

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 98/2015

Reserved on 30th July, 2015
Date of pronouncement: 28th August, 2015

In the matter of

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

And

**Application under Sections 391 to 394 of the
Companies Act, 1956 read with Rule 9 of the
Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Baani Facilities Management Private Limited

Applicant/Transferor Company

WITH

Baani Technology Services Private Limited

Applicant/Transferee Company

**Through Mr. Santosh Kumar, Advocate
for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Baani Facilities Management Private Limited (hereinafter referred to as the transferor company) and Baani Technology Services Private Limited (hereinafter referred to as the transferee company).

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

3. The transferor company was incorporated under the Companies Act, 1956 on 2nd September, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 3rd November, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the auditor's report, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavits. It is claimed by the applicants that the proposed amalgamation will result in greater integration and greater financial strength and flexibility for the transferee company, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity. It is further claimed that the proposed Scheme will provide benefit of operational synergies to the combined entity in areas such as procurement of trading stock, sourcing of material, development of contractor rates, development planning and marketing, which can be put to the best advantage of the stakeholders.

9. So far as the share exchange ratio is concerned, the Scheme provides that upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

“27.4 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.10/- each held in the transferor company.”

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

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 5th January, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 02 equity shareholders and 01 unsecured creditor. Both the equity shareholders and the sole unsecured creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditor of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

13. The transferor company has 02 secured creditors, as on 31st December, 2014. Learned counsel for the applicants has submitted that subsequent to filing of the present application, the dues of one secured creditor namely ICICI Bank Limited has been paid in full and a certificate to this effect has been placed on record. Therefore, presently there is only one secured creditor of the transferor company, who has given its consent/no objection in writing to the proposed Scheme of Amalgamation. Its consent/no objection has been placed on record. It has been examined and found in order. In view thereof, the requirement of convening the meeting of the secured creditor of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

14. The transferee company has 13 equity shareholders, 01 secured creditor and 90 unsecured creditors. All the equity shareholders, the sole secured creditor and 87 out of 90 unsecured creditors, being 96.67% in number and 97.98% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the transferee company to consider and, if thought fit, approve, with or

without modification, the proposed Scheme of Amalgamation is dispensed with.

15. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

August 28, 2015