

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 529/2015

Reserved on 4th May, 2016

Date of pronouncement: 30th May, 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 read with Rules 67 to 87
of the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

ExlService SEZ BPO Solutions Private Limited

Petitioner/Transferor Company No. 1

Exl Support Services Private Limited

Petitioner/Transferor Company No. 2

WITH

Exl Service.com (India) Private Limited

Petitioner/Transferee Company

**Through Mr. Dhritiman Bhattacharyya
with Ms.Sakshi Jain and Ms Deeti
Ojha, Advocates for the petitioners
Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 67 to 87 of the Companies (Court) Rules, 1959 by the petitioner companies seeking sanction of the Scheme of Amalgamation of ExlService SEZ BPO Solutions Private Limited (hereinafter referred to as the transferor company no. 1) and Exl Support

Services Private Limited (hereinafter referred to as the transferor company no. 2) with Exl Service.com (India) 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 15th January, 2009 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 March, 2004 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 21st May, 1999 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of EXL Services.com (India) Private Limited. The company changed its name to exl Service.com (India) Private Limited and obtained the fresh certificate of incorporation on 28th November, 2000.

6. The present authorized share capital of the transferor company no.1 is Rs.15,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.13,76,55,000/- divided into 1,37,65,500 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.10,00,000/- divided into 1,00,000 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.10/- each.

8. The present authorized share capital of the transferee company is Rs.15,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.13,41,70,290/- divided into 1,34,17,029 equity shares of Rs.10/- each.

9. 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) 111/2015, 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, and the provisional accounts of the companies, as on 31st March, 2015, 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 affidavits. It is claimed by the petitioners that the proposed Scheme will result in focused approach towards customers as collective services shall be rendered by a single consolidated entity; reduction of operating/administrative costs, thereby improving overall profitability; reduction in number of legal entities and regulatory compliances thereof; and pooling of financial resources in a single consolidated entity for effective treasury function and centralized management of funds to supplement future growth opportunities.

11. So far as the share exchange ratio is concerned, the Scheme provides that ExlService Mauritius Limited is the parent company which holds the entire paid-up share capital of the transferor company no. 1 (except one share only) and transferee company (except two shares only) and that the transferor company no. 2 is a wholly owned subsidiary of the transferee company and the Scheme does not envisage issuances of any shares to the transferee company. It is further provided that a lump sum consideration amounting to Rs.1,37,65,500/- has been fixed for the transfer and vesting of assets and liabilities of the transferor company no. 1 into the transferee company as a result of amalgamation, which shall be discharged by the transferee company through issuances

of its 13,76,500 equity shares of Rs.10/- each, credited as fully paid up, to ExlService Mauritius Limited.

12. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or corresponding provisions under the Companies Act, 2013 are pending against the petitioner companies.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 2nd April, 2015 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. 111/2015 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 22nd July, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferor and transferee companies, there being no secured or unsecured creditor of the transferor company no. 2,

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 6th August, 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 Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 14th October, 2015. 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 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.

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 9th December, 2015. Relying on Clause 9.1 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 further submitted that in Clause 6.2 of the Scheme, it has been stated that the transferee company shall account the amalgamation of the transferor companies as per the pooling of interest method. He further submitted that in Clause 13 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. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 8th December, 2015 of Mr. Dhritiman Bhattacharyya, counsel of the petitioner companies, have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 14th October, 2015.

19. 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 Official Liquidator and the Regional Director, Northern Region 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, 2015, the transferor companies no. 1 & 2 shall stand dissolved without undergoing the process of winding up.

20. The Assistant Registrar of Companies appearing for the Regional Director 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 04.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

21. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

May 30, 2016