

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 14.12.2016
Judgment Pronounced On: 25.01.2017

CO.PET.1025/2016

AON SERVICES INDIA PRIVATE LIMITED

.....Petitioner/Transferor Company No.1

AND

AON SPECIALIST SERVICES PRIVATE LIMITED

.....Petitioner/Transferor Company No.2

AND

HEWITT HUMAN RESOURCE SERVICES LIMITED

.....Petitioner/Transferor Company No.3

AND

HEWITT OUTSOURCING SERVICES INDIA LIMITED

.....Petitioner/Transferor Company No.4

AND

AON CONSULTING PRIVATE LIMITED

.....Petitioner/Transferee/Demerged
Company

AND

AON HR SERVICES INDIA PRIVATE LIMITED

.....Petitioner/Resulting Company

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition has been filed jointly under Sections 391, 393 and 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by Aon Services India Private Limited (hereinafter referred to as 'Transferor Company No.1'), Aon Specialist Services Private Limited (hereinafter referred to as 'Transferor Company No.2'), Hewitt Human Resource Services Limited (hereinafter referred to as 'Transferor Company No.3'), Hewitt Outsourcing Services India Limited (hereinafter referred to as 'Transferor Company No.4'), Aon Consulting Private Limited (hereinafter referred to as 'Transferee/ Demerged Company') and Aon HR Services India Private Limited (hereinafter referred to as 'Resulting Company') seeking sanction of the scheme of arrangement (hereinafter referred to as 'the Scheme') between the Transferor Companies, Transferee/Demerged Company and Resulting Company.

2. The Transferor Companies, Transferee/Demerged Company and Resulting Company are hereinafter collectively referred to as 'Petitioner Companies'.

3. The scheme of arrangement provides for an arrangement by and among the Transferor Companies, Transferee/Demerged Company and Resulting Company and their respective shareholders and creditors with respect to the:

- (a) Amalgamation of Transferor Company No.1 with Transferee/Demerged Company;
- (b) Amalgamation of Transferor Company No.2, Transferor Company No.3 and Transferor Company No.4 with Transferee/Demerged Company; and
- (c) Demerger of the Demerged Undertaking (as defined in the Scheme) from Transferee/Demerged Company to Resulting Company.

4. The registered offices of each of the Petitioner Companies are situated at Delhi, within the jurisdiction of this Court.

5. Transferor Company No. 1 was incorporated on 20.04.1995 under the Act under the name of Hewitt-Noble & Hewitt India Private Limited, which was subsequently changed to Hewitt Associates (India) Private Limited. The name of the company was subsequently changed to its present name i.e. Aon Services India Private Limited and a fresh certificate in this behalf was issued on 11.08.2014.

6. Transferor Company No. 2 was incorporated under the Act vide certificate of incorporation dated 11.09.2006 issued by the Registrar of Companies, Karnataka. Thereafter, the registered office of Transferor Company No. 2 was shifted to Delhi and a fresh certificate was issued by the Registrar of Companies, NCT of Delhi and Haryana on 30.03.2013.

7. Transferor Company No. 3 was incorporated vide certificate of incorporation dated 23.09.1999 issued by the Assistant Registrar of Companies under the Act in the name of India Life Asset Management Company Limited. Subsequently its name was changed to its present name and a fresh certificate was issued on 05.03.2004 by the Registrar of

Companies, Maharashtra. Thereafter the registered office was shifted to Delhi and a fresh certificate was issued on 25.08.2004, in this behalf by the Assistant Registrar of Companies, NCT of Delhi and Haryana.

8. Transferor Company No.4 was incorporated under the Act in the name of India Life and Pension Services Private Limited vide certificate dated 01.01.1997 issued by the Registrar of Companies, Andhra Pradesh. The name of the company was changed to India Life and Pension Services Limited and a fresh certificate was issued on 21.08.1998 by the Registrar of Companies, Andhra Pradesh. Thereafter its name was changed to India Life Pension Services Limited and a fresh certificate was issued in this behalf on 29.10.1998 by the Registrar of Companies, Andhra Pradesh. Its name was further changed to India Life Hewitt Limited and a fresh certificate was issued on 06.12.2001 by the Registrar of Companies, Andhra Pradesh. Thereafter its name was changed to its present name and a fresh certificate was issued on 30.01.2004 by the Registrar of Companies, Andhra Pradesh. The registered office was shifted to Delhi and a fresh certificate was issued on 14.09.2004 by the Deputy/Assistant Registrar of Companies, NCT of Delhi and Haryana.

9. Transferee/Demerged Company was incorporated under the Act on 07.02.2008 and a certificate in this behalf was issued by the Assistant Registrar of Companies, Maharashtra. Thereafter the registered office was shifted to Delhi and a fresh certificate was issued in this behalf on 16.09.2016 by the Deputy Registrar of Companies, NCT of Delhi and Haryana.

10. The Resulting Company was incorporated under the Companies Act, 2013 on 15.09.2016 and a certificate in this behalf was issued by the Deputy Registrar of Companies, NCT of Delhi and Haryana.

11. The authorized share capital of Transferor Company No.1 as on 31.03.2015 is Rs.90,00,00,000/- divided into 9,00,00,000 shares of Rs.10/- each. The issued, subscribed and paid up share capital as on 31.03.2015 is Rs.61,72,00,000/- divided into 6,17,20,000 shares of Rs.10/- each.

12. The authorized share capital of Transferor Company No.2 as on 31.03.2015 is Rs.5,00,000/- divided into 50,000 shares of Rs.10/- each. The issued, subscribed and paid up share capital as on 31.03.2015 is Rs.1,00,000/- divided into 10,000 shares of Rs.10/- each.

13. The authorized share capital of Transferor Company No.3 as on 31.03.2015 is Rs.5,00,00,000/- divided into 4,00,00,000 shares of Re.1/- each and 1,00,00,000 Non-Cumulative Non Participating Redeemable Preference Shares of Re.1/- each. The issued, subscribed and paid up share capital as on 31.03.2015 is Rs.74,25,855/- divided into 5,25,855 shares of Re.1/- each and 69,00,000 Non-Cumulative Non Participating Redeemable Preference shares of Re.1/- each.

14. The authorized share capital of Transferor Company No.4 as on 31.03.2015 is Rs.2,00,00,000/- divided into 20,00,000 shares of Rs.10/- each. The issued, subscribed and paid up share capital as on 31.03.2015 is Rs.26,07,000/- divided into 2,60,700 shares of Rs.10/- each.

15. The authorized share capital of Transferee/Demerged Company as on 31.03.2015 is Rs.7,50,00,00,000/- divided into 75,00,00,000 shares of Rs.10/- each. The issued, subscribed and paid up share capital as on

31.03.2015 is Rs.4,00,00,000/- divided into 40,00,000 shares of Rs.10/- each.

16. The authorized share capital of Resulting Company as on 30.09.2016 is Rs.7,00,00,000/- divided into 70,00,000 shares of Rs.10/- each. The issued, subscribed and paid up share capital as on 30.09.2016 is Rs.7,00,00,000/- divided into 70,00,000 shares of Rs.10/- each.

17. Copies of the Memorandum of Association and Articles of Association, the audited annual accounts for the year ended 31.03.2015, as well as the latest provisional financial statements up to 31.08.2016 of the Transferor Companies and the Transferee/Demerged Company have been enclosed with the application that earlier came to be filed being Company Application (Main) No.138 of 2016.

18. Copies of the Memorandum of Association and Articles of Association along with the Provisional financial statements up to 30.09.2016, of the Resulting Company have also been enclosed with Company Application (Main) No.138 of 2016.

19. Learned Counsel appearing on behalf of the Petitioner Companies has stated that no proceedings under sections 235 to 251 of the Act (or corresponding provisions of the Companies Act, 2013) are pending against them as on the date of institution of the present petition.

20. It has further been stated on behalf of the Petitioner Companies that the scheme has been approved by their respective Board of Directors (BOD). Copies of the resolutions dated 24.09.2016 of the Petitioner Companies, whereby the scheme has been approved have been filed with the present petition.

21. A copy of the Scheme has been enclosed with the petition and its salient features have been incorporated in the petition. The manner in which the Scheme shall come into effect has been provided in the Scheme. Part IV of the Scheme (that deals with the amalgamation of Transferor Company No. 2, Transferor Company No. 3 and Transferor Company No. 4 with the Transferee Company) shall take effect and be operative after coming into effect of Part III (that deals with the amalgamation of Transferor Company No. 1 with the Transferee Company) of the Scheme; and Part V (that deals with the demerger of the Demerged Undertaking to the Resulting Company) of the Scheme shall take effect and be operative after coming into effect of Part IV of the Scheme.

22. So far as the share allotment ratio is concerned, the Scheme provides as follows:

“(a) Upon the Scheme becoming effective and in consideration for the transfer and vesting of Transferor Company No. 1 in the Transferee Company, the Transferee Company shall issue and allot equity shares in its share capital at par, credited as fully paid up to the extent indicated below, to the shareholders of Transferor Company No.1 excluding the Transferee Company (or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferor Company No.1 whose names appear in the register of members of the Transferor Company No.1 on the Record Date in the following ratio:

2,178 equity share(s) of the face value of Rs. 10/- (Rupees Ten) each credited as fully paid up in the share capital of the Transferee Company for every 100 fully paid up equity share(s) of the face value of Rs. 10/- (Rupees Ten) each held in the Transferor Company No.1.

(b) Upon the Scheme becoming effective and in consideration for the transfer and vesting of Transferor Company No.2 in the Transferee Company, the Transferee Company shall issue and allot equity shares in its share capital at par, credited as fully paid up to the extent indicated

below, to the shareholders of Transferor Company No.2, excluding the Transferee Company (or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Transferor Company No. 2) whose names appear in the Register of Members of Transferor Company No. on the Record Date in the following ratio:

793,536 equity share(s) of the face value of Rs. 10/- (Rupees Ten) each credited as fully paid up in the share capital of the Transferee Company for every 100 fully paid up equity share(s) of the face value of Rs. 10/- (Rupees Ten) each held in Transferor Company No.2.

(c) Upon the effectiveness of Part III of the Scheme, and immediately prior to the amalgamation of Transferor Company No. 3 and Transferor Company No. 4 with the Transferee Company, the entire paid-up share capital of Transferor Company No.3 and Transferor Company No. 4 would be held by the Transferee Company. Therefore, upon Part IV of this Scheme becoming effective, the entire issued, subscribed and paid up share capital of Transferor Company No.3 and Transferor Company No.4 shall without any further application, act or deed stand cancelled on the Effective Date, and no shares will be issued or allotted by the Transferee Company with respect to the shares held by the Transferee Company in Transferor Company No. 3 and Transferor Company No. 4 in consideration for the amalgamation of Transferor Company No. 3 and Transferor Company No. 4 into the Transferee Company.

(d) Upon the Scheme becoming effective and in consideration for the transfer and vesting of the Demerged Undertaking of the Transferee Company in the Resulting Company, the Resulting Company shall issue and allot 10,000 (Ten Thousand) Equity shares of Rs. 10/- (Rupees Ten) each in its share capital at par, credited as fully paid up to the equity shareholders of the Transferee Company (or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferee Company) whose names appear in the Register of Members of the Transferee Company on the Record Date, in proportion of the number of equity shares held by the shareholders in the Transferee Company.”

23. The Petitioner Companies by way of Company Application (Main) No. 138 of 2016 sought directions of this Court for dispensation of meetings of the shareholders, secured creditors and unsecured creditors of the Petitioner Companies. This Court vide order dated 30.09.2016 dispensed with the requirement of convening meetings of the shareholders, secured creditors and unsecured creditors of the Petitioner Companies.

24. Thereafter, the present petition came to be filed by the Petitioner Companies. Notice in the present petition was issued to the Official Liquidator, the Regional Director and the Registrar of Companies vide order dated 21.10.2016. Further, this Court directed the citations, be published in the Delhi editions of 'The Statesman' (English Edition) and 'Jansatta' (Hindi Edition) & be uploaded on the website of Ministry of Corporate Affairs and website of the Petitioner Companies.

25. It has been noted that an affidavit of service and publication dated 25.11.2016 showing service of notice and showing that citations were published in the said newspapers on 09.11.2016, and that the necessary steps to upload citations on the websites of Ministry of Corporate Affairs and Petitioner Companies were taken, has been filed and the same is on record.

26. Pursuant to the notices being issued, the Official Liquidator filed its report dated 09.12.2016 stating that no objections to the Scheme have been received from any person/party and that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interests of any person/party or to public interest.

27. Therefore, it has been stated on behalf of the OL that they would have no objections in the event this Court were to grant sanction to the proposed Scheme.

28. Further, the Regional Director has filed its affidavit dated 09.12.2016, raising no objections to the grant of sanction to the proposed Scheme and stating that the citations were uploaded on the website of the Ministry of Corporate Affairs on 21.11.2016.

29. It is noted that no objections to the proposed Scheme have been received from any person/party.

30. In view of the foregoing and in view of the approval accorded by the shareholders and creditors of the Petitioner Companies and the report filed by the Official Liquidator and the representation/affidavit filed by the Regional Director, whereby no objections to the Scheme have been raised, there is no impediment to grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act.

31. In terms of the provisions of Sections 391 and 394 of the Act and in terms of the Scheme, (a) Transferor Company No. 1 shall amalgamate with Transferee/Demerged Company; (b) Transferor Company No. 2, Transferor Company No. 3 and Transferor Company No. 4 shall amalgamate with Transferee/Demerged Company; and (c) the Demerged Undertaking (as defined in the Scheme) of the Transferee/Demerged Company shall demerge to the Resulting Company, as on the Appointed Date (as defined in the Scheme) without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Companies be transferred to the Transferee Company and all liabilities and duties of the Demerged Undertaking be transferred to the Resulting Company without any further act or deed.

32. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the sanction granted by this Court to the proposed scheme will not come in the way of action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the Petitioner Companies.

33. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

34. The Petitioner Companies will comply with all the statutory requirements in accordance with law.

35. A certified copy of this order be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

36. The Petitioner Companies are directed to deposit a sum of Rs.50,000/- with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi, within a period of two weeks from today.

37. The Petition is allowed in the above terms and is accordingly disposed of.

SIDDHARTH MRIDUL, J

JANUARY 25, 2017

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