

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 512/2014

Reserved on 7th December, 2015
Date of pronouncement: 10th February, 2016

In the matter of

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

And

**Petition under Section 391(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Sapphire Management Consultants Private Limited
Petitioner/Transferor Company No. 1

Silica Media Private Limited
Petitioner/Transferor Company No. 2

WITH

Sapphire Bizforecasting and Consulting Private Limited
Petitioner/Transferee Company

Through Mr. Mukesh Sukhija,
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 joint petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Sapphire Management Consultants Private Limited (hereinafter referred to as the transferor company no. 1) and Silica Media Private Limited (hereinafter referred to as the transferor

company no. 1) with Sapphire Bizforecasting and Consulting 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 24th January, 2008 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 January, 2006 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 24th December, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of NEOL Equity Research Private Limited. The company changed its name to Sapphire Bizforecasting & Consulting Private Limited and obtained the fresh certificate of incorporation on 24th March, 2006.

6. The present authorized share capital of the transferor company no.1 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

The issued, subscribed and paid-up share capital of the company is Rs.3,50,000/- divided into 35,000 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,48,000/- divided into 24,800 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.80,77,000/- divided into 8,07,700 equity shares of Rs.10/- each.

9. 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) 116/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2013, of the transferor and transferee companies, along with the report of the auditors, had 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 petition and the accompanying affidavit. It is claimed

that the proposed amalgamation would enable pooling of physical, financial and human resources of these companies for their most beneficial utilization in the combined entity. It is further claimed that the proposed amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

11. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor companies in the following ratio:-

“2.25 equity shares of Rs.10/- each of the transferee company for every 01 equity share of Rs.10/- each held in the transferor company no. 1.”

“01 equity share of Rs.10/- each of the transferee company for every 01 equity share of Rs.10/- each held in the transferor company no. 2.”

12. 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.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 24th March, 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 and transferee companies have been placed on record.

14. The petitioner companies had earlier filed CA (M) No. 116/2014 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 4th August, 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 transferor and transferee 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.

15. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 14th August, 2014, 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 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 31st October, 2014. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

16. 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 15th December, 2014 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.

17. 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 6th January, 2015. Relying on Clause 8(a) of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies shall become the employees of the transferee company without any break or

interruption in their services. He has further submitted that in Clause 15(a) of the Scheme, it has been stated that amalgamation shall be an 'amalgamation in the nature of merger' as defined in Accounting Standard-14 issued by the Institute of Chartered Accountants of India and shall be accounted for under the 'pooling of interest' method in accordance with the said AS-14. He further submitted that in Clause 10 of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies shall stand dissolved without the process of winding up.

18. The Regional Director in Para 3 of his report has submitted that the Income Tax Department vide letter dated 11.11.2014 has informed that the case of transferor company no. 2 was selected for scrutiny under section 143(3) of the Income Tax Act, 1961 and the last notice issued to the company u/s 142(1) of the Act remained un-complied with. Therefore, the Income Tax Department has requested that the amalgamation proceedings may be kept in abeyance till the completion of scrutiny assessment u/s 143(3) of the Act for AY 2012-13. In response to the aforesaid objection, the petitioner companies in the affidavit dated 6th February, 2015 of Ms. Vishakha Banga, Director of the transferee company have submitted that the income tax assessment of the transferor company no. 2 for the assessment year 2012-13 has already been completed and the Assessment Order dated 24.12.2014 has

already been passed. A copy of the said assessment order has also been placed on record. In view of the aforesaid, the objection raised by the Regional Director does not subsist.

19. The Regional Director in para 8 of his report has stated that the auditors have qualified their report to the balance sheet dated 31.03.2013 of the transferee company in respect of non-provision of the liability on account of leave benefits as per the provisions of AS-15 to the Companies Act, 1956. He has further submitted that as per Annual Return made upto 30.09.2013 filed by the transferor company no. 1 on 25.11.2013, it has three shareholders namely Sh.Piyush Kumar (holding 9,900 shares), Sh. Diksha Kumar (holding 100 shares) and Vama Exim Private Limited (holding 25,000 shares) whereas as per list enclosed to the petition, as on 24.03.2014, it has two shareholders namely Silica Media Private Limited (holding 200 shares) and Saturn the Trust holding 34,800 shares. Similarly, as per Annual Return made upto 30.09.2013 filed by the transferor company no.2, it has four shareholders, out of which three shareholders appear to have transferred their shareholding to Shri Manish Marwah and the transferor company no. 1. The Regional Director has submitted that it could not be ascertained as to when the shareholders shown in the Annual Return have transferred their shares to the present shareholders. The Regional Director has further submitted that the transferee company has not filed its due Annual Return for the

year ended 31.03.2008, thus there is prima facie violation under Section 159 of the Companies Act, 1956 (now Section 92 of the Companies Act, 2013).

20. So far as the first objection with regard to non-compliance of AS-15 is concerned, the petitioner companies in the affidavit dated 6th February, 2015 of Ms. Vishakha Banga, Director of the transferee company have submitted that the issue raised has been adequately addressed by the Directors in the Notes to Accounts of the balance sheet that the operational cost to the requirement of Accounting Standard-15 (Revised) is much more than the benefits of the disclosure, therefore, the company has not complied with the same. It is further submitted that the Registrar of Companies, while verifying the Auditor's Report, ignored the explanation provided by the Board of Directors in the Annual Accounts of the transferee company for 31st March, 2013. The transferee company vide affidavit dated 10th December, 2015 of Ms. Vishakha Banga, Director of the transferee company has, however, undertaken to comply with the provisions of Accounting Standard-15 with regard to Employees Benefits, as issued by the Institute of Chartered Accountants of India, as applicable.

So far as the second objection regarding change in the shareholding pattern of the petitioner companies is concerned, it is

submitted by the petitioners that old shareholders of the transferor companies no. 1 & 2 have transferred their shares to the existing shareholders on 03.03.2014, in accordance with the applicable provisions of the Companies Act, which was allowed by the Board of the respective companies, and the same was duly recorded in the records of the transferor companies no. 1 & 2. Details with regard to the shares transferred in the transferor companies no. 1 & 2 are also placed on record.

So far as the third objection with regard to non-filing of the Annual Return for the year ended 31.03.2008 of the transferee company is concerned, the petitioners have submitted that the Annual Return of the transferee company for the financial year ended 31.03.2008 has been duly filed as mandatory attachment with Form 20B filed vide SRN P28625846 dated 24.12.2008 and a copy of the same is also placed on record. In view of the explanation noticed above, the objections raised by the Regional Director stand satisfied and do not subsist.

21. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 10th November, 2014 of Sh. Peyush Kumar Srivastava, Director of the transferor companies no. 1 & 2 and Ms. Vishakha Banga, Director 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 31st October, 2014.

22. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation; the affidavit filed by the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, and there being no surviving objection to the same by the Regional Director, Northern Region, 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, 2013, the transferor companies no. 1 and 2 shall stand dissolved without undergoing the process of winding up.

23. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- 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 07.12.2015, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

24. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

February 10, 2016