

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 07.12.2016

Order delivered on:16.01.2017

CO. APPL. (M) 152/2016

IN THE MATTER OF:

SOJOURNER BPO PRIVATE LIMITED

... ..Transferor Company/Applicant

WITH

UNICURE INDIA LIMITED

... Transferee Company/Non-Applicant

Through: Mr. Kunal Sabharwal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present is an application filed, under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') read with Rules 9 and 69 of the Companies (Court) Rules, 1959, by Sojourner BPO Private Limited (hereinafter referred to as 'Transferor Company/Applicant'), in connection with the proposed Scheme of Amalgamation (hereinafter referred to as 'proposed scheme') between the Transferor Company/Applicant and Unicure India Limited (hereinafter referred to as 'Transferee Company').

2. It has been stated by learned counsel for the Transferor Company/Applicant that the Transferor Company/Applicant is the wholly owned subsidiary of the Transferee Company.

3. The registered offices of the Transferor Company/Applicant and the Transferee Company are situated at New Delhi, within the jurisdiction of this Court.

4. The Transferor Company/Applicant was incorporated on 19.08.2005 under the Act with the Registrar of Companies, N.C.T. of Delhi and Haryana.

5. The Transferee Company was incorporated on 14.07.1980 under the Act in the name and style of 'Unicare (India) Private Limited', with the Registrar of Companies, N.C.T. of Delhi and Haryana. Its name was subsequently changed to its present name and a fresh certificate in this behalf was issued on 20.03.2013.

6. The Authorised Share Capital of the Transferor Company/Applicant, as on 31.03.2015, is Rs.10,00,000/-, divided into 1,00,000 Equity Shares of Rs.10/- each. The Issued, Subscribed and Paid Up Share Capital of the Transferor Company/Applicant, as on 31.03.2015, is Rs.1,12,100/-, divided into 11,210 Equity Shares of Rs.10/- each fully paid.

7. The Authorised Share Capital of Transferee Company, as on 31.03.2015, is Rs.12,00,00,000/- divided into 1,20,00,000 Equity Shares of Rs.10/- each. The Issued, Subscribed and Paid Up Share Capital of the Transferee Company,

as on 31.03.2015, is Rs.5,21,15,600/- divided into 52,11,560 Equity Shares of Rs.10/- each fully paid.

8. Copies of the Memorandum of Association and Articles of Association of the Transferor Company/Applicant and the Transferee Company have been filed and the same are on record. The audited balance sheets, as on 31.03.2015 of the Transferor Company/Applicant and the Transferee Company, along with the reports of the auditors have also been filed and the same are on record.

9. It has been stated in the application that no proceedings under Sections 235 to 251 of the Act; the erstwhile Monopolies and Restrictive Trade Practices Act, 1969; or Competition Act, 2002, are pending against the Transferor Company/Applicant and the Transferee Company, as on the date of filing of the present application.

10. A copy of the proposed scheme has been filed on record and the salient features thereof have been incorporated and set out in detail in the application. It has been stated therein, that the rationale for the proposed scheme is as follows:-

- i. Pooling of resources and infrastructure of the entities to their common advantage, resulting in a more productive utilisation of the resources, costs and operational efficiencies, faster and effective decision making and its implementation, which would be beneficial for all stakeholders;
- ii. Integrating, rationalising and streamlining the management and administrative structure of the merged business and achieve cost saving;

- iii. Avoiding duplication of regulatory compliances and statutory filings with various government departments;
- iv. Facilitating inter-transfer of resources, costs and optimum utilization of assets;
- v. Synchronizing of efforts to achieve uniform corporate policy;
- vi. Resulting into greater economies of scale, reduction in overheads and other expenses and;
- vii. Achieving greater efficiency in cash management of the Transferee entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.

11. Upon the proposed scheme coming into effect, since the Transferor Company/Applicant is the wholly owned subsidiary of the Transferee Company, no shares of the Transferee company shall be allotted in lieu or exchange of its holding in the Transferor Company and the Issued, Subscribed and Paid-Up Share Capital of the Transferor Company shall stand cancelled/extinguished.

12. The proposed scheme has been approved by the Board of Directors of the Transferor Company/Applicant and the Transferee Company in their separate meetings held on 10.08.2016. Copies of the Resolutions passed at the meetings

of the Board of Directors of the Transferor Company/Applicant and the Transferee Company have been placed on record.

13. A prayer has been sought in the present application, seeking dispensing with the requirement of convening meetings of the equity shareholders, secured and unsecured creditors of the Transferor Company/Applicant, to consider and if thought fit, approve, with or without modification, the proposed scheme.

14. The Transferor Company/Applicant has 02 equity shareholders. Both the equity shareholders have given their written consents/NOCs to the proposed scheme. The said written consents/NOCs have been placed on record. The same have been examined and found in order.

15. In view of the foregoing, the requirement of convening the meeting of the equity shareholders of the Transferor Company/Applicant to consider and, if thought fit, approve with or without modification, the proposed scheme is dispensed with.

16. Since there are no secured creditors of the Transferor Company/Applicant; therefore the question of dispensing with the requirement of convening a meeting of secured creditors thereof does not arise.

17. The Transferor Company/Applicant has 01 unsecured creditor. The sole unsecured creditor has given its written consent/NOC to the proposed scheme. The said written consent/NOC has been placed on record. The same has been examined and found in order.

18. In view of the foregoing, the requirement of convening the meeting of the unsecured creditor of the Transferor Company/Applicant to consider and, if thought fit, approve with or without modification, the proposed scheme is dispensed with.

19. Further, a prayer has also been sought in the present application, seeking dispensation of the requirement of publishing the notices for meetings in newspapers.

20. In view of the circumstance that the requirement of convening meetings of the equity shareholders and sole unsecured creditor has been dispensed with, the requirement of publishing the notices for meetings in newspapers is also dispensed with.

21. Directed accordingly.

22. The application stands allowed in the aforesaid terms and is accordingly disposed of.

JANUARY 16, 2017
sb/mk

SIDDHARTH MRIDUL, J