

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 111/2015

Reserved on 1st July, 2015
Date of pronouncement: 22nd July, 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

Scheme of Amalgamation of:

ExlService SEZ BPO Solutions Private Limited

Applicant/Transferor Company No. 1

Exl Support Services Private Limited

Applicant/Transferor Company No. 2

WITH

Exl Service.com (India) Private Limited

Applicant/Transferee Company

**Through Mr. Dhritiman Bhattacharyya
with Mr. Piyush Sharma and Ms Deeti
Ojha, Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 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 ExlService SEZ BPO Solutions Private Limited (hereinafter referred to as the transferor company no. 1) and Exl Support

Services Private Limited (hereinafter referred to as the transferor company no. 2) with Exl Service.com (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 no. 1 was incorporated under the Companies Act, 1956 on 15th January, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 25th March, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 21st May, 1999 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of EXL Services.com (India) Private Limited. The company changed its name to exl Service.com (India) Private Limited and obtained the fresh certificate of incorporation on 28th November, 2000.

6. The present authorized share capital of the transferor company no.1 is Rs.15,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.13,76,55,000/- divided into 1,37,65,500 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.15,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.13,41,70,290/- divided into 1,34,17,029 equity shares of Rs.10/- each.

9. 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 report of the auditors, and the provisional accounts of the companies, as on 31st March, 2015, have also been filed.

10. 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 Scheme will result in focused approach towards customers as collective services shall be rendered by a single consolidated entity; reduction of operating/administrative costs, thereby improving overall profitability; reduction in number of legal entities and regulatory compliances thereof; and pooling of financial resources in a single consolidated entity for effective treasury function and centralized management of funds to supplement future growth opportunities.

11. So far as the share exchange ratio is concerned, the Scheme provides that ExlService Mauritius Limited is the parent company which holds the entire paid-up share capital of the transferor company no. 1 (except one share only) and transferee company (except two shares only) and that the transferor company no. 2 is a wholly owned subsidiary of the transferee company and the Scheme does not envisage issuances of any shares to the transferee company. It is further provided that a lump sum consideration amounting to Rs.1,37,65,500/- has been fixed for the transfer and vesting of assets and liabilities of the transferor company no. 1 into the transferee company as a result of amalgamation, which shall be discharged by the transferee company through issuances

of its 13,76,500 equity shares of Rs.10/- each, credited as fully paid up, to ExlService Mauritius Limited.

12. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or corresponding provisions under the Companies Act, 2013 are pending against the applicant companies.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 2nd April, 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.

14. The transferor company no. 1 has 02 equity shareholders and 01 secured creditor. Both the equity shareholders and the only secured 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 meeting of the equity shareholders and secured creditor of the transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

15. The transferor company no. 2 has 02 equity shareholders. Both the equity shareholders 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 meeting of the equity shareholders of the transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured or unsecured creditor of the transferor company no. 2, as on 30th April, 2015.

16. The transferee company has 02 equity shareholders and 01 secured creditor. Both the equity shareholders and the only secured 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 meeting of the equity shareholders and secured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

17. The transferor company no. 1 has 246 unsecured creditors amounting to Rs.18,16,38,708/- whereas the transferee company has

552 unsecured creditors amounting to Rs.65,31,49,575/-. 43 out of 246 unsecured creditors, being 17.4% in number and 86.24% in value, of the transferor company no. 1 and 48 out of 552 unsecured creditors, being 8.69% in number and 76.45% in value, of the transferee company 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.

18. In addition to the aforesaid consents of the unsecured creditors of the transferor company no. 1 and the transferee company, the applicants have placed on record an affidavit cum undertaking dated 14th July, 2015 of Mr. Vishal Chhibbar, Director of the applicant companies stating that the transferee company has liquidity comprising of cash and bank balances of Rs.67,83,62,559/- and liquid investments in mutual funds of Rs.2,50,34,70,415/- totaling to Rs.3,18,18,32,974/- which is more than sufficient to meet and discharge the entire liability towards all the unsecured creditors of the transferor company no. 1 and the transferee company amounting to Rs.83,47,88,283/-. The applicant companies have also undertaken to duly pay and discharge the liabilities of the unsecured creditors in normal course of their business. In view thereof, the requirement of convening the meetings of the unsecured creditors of the transferor company no. 1 and the transferee company to consider and, if

thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

19. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

July 22, 2015