IN THE HIGH COURT OF DELHI

COMPANY PETITION NO. 221/2015

Reserved on 10th September, 2015
Date of pronouncement: 21st September, 2015

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

And

Petition under Sections 391 to 394 of the Companies Act, 1956

Scheme of Amalgamation of:

FIL India Business Services Private Limited
Petitioner/Transferor Company

WITH

FIL Research (India) Private Limited
Petitioner/Transferee Company

Through Mr. Mahesh Aggarwal and Mr.Rajeev Kumar, Advocates for the petitioners
Ms. Aparna Mudiam, Assistant 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 Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of FIL India Business Services Private Limited (hereinafter referred to as the transferor company) with FIL Research (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 27th March, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 7th November, 2007 with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Fidelity Funds Network Private Limited. The company changed its name to FIL Funds Network Private Limited and obtained the fresh certificate of incorporation on 11th June, 2008. The company again changed its name to FIL Research (India) Private Limited and obtained the fresh certificate of incorporation on 23rd May, 2012. Thereafter, the company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 17th December, 2014.

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

Rs.1,47,130/- divided into 14,713 equity shares of Rs.10/- each fully paid-up.

6. The present authorized share capital of the transferee company is Rs.2,99,00,00,000/- divided into 29,90,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,43,85,39,370/- divided into 24,38,53,937 equity shares of Rs.10/- each fully paid-up.

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) 39/2015, 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 amalgamation will result in reduction of overheads, administrative and other expenditure and bring about operational rationalization, organizational efficiency and optimal utilization of various resources. It is further claimed that proposed

amalgamation will provide an opportunity to leverage combined assets and capital better, build a stronger sustainable business, improve the potential for further growth and expansion of the businesses of the two companies.

9. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor company is a wholly owned subsidiary of the transferee company, the transferee company shall not issue any share or pay any consideration to the transferor company or to its shareholders pursuant to the sanction of this Scheme.

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or under Sections 210, 212(1) to (7) & (11) to (17), 214, 215, 216(1) & (3), 217, 219, 220, 223, 224(1), (3) & (4), and 225 of the Companies Act, 2013 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 9th March, 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 petitioner companies had earlier filed CA (M) No. 39/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 16th April, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor and transferee companies, there being no secured or unsecured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 7th May, 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 'Business Standard' (English) and (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 12th June, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. 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 24th August, 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.

15. 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 August, 2015. Relying on Clause 10.1 of Part-B 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 7 of Part-B of the Scheme, it has been stated that the transferee company shall account for the amalgamation of the transferor company in its books of accounts with effect from appointed date as per 'Pooling of Interest method' as defined in the Accounting Standard-14 'Accounting for Amalgamation' issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 16 of Part-B 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.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 24th August, 2015 of Mr. Ameet Nayak, authorized representative of the transferor company and of Mr. Alok Loyalka, authorized representative of the 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 12th June, 2015.

17. Considering the approval accorded by the equity shareholders of the petitioner companies, there being no secured or unsecured 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 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, 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, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

18. Learned counsel for the Official Liquidator prays that costs may also be imposed keeping in view the fact that the matter has involved examination of extensive records and prioritized hearings. He submits that at least costs of Rs.1,00,000/- should be paid by the petitioners. Learned counsel for the petitioners states that the same is acceptable to him. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs in the Common Pool Fund of the Official Liquidator, within two weeks.

19. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 21, 2015