

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 430/2015

Reserved on 8th December, 2015

Date of pronouncement: 23rd December, 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:

LMS India Engineering Solutions Private Limited

Non-Petitioner/Transferor Company

WITH

Siemens Industry Software (India) Private Limited

Petitioner/Transferee Company

**Through Mr. Sharad Vaid, 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 petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner/transferee company seeking sanction of the Scheme of Amalgamation of LMS India Engineering Solutions Private Limited (hereinafter referred to as the transferor company) with Siemens Industry Software (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, Tamil Nadu, outside the jurisdiction of this Court. Learned counsel for the petitioner submits that a separate petition has been filed by the transferor company in the court of competent jurisdiction seeking sanction of the Scheme of Amalgamation in respect of the transferor company.

3. The petitioner/transferee company was originally incorporated under the Companies Act, 1956 on 8th June, 1998 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of SDRC India Private Limited. The company changed its name to UGS India Private Limited and obtained the fresh certificate of incorporation on 9th January, 2006. The company again changed its name to Siemens Product Lifecycle Management Software (India) Private Limited and obtained the fresh certificate of incorporation on 8th May, 2008. The company finally changed its name to Siemens Industry Software (India) Private Limited and obtained the fresh certificate of incorporation on 22nd December, 2010.

4. The present authorized share capital of the petitioner/transferee company is Rs.12,50,00,000/- divided into 1,25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the

company is Rs.12,10,64,020/- divided into 1,21,06,402 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the application, being CA(M) 99/2015, earlier filed by the petitioner. The audited balance sheets, as on 31st March, 2014, along with the reports of the auditors, and the unaudited financial statements, as on 28th February, 2015, of the transferor and transferee companies, 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 claimed by the petitioner that the proposed amalgamation will result in rationalization of Siemens group structure in India because the businesses of providing test and mechatronic simulation software and product lifecycle management software shall be combined in one legal entity, instead of having two different entities. It is further claimed that the proposed amalgamation will enable appropriate consolidation of the activities of the petitioner companies with pooling and more efficient utilization of their resources, greater economies of scale, reduction in overheads and other expenses and improvement in various operating parameters.

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:

“63 equity shares of Rs.10/- each of the transferee company fully paid-up for every 10 fully paid-up equity shares of Rs.10/- each 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 transferor and transferee companies.

9. The Board of Directors of the transferor company and the transferee company in their separate meetings held on 21st November, 2014 and 12th November, 2014 respectively 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.

10. The petitioner/transferee company had earlier filed CA (M) No. 99/2015 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 29th May, 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 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/transferee company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 10th July, 2015, 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 petitioners showing compliance regarding service on the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 9th September, 2015. 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 4th December, 2015. Relying on Clause 1(viii) of Part-I 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 5.1.2 of Part-V of the Scheme, it has been stated that the transferee company shall follow the method of Accounting as prescribed for the pooling of interest method under Accounting Standard-14 as notified under the Companies (Accounting Standard) Rules, 2006. He has further submitted that in Clause 3.5 of Part-III 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 company, in the affidavit dated 3rd December, 2015 of Mr. Ashish Mishra, Company Secretary and the Authorized Signatory of the petitioner/transferee company, has submitted that neither the petitioner company nor their counsel have received any objection pursuant to the citations published in the newspapers on 9th September, 2015.

14. Considering the approval accorded by the shareholders and creditors of the petitioner 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 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. This sanction will be effective from the appointed date of Amalgamation, i.e. 1st April, 2014.

15. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- should be paid by the petitioner keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner states that the same is acceptable to him. As already directed vide order dated 08.12.2015, petitioner shall deposit a sum of Rs.50,000/-, by way of costs, with the Common Pool Fund of the Official Liquidator.

16. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

December 23, 2015