

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 397/2015

Reserved on 17th 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 Sections 391 and 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Comet Healthcare and Consulting Private Limited

Petitioner/Transferor Company No. 1

RG Medicity Private Limited

Petitioner/Transferor Company No. 2

R.B. Medicare Limited

Petitioner/Transferor Company No. 3

WITH

R.G. Scientific Enterprises Private Limited

Petitioner/Transferee Company

**Through Mr. Kunal Juneja and
Mr. Karan Mehra, Advocates 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 and 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Comet Healthcare and Consulting Private Limited (hereinafter referred to as the transferor company no. 1);

RG Medicity Private Limited (hereinafter referred to as the transferor company no. 2); and R.B. Medicare Limited (hereinafter referred to as the transferor company no.3) with R.G. Scientific 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 no. 1 was originally incorporated under the Companies Act, 1956 on 7th December, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Comet Education Services Private Limited. The company changed its name to Comet Healthcare & Consulting Private Limited and obtained the fresh certificate of incorporation on 7th December, 2010.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 28th January, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 25th August, 1993 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferee company was originally incorporated under the Companies Act, 1956 on 28th February, 1986 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of R.G. Scientific Enterprises Private Limited. The company changed its name to R.G. Scientific Enterprises Limited and obtained a fresh certificate of incorporation on 24th September, 2007. The company again changed its name to R.G. Scientific Enterprises Private Limited and obtained the fresh certificate of incorporation on 17th February, 2011.

7. The present authorized share capital of the transferor company no.1 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.12,07,66,670/- divided into 1,20,76,667 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferor company no.2, is Rs.10,00,000/- divided into 1,00,00 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.100/- each.

9. The present authorized share capital of the transferor company no.3 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.1,18,34,000/- divided into 11,83,400 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.5,00,00,000/- divided into 5,00,000 equity shares of Rs.100/- each. The present issued, subscribed and paid-up share capital of the company is Rs.2,34,10,600/- divided into 2,34,106 equity shares of Rs.100/- each.

11. 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) 73/2015, 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.

12. 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 submitted by the petitioners that the objective of the Scheme is to enable appropriate consolidation of activities of the transferor companies and the transferee company with pooling and more effective utilization of their resources, reduction in overhead and other expenses, improvement in various

operating parameters and synergy benefits which will help to streamline the corporate structure of the group.

13. 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:-

“49 equity shares of Rs.100/- each of the transferee company for every 6336 equity shares of Rs.10/- each held in the transferor company no. 1.”

“01 equity share of Rs.100/- each of the transferee company for every 1000 equity shares of Rs.10/- each held in the transferor company no. 2.”

“01 equity share of Rs.100/- each of the transferee company for every 1000 equity shares of Rs.10/- each held in the transferor company no. 3.”

14. 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.

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

16. The petitioner companies had earlier filed CA (M) No. 73/2015 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 25th May, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

17. 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 '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 the Official Liquidator and also 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.

18. 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 7th December, 2015 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 companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

19. 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 14th December, 2015. Relying on Clause 11.1 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 9.1 of the Scheme, it has been stated that the transferee company shall follow pooling of interest method for accounting as per Accounting Standard-14 on 'Accounting for Amalgamation' prescribed under Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 15.1 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.

20. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 11th December, 2015 of Mr. Sandeep Aggarwal, authorized signatory of the transferor company no. 1, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 10th August, 2015.

21. 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 companies no. 1 to 3 shall stand dissolved without undergoing the process of winding up.

22. 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 17.12.2015, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

23. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

February 10, 2016