

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 778/2015

Reserved on 11th May, 2016
Date of pronouncement: 27th July, 2016

In the matter of

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

And

**Petition under Sections 391, 392 and 394 of
the Companies Act, 1956**

Scheme of Amalgamation of:

Nine Dot Nine Interactive Private Limited

Petitioner/Transferor Company

WITH

Nine Dot Nine Mediaworx Private Limited

Petitioner/Transferee Company

Through Mr. Uddyan Mukherjee,
Advocate 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, 392 and 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Nine Dot Nine Interactive Private Limited (hereinafter referred to as the transferor company) with Nine Dot Nine Mediaworx 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 originally incorporated under the Companies Act, 1956 on 7th January, 2000 with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Jasubhai Digital Media Private Limited. The company changed its name to Nine Dot Nine Interactive Private Limited and obtained the fresh certificate of incorporation on 18th February, 2008. Thereafter, the company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 12th January, 2015.

4. The transferee company was incorporated under the Companies Act, 1956 on 1st September, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,48,83,950/- divided into 24,88,395 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.1,00,00,000/- divided into 2,00,000 equity shares of Rs.10/- each

aggregating to Rs.20,00,000/- and 8,00,000 preference shares of Rs.10/- each aggregating to Rs.80,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.21,63,380/- divided into 1,10,403 equity shares of Rs.10/- each aggregating Rs.11,04,030/- and 1,05,935 compulsory convertible preference shares of Rs.10/- each aggregating to Rs.10,59,350/-.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the reports of the auditors, have 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 by the petitioners that the amalgamation would enable the petitioner companies to realize the substantial benefit of greater synergies between their businesses, operations and economies. It is further claimed that the amalgamation would lead to better and more efficient and productive utilization of resources and capabilities of these companies, reduce administrative and overhead costs, lead to greater and effective executive control and synergy in use of infrastructure facilities.

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 shares or consideration shall be issued/paid by the transferee company pursuant to the amalgamation of the transferor company in accordance with the 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 petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 13th March, 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.

12. The petitioner companies had earlier filed CA (M) No. 67/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 11th September, 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 and the preference shareholders of the transferee company, 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 14th October, 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 'Business Standard' (English) and (Hindi) editions. Affidavit of service has been filed by the petitioner 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 18th January, 2016. 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 15th 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 23rd February, 2016 not raising any objection to the proposed Scheme of Amalgamation. However, in para 8 of his report, the Regional Director has submitted that all the shares of the transferor company are held by the transferee company but in para 8 of the Scheme, it has wrongly been mentioned that all the shares of the transferor company are held by the transferor company. He, therefore, prays that the petitioners may be directed to amend the said clause of the Scheme. In response to the aforesaid observation, the petitioner companies in the affidavit dated 24th May, 2016 of Mr. Sandeep Jain, authorized signatory of the transferor company have submitted that due to an inadvertent typographical error, the word 'transferor' has been mentioned in para 8.1 of the Scheme instead of 'transferee company'. The petitioner companies have also placed on record the amended Scheme of Amalgamation rectifying the said error. The same is taken on record. In view of the aforesaid, the observation made by the Regional Director stands satisfied.

16. So far as the observation of the Regional Director in para 7 of his report with regard to outstanding tax liabilities of the transferor company is concerned, learned counsel for the petitioners undertakes on behalf of the transferee company that all outstanding tax liability of both the companies shall be the responsibility of the transferee company and that the same shall be duly met or otherwise dealt with in accordance with law by that company. He further submits that appeals in this behalf are also pending before the concerned authority. The undertaking given by the counsel on behalf of the petitioners is accepted and the petitioners shall remain bound by the same.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 22nd February, 2016 of Mr. Sandeep Jain, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 18th January, 2016.

18. Considering the approval accorded by the 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 amended Scheme of Amalgamation annexed with the affidavit dated 24th May, 2016 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 11.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

20. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

July 27, 2016