

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 211/2016

Reserved on 10th August, 2016

Date of pronouncement: 2nd September, 2016

In the matter of

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

And

**Petition under Section 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Spice Innovative Technologies Private Limited

Petitioner/Transferor Company

WITH

Smart Global Corporate Holding Private Limited

Petitioner/Transferee Company

**Through Mr. Harshit Aggarwal with
Mr. Gursat Singh, Advocates for the
petitioners**

**Ms. Aparna Mudiam, Asstt. 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 Spice Innovative Technologies Private Limited (hereinafter referred to as the transferor company) with Smart Global Corporate Holding 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 originally incorporated under the Companies Act, 1956 on 13th May, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Excellent Technologies Private Limited. The company changed its name to Spice Innovative Technologies Private Limited and obtained the fresh certificate of incorporation on 2nd September, 2008.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 18th June, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Indian Televentures Private Limited. The company changed its name to Spice Global Investments Private Limited and obtained the fresh certificate of incorporation on 16th July, 2009. The company again changed its name to Smart Global Corporate Holding Private Limited and obtained the fresh certificate of incorporation on 8th August, 2014.

5. The present authorized share capital of the transferor company is Rs.3,01,00,00,000/- divided into 30,10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,00,01,00,000/- divided into 30,00,10,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.2,12,00,00,000/- divided into 21,20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,94,11,960/- divided into 39,41,196 equity shares of Rs.10/- each.

7. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 191/2015, earlier filed by the petitioners. The audited balance sheets, as on 30th June, 2015, of the transferor and transferee companies 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 greater efficiency in resource management, cost savings resulting from rationalization, standardization and simplification of business processes. It is further claimed that the proposed amalgamation would result in improved organizational capability arising from pooling of financial, managerial and technical resources and will also maximize the overall shareholders value by strengthening its core competencies.

9. So far as the share exchange ratio is concerned, the Scheme provides that there will be no issue and allotment of shares by the transferee company in consideration of amalgamation of the transferor company with the transferee company as the entire share capital of the transferor company is held by the transferee company either in its own name or through its nominee(s).

10. It has been submitted by the petitioners that no 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 company and the transferee company in their separate meetings held on 1st December, 2015 and 2nd December, 2015 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.

12. The petitioner companies had earlier filed CA (M) No. 191/2015 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 18th February, 2016, 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 companies, there being no secured creditor 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 11th March, 2016, 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 "Jansatta" (Hindi) Delhi 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 9th April, 2016. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

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 4th August, 2016 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. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 5th August, 2016 stated that he had no objection to the Scheme subject to the findings made by the ROC in his Technical Scrutiny report as stated in para 8 of his report. The Regional Director in para 8 of his report has stated that Technical Scrutiny under Section 234(1) of the Companies Act, 1956 of the transferor company was conducted on 26.06.2013 and the report of the same is under process.

16. In response to the aforesaid observation, the petitioner companies in the affidavit dated 8th August, 2016 of Ms. Jyoti Manchanda, Director of the petitioner companies, have submitted that pursuant to sanction of the Scheme, the transferor company would amalgamated with the transferee company. Further, if there is any violation of any provisions of Companies Act, 2013 or any other applicable laws by the transferor company, then the same would be continued and enforced by or against the transferee

company in terms of Section 4 of the Scheme of Amalgamation. Since the transferee company is not the subject matter of dissolution and will remain in existence even after the sanction of the Scheme, therefore, in case of any adverse finding emanates from the Technical Scrutiny under Section 234(1) of the Companies Act, 1956 against the transferor company, the ROC/other statutory authorities would be at liberty to take appropriate action, as permissible in law, against the transferee company.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 8th August, 2016 of Ms. Jyoti Manchanda, Director 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 9th April, 2016.

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 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 July, 2015, 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.2,00,000/- 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 10.08.2016, the petitioners shall deposit a sum of Rs.2,00,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

20. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

September 02, 2016