paid-up, for every one equity share of the face value of Rs.10/- each held in the share capital of the transferor company No. 1.

One equity share(s) of the face value of Rs.10/- each of the transferee company credited as fully paid-up, for every one equity shares of the face value of Rs.10/- each held in the share capital of the transferor company No. 2.”

7. It has been submitted by the petitioners that the Scheme of Amalgamation is beneficial to the company and its shareholders and no person or creditor is prejudicially affected by the proposed scheme. It is further claimed that no proceedings are pending under Sections 235 and 251 of the Companies Act, 1956 against the transferor and transferee Companies.

8. The Board of Directors of the transferor and transferee Companies in their separate meetings held on 1st December, 2007 have approved the proposed Scheme of Amalgamation. A copy each of the said Board Resolutions has been placed on record.

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9. Learned counsel for the petitioners submits that the transferor company No. 2 had filed Company Petition No. 126/2007 before High Court of Karnataka at Bangalore for sanction of Scheme of Amalgamation in respect of the transferor company No. 2 which has been allowed by the court vide order dated 3rd July, 2008. A copy of the said order has been placed on record.

10. The petitioner companies had earlier filed CA (M) 170 & 171/2007 seeking directions from the court to dispense with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the petitioner companies. Vide order dated 12th December, 2007 the court allowed the applications and dispensed with the requirement of convening and holding the meeting of equity shareholders, secured and unsecured creditors of the petitioner companies to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

11. Thereafter, the petitioner companies have filed the present petitions seeking sanction of the Scheme of Amalgamation. On 8th January, 2008, notices in the petitions were directed to be issued to the Official Liquidator and Regional Director, Northern Region. Citations were also directed to be published in 'Statesman (English)' and 'Veer Arjun (Hindi)' in terms of the Company (Court) Rules, 1959. Affidavits of service have been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also publication of citations in the above said newspapers on 24th January, 2008. Copies of the newspaper clippings containing publication have been filed alongwith the affidavit of service in both the petitions.

12. Pursuant to the notices issued, the Official Liquidator has filed a consolidated report dated 23rd April, 2008 stating that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the second proviso of Section 394(1) of the Companies Act, 1956.

13. Shri Dhan Raj, Regional Director, Northern Region, Ministry of Corporate Affairs has filed a common affidavit dated 19th March, 2008, in response to the notices issued in the petitions. Relying on clause 3.2.1 of Part 3 of the Scheme of Amalgamation, it is submitted that all the employees of the Transferor Companies shall become the employees of the transferee company without any break or interruption in their service upon sanctioning of the Scheme of Amalgamation. He has further submitted that the petitioners have not mentioned whether they have complied with the Accounting Standard-14 issued by Institute of Chartered Accountants of India. He has prayed that the petitioner companies may be asked to furnish an undertaking that they shall comply with the accounting treatment as prescribed under Accounting Standard-14 i.e. 'Accounting for Amalgamation' issued by the Institute of Chartered Accountants of India. He has further submitted that the Appointed Date of the Scheme is 1/4/2008 and the Scheme is based on the audited balance sheets as on 31/3/2007 of all the petitioner companies and the balance sheets of the petitioner companies as at 31/3/2008 were not available when the Board of Directors as well as the shareholders of the companies approved the Scheme of Amalgamation. He has further stated that it is not understood as to how the Board of Directors and shareholders of the Transferor and Transferee Companies could take a decision

for transfer of assets and liabilities of the Transferor Companies to the transferee company without knowing the details thereof. (B)

14. In response thereto the petitioners have filed an additional affidavit of Sh. Mahendra Singh Rawat, Director of the transferee company undertaking to comply with the accounting treatment as prescribed under Accounting Standard-14 i.e. 'Accounting for Amalgamation' issued by the Institute of Chartered Accountants of India upon the Scheme of Amalgamation being effectuated.

15. So far as the objection of the Regional Director with regard to the appointed date of the scheme is concerned, it is submitted by learned counsel for the petitioners that the transferor companies and the transferee company are wholly owned subsidiaries of the holding company, Heartland Asia Mauritius and have a common Board of Directors. The companies are therefore closely held companies with common control and management. There is no outside shareholder whose interest would be affected.

16. In this regard an affidavit dated 26th May, 2008 has also been filed by the petitioner companies stating that the decision is based on financial projections and that the same is in

the interest of the company. In this view of the matter, the observations of the Regional Director would be misplaced.

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17. Yet another reason favouring grant of the present scheme is the sanction accorded to the Scheme of Amalgamation by the High Court of Karnataka at Bangalore on the petition filed by the transferor company no. 2.

18. No objection has been received to the Scheme of Amalgamation from any other party.

19. In view of the approval accorded by the equity shareholders, secured and unsecured creditors of the petitioner companies to the proposed Scheme of Amalgamation and there being no legally tenable objection to the same either by the Official Liquidator or the Regional Director, Northern Region, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation.

20. Consequently, sanction is hereby granted to the Scheme of Amalgamation of Transferor Companies with the transferee company, under section 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified

copy of this order be filed with the Registrar of Companies within five weeks. It is also clarified that this order will not be construed ⁽¹⁵⁾ as an order granting exemption from payment of stamp duty as payable in accordance to law. Upon sanction becoming effective from the appointed date of amalgamation, that is 1st April, 2008, the transferor company No. 1 shall stand dissolved without undergoing the process of winding up.

21. The petitioners shall deposit cost of Rs.50,000/- in the Common Pool Fund of the Official Liquidator immediately on receipt of the copy of this order.

22. Petitions are allowed in terms of the above order.

Dasti.

July 25, 2008


GITA MITTAL, J