

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 251/2015

Reserved on 16th December, 2015

Date of pronouncement: 23d December, 2015

In the matter of

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

And

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

Scheme of Amalgamation of:

AVL India Softwares Private Limited

Petitioner/Transferor Company

WITH

AVL India Private Limited

Petitioner/Transferee Company

**Through Mr. Kunal Juneja, Advocate
for the petitioners**

**Mr. Sanjay Bose, Dy. Registrar of
Companies for the Regional Director**

**Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Section 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of AVL India Softwares Private Limited (hereinafter referred to as the transferor company) with AVL India 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 10th July, 1990 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 28th April, 1984 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.25,00,000/- divided into 25,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 1,000 equity shares of Rs.100/- each.

6. The present authorized share capital of the transferee company is Rs.1,50,00,000/- divided into 1,50,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,30,00,000/- divided into 1,30,000 equity shares of Rs.100/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 169/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor

and transferee companies, along with the report of the auditors, had 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 petition and the accompanying affidavit. It is claimed by the petitioners that the proposed amalgamation would result in synergy and cost efficiencies and would prevent duplication of efforts in running the business. Further, it shall provide significant impetus to the growth of the transferor undertaking with focused operations, judicious utilization of resources and operational efficiencies. It is further claimed that the amalgamation will provide a larger asset base to the transferee company and thereby enable it to raise resources for future growth and expansion of the business and should also result in economies of scale and optimum utilization of available resources.

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:-

“14 equity shares of Rs.100/- each of the transferee company for every 01 (one) equity share of Rs.100/- each in the transferor company.”

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

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 25th July, 2014 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 petitioner companies had earlier filed CA (M) No. 169/2014 seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the transferor company and equity shareholders and secured creditors of the transferee company and for convening a meeting the unsecured creditors of the transferee company, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 20th February, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor company and equity shareholders of the transferee company, there being no secured creditor of the petitioner companies, and directed convening a meeting of the unsecured creditors of the transferee company, to

consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The Chairperson of the ordered meeting of the unsecured creditors of the transferee company have filed his report stating that the meeting was duly held on 4th April, 2015, as directed, and that the Scheme of Amalgamation has been approved unanimously by the unsecured creditors of the transferee company, present and voting, in the meeting.

14. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 21st July, 2015, 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 'Financial Express' (English) and 'Jansatta' (Hindi) editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator and also regarding publication of citations in the aforesaid newspapers on 18th August, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

15. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information

received, the Official Liquidator has filed a report dated 5th November, 2015 wherein he has stated 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 company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

16. 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 10th December, 2015. Relying on Clause 6(h) 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. He has further submitted that in Clause 15 of Part-III of the Scheme, it has been stated that the transferee company shall follow pooling of interest method for accounting as per Accounting Standard-14 on 'Accounting for Amalgamation' prescribed under Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 18(d) of Part-IV of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 11th December, 2015 of Mr. Ashwani Mittal, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 18th August, 2015.

18. 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 and the Official Liquidator having not raised 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, sanction is hereby granted to the Scheme of Amalgamation under Sections 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 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 Amalgamation, i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

19. Learned counsel for the Official Liquidator 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 companies states that the same is acceptable to him. As already directed vide order dated 16.12.2015, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

20. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

December 23, 2015