

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 887/2015

Reserved on 25th 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:

EDA Rural Systems Private Limited

Petitioner/Transferor Company

WITH

Micro Credit Ratings International Limited

Petitioner/Transferee Company

**Through Mr. Sunil Kumar Grover,
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 EDA Rural Systems Private Limited (hereinafter referred to as the transferor company) with Micro Credit Ratings International 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 23rd December, 1997 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi. Thereafter, the company shifted its registered office from the State of Haryana to NCT of Delhi and obtained a certificate in this regard on 20th January, 2003.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 8th June, 1999 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Micro Credit Ratings and Guarantees India Limited. The company shifted its registered office from the State of Haryana to NCT of Delhi and obtained a certificate in this regard on 29th January, 2001. Thereafter, the company changed its name to Micro Credit Ratings International Limited and obtained the fresh certificate of incorporation on 13th May, 2002.

5. The present authorized share capital of the transferor company is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.24,22,050/- divided into 2,42,205 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.50,00,000/- divided into 4,00,000 equity shares of Rs.10/- each aggregating to Rs.40,00,000/- and 10,000 preference shares of Rs.100/- each aggregating to Rs.10,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.21,97,800/- divided into 2,19,780 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, 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 with the business activities of the transferor company being merged with the transferee company, the operations of both the companies can be better leveraged. It is further claimed that the proposed amalgamation will lead to synergies, in terms of economies of scale and integration of operation and will also enhance the financial strength and flexibility of the transferee company.

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:

“327 equity shares of Rs.10/- each of the transferee company for every 223 equity shares of Rs.10/- each held by the shareholders 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 7th August, 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. 155/2015 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 2nd November, 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 creditor of the petitioner 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 30th 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 '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 25th December, 2015. 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 11th May, 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 19th May, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation subject to necessary compliance of the observations/violations mentioned in para 8 of this report by the petitioner companies.

16. The Regional Director in para 8(i) of this report has submitted that the Board of Directors of the transferee company have approved the proposed Scheme in their meetings held on 07.08.2015. Accordingly, in terms of provisions of Section 117(3) read with 179(3) of the Companies Act, 2013, the company is required to file such resolution (e-form MGT-14) with the ROC within 30 days of passing the resolution whereas the company has not filed the said resolution so far thereby prima facie violated the provisions of Section 117(3) of the Companies Act, 2013. Further in para 8(ii) of his report, the Regional Director has submitted that the petitioner companies have not filed their due Annual Return for the financial year ended 31.03.2015 thereby prima facie violated Section 92 of the Companies Act, 1956.

17. In response to the aforesaid observations, the petitioner companies in the affidavit dated 24th May, 2016 of Mr. Sanjay Sinha, Director of the petitioner companies, have submitted that the transferee company, in terms of the provisions of Section 117(3) of the Companies Act, 2013, has filed the requisite form MGT-14 on 23.05.2016 and that the transferor and transferee companies have already filed their annual return for the financial year ended 31.03.2015 on 23.12.2015. Copies of the receipts evidencing filing of the form MGT-14 and the annual returns of the petitioner companies for the financial year ended 31.03.2015 have also been placed on record. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

18. The Regional Director in para 8(ii) of his report has also submitted that as per the Annual Return made upto 29.09.2012, the transferor company has 05 shareholders. However, when the company has filed its subsequent Annual Return made upto 30.09.2013, it was disclosed by the company that since the date of its last AGM i.e. 29.09.2012, there was no transfer of shares whereas as per the list of shareholders attached to the Annual Return made upto 30.09.2013, the company has shown only 03 shareholders, thereby prima facie made wrong disclosure in the annual return making the company and its directors in default liable for penal action under Section 159(1) r/w Schedule V to the Companies

Act, 1956. In response to the aforesaid observations, the petitioner companies in the affidavit dated 24th May, 2016 of Mr. Sanjay Sinha, Director of the petitioner companies, have submitted that the omission was unintentional and was caused because of an oversight. It has been further submitted that the directors of the petitioner companies are law abiding persons and are desirous of making necessary compliance to make good the omission, if possible, and accordingly undertake to make all possible necessary compliances with regard to this omission as may be required by the Registrar of Companies, NCT of Delhi & Haryana at any point of time in future also. It has been further submitted that the transferee company and its directors, which include both the directors of the transferor company, shall remain within the jurisdiction of the ROC and the Regional Director (Northern Region).

19. As regards the change in the shareholding in the transferor company, as indicated in the Annual Returns for the years 2012 and 2013, is concerned, it would be open to the concerned authorities to take appropriate penal action in terms of section 159(1) of the Companies Act, 1956 against all persons concerned including, *inter alia*, the transferee company, with whom transferor company is proposed to be amalgamated. Counsel for the petitioner has no objection to this approach while reserving the petitioner's right to take all necessary defences that may be available in law.

20. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 20th May, 2016 of Mr. Sunil Kumar Grover, 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 25th December, 2015.

21. Considering the approval accorded by the equity shareholders of the petitioner companies, there being no secured or unsecured creditor 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 company shall stand dissolved without undergoing the process of winding up.

22. 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 25.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

23. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

July 27, 2016