

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 193/2014

Reserved on 6th April, 2015
Date of pronouncement: 8th May, 2015

In the matter of

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

And

**Petition under Sections 391(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Efficient Frontier Technology India Private Limited

Non-Petitioner/Transferor Company

WITH

Adobe Systems India Private Limited

Petitioner/Transferee Company

Through Mr. Saurabh Leekha,
Advocate for the petitioners
Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under sections 391(2) & 394 of the Companies Act, 1956 by the petitioner/transferee company seeking sanction of the Scheme of Amalgamation of Efficient Frontier Technology India Private Limited (hereinafter referred to as the transferor company) with Adobe Systems India Private Limited (hereinafter referred to as the petitioner/transferee company).

2. The registered office of the petitioner/transferee company is situated at New Delhi, within the jurisdiction of this Court. However, the registered office of the transferor company is situated at Chennai, outside the jurisdiction of this Court. Learned counsel for the petitioner submitted that separate proceedings on behalf of the transferor company have been filed in the High Court of Judicature at Madras for sanction of the Scheme of Amalgamation.

3. The petitioner/transferee company was incorporated under the Companies Act, 1956 on 30th July, 1997 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the petitioner/transferor company is Rs.1,25,00,00,000/- divided into 12,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,14,90,78,000/- divided into 11,49,07,800 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the transferor company and petitioner/transferee company have been filed on record with the joint application, being CA(M) 32/2014, earlier filed by the petitioner. The audited balance sheets, as on 31st March, 2013, of the transferor company and petitioner/transferee company, along with the report of the auditors, had also been filed.

6. 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 petition and the accompanying affidavit. It is submitted by the petitioner that the transferor and transferee companies are carrying on the same business i.e. software development. It is claimed that the proposed amalgamation enables combining and pooling of software development, financial and other resources of the two companies together for deriving optimum benefits. It is further claimed that the amalgamation will result in increased financial strength and flexibility and enhance the ability of the amalgamated entity to expand its activities, thereby contributing to enhancement of future business potential.

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

“21 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 by the shareholders in the transferor company.”

8. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/transferee company.

9. The Board of Directors of the petitioner/transferee company, by Circulation on 20th January, 2014, have unanimously approved the proposed Scheme of Amalgamation. A copy of the Resolution passed by the Board of Directors of the petitioner/transferee company had been placed on record.

10. The petitioner/transferee company had earlier filed CA (M) No. 32/2014 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 21st February, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meeting of the equity shareholders of the petitioner/transferee company, there being no secured or unsecured creditors of the petitioner company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

11. The petitioner/transferee company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 21st March, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and (Hindi) editions. Thereafter, vide order dated 11th

September, 2014, in view of the fact that the transferor company had filed the petition before the High Court of Judicature at Madras since its registered office is in Chennai, it was held that no notice was required to be issued to the Official Liquidator and no response is required from him. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 3rd July, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. 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 24th July, 2014. Relying on Clause 7.1 of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services.

13. Although no objection has been raised by the Regional Director, but in Para 4 of his report, he has submitted that on perusal of the shareholding pattern of both the companies, it has been observed that all the shares are held by foreign companies. He, therefore, prayed that the petitioner company may be asked to give an undertaking for all compliances from Reserve Bank of India as required under FEMA for

above transactions involving foreign banks/entities. Further, in para 5 of the report, he has pointed out that the petitioner has not filed the requisite e-form 32 (DIR 12) regarding regularization of their Additional Director, namely Sh. Raman Nagpal. In reply to the aforesaid, the petitioner has undertaken to comply with the statutory provisions under the FEMA and the RBI Act, and the rules and regulations framed thereunder. The same is accepted and the petitioner shall remain bound by the same. The Assistant Registrar of Companies has submitted that the petitioner has also filed the relevant e-form 32 (DIR 12) with regard to the Director, Sh. Raman Nagpal for regularization of his directorship. In view of the aforesaid, the observations raised by the Regional Director, Northern Region stand satisfied.

14. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 9th September, 2014 of Mr. Naresh Chand Gupta, authorized signatory of the petitioner/transferee company, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 3rd July, 2014.

15. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region not raising any objection to the proposed Scheme of

Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, subject to sanction of the Scheme of Amalgamation in respect of the transferor company from the court of competent jurisdiction, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner company 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. The sanction will be effective from the appointed date of amalgamation, that is 1st April, 2013.

16. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 08, 2015