

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 850/2015

Reserved on 27th April, 2016
Date of pronouncement: 16th 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**

Scheme of Amalgamation of:

Baani Facilities Management Private Limited

Petitioner/Transferor Company

WITH

Baani Technology Services Private Limited

Petitioner/Transferee Company

**Through Mr. Santosh Kumar, 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 Section 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Baani Facilities Management Private Limited (hereinafter referred to as the transferor company) and Baani Technology Services 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 September, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 3rd November, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.5,00,00,000/- divided into 50,00,000 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. The

audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the auditor's report, 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 proposed amalgamation will result in greater integration and greater financial strength and flexibility for the transferee company, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity. It is further claimed that the proposed Scheme will provide benefit of operational synergies to the combined entity in areas such as procurement of trading stock, sourcing of material, development of contractor rates, development planning and marketing, which can be put to the best advantage of the stakeholders.

9. 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 company in the following ratio:

“27.4 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.10/- each held in the transferor company.”

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 5th January, 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. 98/2015 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 28th August, 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, 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 18th

November, 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 'Statesman' (English) and 'Veer Arjun' (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 30th 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 10th March, 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 10th March, 2016 stating that the ROC in

his report has not made any adverse comments to the Scheme of Amalgamation and that the Regional Director has no objection to the proposed Scheme of Amalgamation. However, in para 9 of his report, while referring to clause 13.5 of the Scheme with regard to the fact that the transferee company can retain and use the name of the transferor company, he has submitted that as the transferor company will be dissolved after sanction of the Scheme of Amalgamation, the name cannot be retained by the transferee company in terms of clause 13.5 of the Scheme and the transferee company has to make an application for name availability after sanction of the Scheme and any such application shall be regulated as per the provisions of the Companies Act, 2013 and the Companies (Incorporation) Rules, 2014.

16. In response to the aforesaid observation, the petitioner companies in the affidavit dated 6th April, 2016 of Mr. Virendra Kumar Bhatia, Director of the transferee company have submitted that the transferee company will not claim to retain and use the name of the transferor company as a result of completion of amalgamation proceedings. Further, if the transferee company requires to obtain the name of the transferor company after completion of the amalgamation proceedings, then it will make an application for name availability and the same will be regulated as per the provisions of the Companies Act, 2013 and the

Companies (Incorporation) Rules, 2014. In view of the above, the observation of the Regional Director stands satisfied.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 10th March, 2016 of Mr. Santosh Kumar, counsel for 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 30th January, 2016.

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 having not raised 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 27.04.2016, 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.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 16, 2016