

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 750/2015

Reserved on 20th 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 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

GI Executive Solutions Private Limited

Petitioner/Transferor Company No. 1

GI Human Resources and Services Private Limited

Petitioner/Transferor Company No. 2

WITH

Elixir Web Solutions Private Limited

Petitioner/Transferee Company

**Through Mr. Saurabh Kalia, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Asstt. 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 by the petitioner companies seeking sanction of the Scheme of Amalgamation of GI Executive Solutions Private Limited (hereinafter referred to as the transferor company No. 1) and GI Human Resources and Services Private Limited (hereinafter referred to as the transferor company No. 2) with Elixir Web Solutions 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 21st December, 2010 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 9th February, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was incorporated under the Companies Act, 1956 on 9th April, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

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

7. The present authorized share capital of the transferor company no.2 is Rs.20,00,00,000/- divided into 2,00,00,000 equity shares of

Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.19,99,83,300/- divided into 1,99,98,330 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.40,00,00,000/- divided into 4,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.37,40,00,000/- divided into 3,74,00,000 equity shares of Rs.10/- each.

9. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 141/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies 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 affidavit. It is claimed by the petitioners that the proposed amalgamation would result in greater efficiency in resource management, cost savings resulting from rationalization, standardization and simplification of business processes. It is further claimed that the proposed amalgamation would result in improved organizational capability arising from pooling of financial,

managerial and technical resources and will also maximize the overall shareholders value by strengthening its core competencies.

11. 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 no. 2 in the following ratio:-

“01 fully paid up equity share of Rs.10/- each of the transferee company for every 09 fully paid up equity shares of Rs.10/- each held by the shareholders in the transferor company no.2.”

It has been further provided that since the transferor company no.1 is a wholly owned subsidiary of the transferee company, no consideration shall be payable by the transferee company pursuant to the amalgamation and the investment in the transferor company no. 1 held by the transferee company would stand cancelled.

12. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or Sections 206 to 229 of 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 15th May, 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. 141/2015 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 11th September, 2015 this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor and transferee companies, there being no secured or unsecured creditors of the petitioner companies, 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 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) Delhi 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 28th November, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

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 5th 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 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 5th February, 2016 stating that he has no objection to the proposed Scheme of Amalgamation.

18. The Regional Director has not raised any objection to the proposed Scheme. But in response to his observation made in para 7 of his report regarding the foreign/non-residents having interest/shares in the

petitioner companies, the petitioner companies in the affidavit dated 5th February, 2016 of Mr. Asim Handa, Director of the petitioner companies, have stated that they shall comply with the provisions of Foreign Exchange Management Act and other applicable laws, if any, with regard to the said shareholding.

19. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 17th May, 2016 of Mr. Asim Handa, Director 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 28th November, 2015.

20. Considering the approval accorded by the equity shareholders of the petitioner companies, there being no 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 & 2 shall stand dissolved without undergoing the process of winding up.

21. 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 20.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

22. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

July 27, 2016