

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement reserved on: 09.03.2016

Judgement delivered on: 18.03.2016

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CO.PET. 703/2015

IN THE MATTER OF

FELIX SOFTWARE SOLUTIONS PRIVATE LIMITED

.... Transferor Company No. 1/Petitioner No. 1

AND

GENPACT INDIA

.... Transferor Company No. 2/Petitioner No. 2

AND

GENPACT INFRASTRUCTURE (Bhubaneswar) PRIVATE

LIMITED

.... Transferor Company No. 3/Petitioner No. 3

AND

GENPACT INDIA BUSINESS PROCESSING PRIVATE

LIMITED

.... Transferor Company No. 4/Petitioner No. 4

AND

GENPACT INFRASTRUCTURE (Jaipur) PRIVATE

LIMITED

.... Transferor Company No. 5/Petitioner No. 5

AND

NGEN MEDIA SERVICES PRIVATE LIMITED

.... Transferor Company No. 6/Petitioner No. 6

AND

PHARMALINK CONSULTING OPERATIONS PRIVATE
LIMITED Transferor Company No. 7/Petitioner No. 7

WITH

EMPOWER RESEARCH KNOWLEDGE SERVICES PRIVATE
LIMITED Transferee Company/ Non- Petitioner

Through: Mr. Rajeev Kumar, Advocate
Ms Aparna Mudiam, Asstt. ROC for the RD.
Mr Rajiv Behl, Adv. for the OL

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by the transferor companies, namely Felix Software Solutions Private Limited (i.e. the transferor company no. 1/petitioner no.1), Genpact India (i.e. the transferor company no. 2/petitioner no.2), Genpact Infrastructure (bhubaneswar) Private Limited (i.e. the transferor company no. 3/petitioner no.3), Genpact India Business Processing Private Limited (i.e. transferor company no. 4/petitioner no. 4), Genpact Infrastructure (jaipur) Private Limited (i.e. transferor company no. 5/petitioner no. 5), NGEN Media Services Private Limited (i.e. transferor company no. 6/petitioner no. 6), Pharmalink Consulting Operations Private Limited (i.e transferor company no. 7/petitioner no. 7) under Section 391 and 394 of the Companies Act 1956 (in short the 1956 Act), to seek sanction of the Scheme of Amalgamation (hereafter referred to as the scheme). A copy of the scheme is enclosed with the petition.

2. The transferor companies, as referred to above, will hereafter be collectively referred to as the petitioners.

3. The petitioners aver that the objective of the scheme is to consolidate the shareholdings and finances and to integrate the management in order to ultimately be equipollent to the multi nationals in the field. Apart from this, the combined resources will lead to overall cost reduction, which will enable the petitioners to efficiently compete in the market and enhance the net worth. The scheme therefore aims at attaining an all in all financial growth and promotion of business of the petitioners.

4. The scheme provides that, the entire share capital of the transferor companies, is held by the transferee company (i.e. Empower Research Knowledge Services Private Limited), therefore, no shares shall be issued pursuant to amalgamation of the transferor companies by the transferee company.

5. The registered offices of the petitioners are located within the jurisdiction of this court. Hence, this court has the jurisdiction to entertain and adjudicate upon the present petition.

6. The details with respect to petitioners' authorised, issued, subscribed and paid up capital have been set out in paragraphs 4, 11, 17, 24, 30, 36 and 42 respectively, of the petition.

7. The copies of Memorandum and Articles of Association as well as the profit and loss accounts and the Balance Sheets, of an even date i.e. 31.03.2015, have been filed with the petition.

8. The copies of Board of Directors' (BOD) resolution of the petitioners, approving the scheme, have been filed with the petition.

9. The petitioners have averred that there are no proceedings pending against them under Section 235 to 251 of the Act.

10. To recapitulate, the petitioners had earlier filed an application (i.e. the first motion application) being: CA No. (M) 103/2015, whereby, a prayer had been made for dispensing with, the requirement of convening the meetings of equity shareholders and unsecured creditors of the transferor companies and equity shareholders, secured and unsecured creditors of the transferor company no. 2.

10.1 This court vide order dated 27.07.2015, having regard to the fact, that except for the unsecured creditors of the transferor company no. 2, the consent of the aforesaid class of persons/entities was received, dispensed with the requirement of convening the meetings as prayed.

10.2 The court further directed to convene the meetings of the unsecured creditors of the transferor company no. 2. The meeting thereafter, dated 05.09.2015, was convened and 24 out of the 368 unsecured creditors (77.48% in value) present and voting, voted in favour of the scheme.

11. The petitioners, thereafter, filed the instant petition (i.e. second motion). Notice in this petition was issued on 21.09.2015. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD). Furthermore, citations were ordered to be published in Business Standard (English) and Jansatta (Hindi).

11.1 The citations were published in Delhi Editions of the newspapers; Business Standard (English) and Jansatta (Hindi) on 14.11.2015. An affidavit dated 11.12.2015, demonstrating service of the petition on the RD and establishing publication of citation along with the newspaper extracts, has been filed by the petitioners.

11.2 Further, petitioners have averred by way of the affidavit dated 12.02.2016, that subsequent to the publication of the notice in the petition, they have not received any objection or complaint qua the scheme.

12. Pursuant thereto, affidavit has been filed by the RD under Section 394A of the 1956 Act. In the affidavit, the RD relied upon the general circular bearing no. 53/2011, dated 26.07.2011 and, circular bearing no. 1/2014, dated 15.01.2014. Based on the aforementioned circulars, as per the affidavit of R.D., communications were sent to the Registrar of Companies (ROC) and the Income Tax Department (I.T. Department) seeking their response to the scheme. However, no response by the I.T. Department, on this matter, has apparently been received, till date.

13. The affidavit of RD, adverts to the fact that it has received information from the ROC vide communication dated 10.02.2016. The communication, inter alia, is indicative of the fact that the said authority has no objection to the scheme and has not received any complaint or objection from the shareholders, creditors, or any of the stakeholders of either of the petitioners. Therefore, in so far as the RD's affidavit is concerned, there are no objections taken by him to the scheme.

14. As far as the OL's report is concerned, it has, inter alia, stated that no complaint qua the scheme has been received by him from any interested person or party. The OL has also averred that on the basis of information supplied by the petitioners, it appears, the affairs of the transferor companies, have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large. In other words, affairs of the companies, according to the OL, do not fall foul of the provisions of the second proviso of Section 394(1) of the Act.

15. To be noted, the scheme in clause 10 provides that all employees of transferor companies, in service on the effective date, shall become the employees of the transferee company, on such date without any break or interruption in service and on terms and conditions as to remuneration not less favorable than those subsisting with reference to transferor companies, as on the said date.

15.1 In terms of the provisions of Section 391 and 394 of the Act, and in terms of the scheme, the entire undertaking, properties, rights and powers of the transferor companies, will stand transferred to and/or vest in the transferee company, without any further act or deed. Similarly, all liabilities and duties of the transferor companies shall stand transferred to the transferee company, without any further act or deed.

16. Furthermore, as per clause 14 of the scheme, transferor companies shall stand dissolved without being wound up.

17. In view of the approval accorded to the scheme by the shareholders, secured and unsecured creditors of the petitioners and, given the fact, that the RD and the OL have not articulated any objections qua the scheme,

as indicated above, in my opinion, there appears to be no impediment in the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law.

18. A certified copy of the order, sanctioning the scheme, will be filed with the ROC, within thirty (30) days of its receipt.

19. Resultantly, it is directed that the petitioners will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

20. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of any action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the petitioners.

21. It is made clear, that this order will not be construed as an order granting exemption from : payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

22. Consequently, the petition is allowed and disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

MARCH 18, 2016