

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 705/2015

Reserved on 29th April, 2016

Date of pronouncement: 16th May, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Sections 391(2) and 394 read with Sections 100 to 103 of the Companies Act, 1956 read with Rules 67 to 87 of the Companies (Court) Rules, 1959

Scheme of Arrangement between:

Bright Lifecare Private Limited

Petitioner/Demerged Company

AND

1MG Technologies Private Limited

Petitioner/Resulting Company

**Through Mr. Gaurav Varma, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391(2) and 394 read with Sections 100 to 103 of the Companies Act, 1956 read with Rules 67 to 87 of the Companies (Court) Rules, 1959 by the petitioner companies seeking sanction of the Scheme of Arrangement between Bright Lifecare Private Limited (hereinafter referred to as the demerged company) and 1MG Technologies Private Limited (hereinafter referred to as the resulting company).

2. The registered offices of the demerged and resulting companies are situated at New Delhi, within the jurisdiction of this Court.

3. The demerged company was incorporated under the Companies Act, 1956 on 30th April, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The resulting company was incorporated under the Companies Act, 2013 on 20th April, 2015 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the demerged company is Rs.2,07,07,14,591/- divided into 2,99,050 equity shares of Rs.1/- each aggregating to Rs.2,99,050/-; 200 series A equity shares of Rs.1/- each aggregating to Rs.200/-; 750 series B equity shares of Rs.1/- each aggregating to Rs.750/-; 84,706 series A compulsorily convertible preference shares of Rs.1/- each aggregating to Rs.84,706/-; 36,51,71,360 series B compulsorily convertible preference shares of Rs.1/- each aggregating to Rs.36,51,71,360/-; 1,79,344 series C compulsorily convertible preference shares of Rs.3997.90/- each aggregating to Rs.71,69,99,377.60/-; 1,13,140 series D compulsorily convertible preference shares of Rs.7664.4857/- each aggregating to

Rs.86,71,59,912.10/- and 15,787 series D1 compulsorily convertible preference shares of Rs.7664.4857/- each aggregating to Rs.12,09,99,235.75/-. The issued, subscribed and paid up capital of the company is Rs.2,07,05,09,051.99/- divided into 1,16,524 equity shares of Rs.1/- each aggregating to Rs.1,16,524/-; 200 series A equity shares of Rs.1/- each aggregating to Rs.200/-; 750 series B equity shares of Rs.1/- each aggregating to Rs.750/-; 84,706 series A compulsorily convertible preference shares of Rs.1/- each aggregating to Rs.84,706/-; 36,51,71,340 series B compulsorily convertible preference shares of Rs.1/- each aggregating to Rs.36,51,71,340/-; 1,79,344 series C compulsorily convertible preference shares of Rs.3997.90/- each aggregating to Rs.71,69,99,377.60/-; 1,13,137 series D compulsorily convertible preference shares of Rs.7664.4857/- each aggregating to Rs.86,71,36,918.64/- and 15,787 series D1 compulsorily convertible preference shares of Rs.7664.4857/- each aggregating to Rs.12,09,99,235.75/-.

6. The present authorized share capital of the resulting company is Rs.30,01,00,000/- divided into 30,01,00,000 equity shares of Rs.1/- each. The issued, subscribed and paid up capital of the company is Rs.30,01,00,000/- divided into 30,01,00,000 equity shares of Rs.1/- each.

7. Copies of the Memorandum and Articles of Association of the demerged and resulting companies have been filed on record with the joint application, being CA(M) 136/2015, earlier filed by the petitioners.. The audited balance sheet, as on 31st March, 2014, of the demerged company, along with the report of the auditors, and the unaudited provisional balance sheet, as on 31st May, 2015, of the resulting company had also been filed.

8. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavits. It is submitted by the petitioners that the Scheme of Arrangement, *inter-alia*, provides for merger of the HealthKartPlus Business of the demerged company into the resulting company. It is further submitted that the present demerger is being undertaken to segregate the HealthKartPlus Business of the demerged company from its Bright Business since the two segments have distinct nature of operations and nature of offering and risks and rewards for both the segments are different. It is claimed that the Scheme is expected to have beneficial results for the shareholders and the petitioner companies.

9. So far as the share exchange ratio is concerned, the Scheme provides that upon coming into effect of this Scheme, the resulting

company shall issue and allot shares to the shareholders of the demerged company in the following ratio:

“69 fully paid up equity shares of Rs.1/- each of the resulting company for every 664 equity shares of Rs.1/- each fully paid up held in the demerged company.”

“69 fully paid up series A equity shares of Rs.1/- each of the resulting company for every 664 series A equity shares of Rs.1/- each fully paid up held in the demerged company.”

“69 fully paid up series B equity shares of Rs.1/- each of the resulting company for every 664 series B equity shares of Rs.1/- each fully paid up held in the demerged company.”

“69 fully paid up series A compulsorily convertible preference shares Rs.1/- each of the resulting company for every 664 series A compulsorily convertible preference shares of Rs.1/- each fully paid up held in the demerged company.”

“69 fully paid up series B compulsorily convertible preference shares Rs.1/- each of the resulting company for every 664 series B compulsorily convertible preference shares of Rs.1/- each fully paid up held in the demerged company.”

“69 fully paid up series C compulsorily convertible preference shares Rs.1/- each of the resulting company for every 664 series C compulsorily convertible preference shares of Rs.3997.90 each fully paid up held in the demerged company.”

“69 fully paid up series D compulsorily convertible preference shares Rs.1/- each of the resulting company for every 664 series D compulsorily convertible preference shares of Rs.7664.4857 each fully paid up held in the demerged company.”

“69 fully paid up series D1 compulsorily convertible preference shares Rs.1/- each of the resulting company for every 664 series D1 compulsorily convertible preference shares of Rs.7664.4857 each fully paid up held in the demerged company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

11. The Board of Directors of the demerged and resulting companies in their separate meetings held on 17th June, 2015 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the demerged and resulting companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 136/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 28th August, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, preference shareholders, secured and unsecured creditors of the demerged company and equity shareholders of the resulting company, there being no secured or unsecured creditor of the resulting company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 18th September, 2015, notice in the petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Citations were also directed to be published in 'Financial Express' (English) and 'Jansatta' (Hindi) editions. Thereafter, vide order dated 2nd November, 2015 passed in CA No. 3178/2015, it was directed that notice need not be issued to the Official Liquidator in this matter. Affidavit of services has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 1st November, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 15th February, 2016 stating that he had no objection to the proposed Scheme of Arrangement.

15. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 12th February, 2016 of Mr. Satwinder Singh, counsel for the petitioner companies, have submitted that neither the petitioner companies nor

their advocates have been received pursuant to the citations published in the newspapers on 1st November, 2015.

16. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavit filed by the Regional Director, Northern Region, not raising any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of Arrangement under Sections 391 and 394 read with Sections 100 to 103 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 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Arrangement, i.e. 1st May, 2015, the HealthKartPlus Business of the demerged company shall stand merged in the resulting company.

17. The representative of the Regional Director prays that costs of at least Rs.1,00,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and

also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 29.04.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

18. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 16, 2016