

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 748/2014

Reserved on 23rd March, 2015
Date of pronouncement: 23rd April, 2015

In the matter of

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

And

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

Scheme of Amalgamation of:

SD Bio Standard Diagnostics Private Limited

Non-Petitioner/Transferor Company

WITH

Alere Medical Private Limited

Petitioner /Transferee Company

**Through Mr. D.Bhattacharya and Ms.D.
Ojha, Advocates 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 & 394 of the Companies Act, 1956 by the petitioner/transferee company seeking sanction of the Scheme of Amalgamation of SD Bio Standard Diagnostics Private Limited (hereinafter referred to as the transferor company) with Alere Medical 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 Gurgaon, Haryana, 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 Punjab & Haryana at Chandigarh for sanction of the Scheme of Amalgamation.

3. The petitioner/transferee company was originally incorporated under the Companies Act, 1956 on 6th June, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Spectral Diagnostics Private Limited. The company changed its name to Inverness Medical India Private Limited and obtained the fresh certificate of incorporation on 28th May, 2008. The company again changed its name to Alere Medical Private Limited and obtained the fresh certificate of incorporation on 25th March, 2010.

4. The present authorized share capital of the petitioner/transferee company is Rs.1,00,00,00,000/- divided into 10,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.21,39,43,060/- divided into 2,13,94,306 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the transferor company and the petitioner/transferee company have been filed on record with the joint application, being CA(M) 150/2014, 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.

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 that the transferor company and the petitioner/transferee company both are part of Alere Group which is headquartered in USA. It is claimed that the proposed merger would derive the synergies arising out of consolidation of business and would also provide focused approach to the customers as treatment/products would be available with a single consolidated entity. It is further claimed that the proposed merger would reduce the operating/administrative costs and improve profitability.

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:

“10 equity shares of Rs.10/- each fully paid up of the transferee company for every 29 equity shares of Rs.10/- each fully paid up held 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 transferor company and the petitioner/transferee company in their separate meetings held on 5th September, 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 company and the petitioner/transferee company have been placed on record.

10. The petitioner/transferee company had earlier filed CA (M) No.150/2014 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 13th November, 2014, 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 petitioner/transferee company, there being no secured creditors of the petitioner company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

11. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 2nd December, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in 'Financial Express' (English) and 'Jansatta' (Hindi) editions. 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 31st December, 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 2nd March, 2015. Relying on Clause 9.1 of Part-C 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 6.2 of Part-B of the Scheme, it has been stated that the transferee company shall account the amalgamation of the transferor company as per pooling of interest method as set out in Accounting Standards-14. He further submitted that in Clause 13 of Part-C 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.

13. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner/transferee company, in the affidavit dated 3rd March, 2015 of Mr. Dhritiman Bhattacharyya, Counsel of the petitioner/transferee company, has submitted that they have not received any objection pursuant to the citations published in the newspapers on 31st December, 2014.

14. Considering the approval accorded by the equity shareholders and creditors of the petitioner/transferee company to the proposed Scheme of Amalgamation and the affidavit 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, 2014.

15. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

April 23, 2015