IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 336/2015

Reserved on 10th May, 2016
Date of pronouncement: 19th July, 2016

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

And

Petition under Sections 391(2) & 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959

Scheme of Amalgamation of:

CNS Infotech (India) Private Limited
Petitioner/Transferor Company

WITH

Ratna Commercial Enterprises Private Limited
Petitioner/Transferee Company

Through Mr. Sudhir K. Makkar and Ms.Meenakshi Singh, Advocates for the petitioners
Ms. Aparna Mudiam, Assistant 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) and 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the petitioner companies seeking sanction of the Scheme of Amalgamation of CNS Infotech (India) Private Limited (hereinafter referred to as the transferor company) with Ratna Commercial Enterprises 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 incorporated under the Companies Act, 1956 on 10th June, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 3rd March, 1979 with the Registrar of Companies, Rajasthan at Jaipur. Thereafter, the company shifted its registered office from the State of Rajasthan to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 30th July, 1985.

5. The present authorized share capital of the transferor company is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,42,99,100/- divided into 24,29,910 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.5,00,00,000/- divided into 49,70,200 equity shares of Rs.10/- each aggregating to Rs.4,97,02,000/-; 24,400 4% non-cumulative redeemable

preference shares of Rs.10/- each aggregating to Rs.2,44,000/-; 5,000 4% non-cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.50,000/- and 400 8% preference shares of Rs.10/- each aggregating to Rs.4,000/-. The issued, subscribed and paid-up share capital of the company is Rs.3,12,00,000/- divided into 31,20,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 176/2014, 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.

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 affidavits. It is claimed by the applicants 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 Scheme will result in usual economies of a centralized and large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other

resources 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.

9. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor company is a wholly owned subsidiary of the transferee company, no new shares will be issued by the transferee company pursuant to this Scheme.

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 transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 10th October, 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.

12. The petitioner companies had earlier filed CA (M) No. 176/2014 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 24th December, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor and transferee companies, there being no secured or unsecured creditors 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 2nd July, 2015, 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 'Statesman' (English) and ‘Rashtriya Sahara’ (Hindi) editions. An affidavit has been filed by the petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 30th September, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

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 5th February,

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. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 5th May, 2016 stating therein that the ROC in his report has not made any adverse comments to the Scheme of Amalgamation and that the Regional Director has no objection to the proposed Scheme.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 5th May, 2016 of Mr. Pankaj Bhardwaj, authorized signatory of the petitioner companies, have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 30th September, 2015. The petitioners have also placed on record the 'no objection certificate' issued by the Reserve Bank of India.

17. Considering the approval accorded by the equity shareholders, there being no 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 April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

18. 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 company states that the same is acceptable to him. As already directed vide order

dated 10.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

19. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMA R MISRA, J.

July 19, 2016