

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 391/2015

Reserved on 19th July, 2016

Date of pronouncement: 29th August, 2016

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:

Uzanto Consulting India Private Limited

Petitioner/Transferor Company

WITH

LinkedIn Technology Information Private Limited

Petitioner/Transferee Company

**Through Mr. Amit Kumar Mishra,
Mr. Shashank Gautam, Mr. Aditya S.,
Ms. Akansha Sharma and Mr. Nitin
Wadhwa, 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 Uzanto Consulting India Private Limited (hereinafter referred to as the transferor company) with LinkedIn Technology Information 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 2nd June, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 31st December, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.6,00,010/- divided into 60,001 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.50,00,00,000/- divided into 5,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.1,19,47,440/- divided into 11,94,744 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) 22/2015, 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 affidavit. It is claimed that the proposed amalgamation would result in pooling of resources of the entities to their common advantage, resulting in more productive utilization of the resources, costs and operational efficiencies, faster and effective decision making and its implementation, which would be beneficial for all stakeholders. It is further claimed that the proposed amalgamation would result in economies of scale, reduction in overheads and other expenses.

9. So far as the share exchange ratio is concerned, the Scheme provides that transferee company will not issue any shares to the shareholders of the transferor company as the transferor company is a wholly owned subsidiary of the transferee company and all the equity

shares held by the transferee company in the transferor company will be cancelled upon the Scheme becoming finally effective.

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 250A of the Companies Act, 1956 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 14th November, 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. 22/2015 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 21st 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 transferor and transferee companies, there being no secured 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 1st 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 'Times of India' (English) and 'Jansatta' (Hindi) editions. An affidavit has been filed by the petitioner showing compliance regarding publication of citations in the aforesaid newspapers on 10th August, 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 23rd 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 2nd March, 2016 not raising any objection to the proposed Scheme of Amalgamation. However, in para 7 of his report, the Regional Director has made the following observations:

- (a) Para 5 of the petition provides that as on 14.11.2014, the paid up share capital of the transferee company is Rs.1,19,47,440/- whereas as per e-records maintained under MCA-21, the paid up share capital of the said company is Rs.1,00,00,000/- as the company has not yet filed PAS-3 in terms of the provisions of Section 39(4) of the Companies Act, 2013 with regard to increase in its paid up share capital from Rs.1,00,00,000/- to Rs.1,19,47,440/-. Thus, there is a prima facie violation of Section 39(4) of the Companies Act, 2013;
- (b) In para 4.2 of the proposed Scheme, the paid up share capital of the transferee company is wrongly shown as Rs.28,00,00,000/-; and
- (c) The transferee company has not filed its due Annual Return & Balance Sheet for the financial year ended 31.03.2014 thereby prima facie violated the provisions of Section 92 & 137 r/w 403 of the Companies Act, 2013.

16. In response to the aforesaid observations, the petitioner companies have filed their affidavit dated 6th June, 2016 through Mr. Karl Maneck Pavri, authorized signatory of the petitioner companies, stating that the requisite form PAS-3 with regard to increase in the authorized share capital of the transferee company has been filed by the petitioner company on 23rd January, 2016 and the challan evidencing proof of submission of said form is placed on record. With regard to the second observation, it has been submitted that the amount of Rs.28,00,00,000/-, as mentioned in para 4.2 of the Scheme, represents the sum total of the paid-up capital and the amount credited to the share premium account by the transferee company following an infusion of Rs.27,00,00,000/- by its parent company, LinkedIn Ireland, and which was inadvertently noted as part of the paid up capital of the transferee company. With regard to the third observation, it has been submitted that the form 20B (Annual Return) and form 23AC (Balance Sheet) for the financial year ending 31st March, 2014 were filed by the petitioner company on 18th February, 2016 and 27th February, 2016 respectively. The relevant forms and the challans evidencing proof of submissions of forms are also placed on record. In view of the aforesaid, the observations made by the Regional Director do not survive.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 19th

May, 2016 of Mr. Amit Kumar Mishra, counsel of the petitioner companies, have submitted that they have not received any objection pursuant to the citations published in the newspapers on 10th August, 2015.

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 April, 2014, 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.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 19.07.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 29, 2016