

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

+

CP No. 237 of 2007

%

DATED 04.02.2008

In the matter of the Companies Act, 1956:

Scheme of Amalgamation and Demerger of:

S M Towers Pvt. Ltd. ... Transferor Company/Petitioner no.1

Snerea Buildcon Pvt. Ltd ... Transferor Company/Petitioner no.3

Suni Estates Pvt. Ltd ... Transferor Company/Petitioner no.4

JNG Farms Pvt. Ltd ... Transferor Company/Petitioner no.5

Kirti Realtors Pvt. Ltd ... Transferor Company/Petitioner no.6

Khemka Stuart Leisure Ltd. ... Demerged Company/Petitioner no.7

with

AEZ Infratech Pvt. Ltd. ... Transferee Company/Petitioner no.8
Through : Mr. Rajeev K. Goel, Advocate.

VIPIN SANGHI, J. (ORAL)

1. This is a petition under Sections 391 and 394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of SM Towers Pvt. Ltd. (transferor company no.1), Snerea Buildcon Pvt. Ltd. (transferor company no.3), Suni Estates Pvt. Ltd. (transferor company no.4), JNG Farms Pvt. Ltd. (transferor company no.5) and Kirti Realtors Pvt. Ltd. (transferor company no.6) with AEZ Infratech Pvt. Ltd. (transferee company), and the Scheme of Demerger between Khemka

Stuart Leisure Ltd. (demerged company) and AEZ Infratech Pvt. Ltd. (transferee company).

2. In the original petition, Indirapuram Habitat Centre Pvt. Ltd. was included as Transferor company no.2. However, subsequent to the filing of the present 2nd motion petition, Transferor company no.2 decided to withdraw from the on-going amalgamation. The Court, while disposing off CA 1167 of 2007 on 14th November 2007, allowed the Transferor company no.2 to withdraw from the ongoing amalgamation, and replaced the initial Composite Scheme of Amalgamation and Demerger with the revised Scheme after deleting the Transferor company no.2 from the amalgamation.

3. The registered offices of the Transferor companies no. , 3, 4 and 5, the Demerged company and the Transferee company are situated at 707, Chiranjiv Towers, 43 Nehru Place, New Delhi – 110019, that is, within the jurisdiction of this Court. The registered office of Transferor company no.6 is situated at C-20, Green Park Extension, New Delhi 110016, that is, within the jurisdiction of this Court.

4. The Transferor company no.1 was incorporated on 11.06.1994. The authorized share capital of the Transferor company no.1 is Rs.12,60,00,000/- divided into 1,26,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.1 is Rs.12,59,50,000/- divided into 1,25,95,000 equity shares of Rs.10/- each.

5. The Transferor company no.3 was incorporated on 04.01.2006. The authorized share capital of the Transferor company no.3 is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.3 is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

6. The Transferor company no.4 was incorporated on 25.01.2005. The authorized, issued, subscribed and paid up equity share capital of the Transferor company no.4 is Rs.51,00,000/- divided into 5,10,000 equity shares of Rs.10/- each.

7. The Transferor company no.5 was incorporated on 13.05.1989. The authorized share capital of the Transferor company no.5 is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.5 is Rs.9,00,000/- divided into 90,000 equity shares of Rs.10/- each.

8. The Transferor company no.6 was incorporated on 09.12.2004. The authorized, issued, subscribed and paid up equity share capital of the Transferor company no.6 is Rs.26,00,000/- divided into 2,60,000 equity shares of Rs.10/- each.

9. The Demerged company was incorporated on 12.05.1995. The authorized share capital of the Demerged company is Rs.13,00,00,000/- divided into 1,30,00,000 equity shares of Rs.10/-

each. The issued, subscribed and paid up equity share capital of the Demerged company is Rs.62,57,000/- divided into 6,25,700 equity shares of Rs.10/- each.

10. The Transferee company was incorporated on 26.09.2003. The authorized share capital of the Transferee company is Rs.4,00,00,000/- divided into 2,00,000 equity shares of Rs.100/- each and 2,00,000 preference shares of Rs.100/- each. The issued, subscribed and paid-up equity share capital of the Transferee company is Rs.1,87,33,300/- divided into 67,333 equity shares of Rs.100/- each and 1,20,000 compulsorily convertible preference shares of Rs.100/- each.

11. The Transferor companies no.1 to 6, Demerged company and the Transferee company had filed the joint 1st motion Company Application (M) No. 73/2007, which was allowed by order dated 4th April, 2007. By the aforesaid order, the requirement of conducting statutory meetings of equity shareholders of all the petitioners, of preference shareholders of Transferor company no.2 and the Transferee company and of the unsecured creditors of the Transferor companies no.3 to 6 were dispensed with. However, the Transferor company no.1, the Demerged company and the Transferee company were directed to convene separate meetings of their secured creditors. Furthermore, the Transferor companies no. 1 & 2, the Demerged company and the Transferee company were directed to convene separate meetings of their unsecured creditors. Transferor companies no.3 to 6 do not have

any secured creditors.

12. The Court directed separate meetings of the secured creditors of the Transferor company no.1, Demerged company and the Transferee company to be convened at Amaltas Hall, Habitat World, India Habitat Centre, Lodhi Road, New Delhi on 19th May 2007 at 10.30 am, 11.00 am and 11.30 pm respectively, for the purpose of considering and, if thought fit, approving the said Scheme of Amalgamation.

13. Mr Abhik Mazumdar, Advocate and Mr Abhinav Jain, Advocate were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of secured creditors of the Transferor company no.1. The required quorum was fixed at 2 in number and 15% of the total secured debt in value. The Chairperson of the said meeting, in his report dated 30th May 2007, has reported that out of the 3 secured creditors, only 1 attended the meeting representing 55.59% in value. The said Scheme was approved unanimously. The copy of the Chairperson's report has been filed for record.

14. Mr Abhik Mazumdar, Advocate and Mr KK Sharma, AO(M) were appointed as the Chairperson and the Alternate Chairperson respectively of the meeting of secured creditors of the Demerged company. However, no secured creditor was present at the meeting. The meeting was adjourned sine-die for the want of quorum. The copy of the Chairperson's report has been filed for record.

15. Mr Mayank Goel, Advocate and Mr R.S. Rathi, Advocate were

appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of secured creditors of the Transferee company. However, no secured creditor was present at the meeting. The meeting was adjourned sine-die for the want of quorum. The copy of the Chairperson's report has been filed for record. The copy of the Chairperson's report has been filed for record.

16. Since the proper quorum was not present in the meetings of the secured creditors of the Transferor company no.1, the Demerged company and the Transferee company, this Court, while disposing CA 748/2007 passed an order dated 25th July, 2007 re-convening separate meetings of the secured creditors of the Transferor company no.1, the Demerged company and the Transferee company. However, the requirement of publication of these meetings in the newspapers was dispensed with, but individual notices, along with the Explanatory Statement, Form of Proxy and a copy of the Scheme of Amalgamation were directed to be sent to all the secured creditors, by registered post and also by hand, of the above-mentioned companies. The notice, Explanatory Statement and the Form of Proxy have been filed on record.

17. The Court directed that the separate meetings of the secured creditors of the Transferor company no.1, Demerged company and the Transferee company be held on 15th September 2007 at 11.00 am, 11.30 am and 12 noon respectively, at 707, Chiranjiv Towers, 43 Nehru

Place, New Delhi 110019.

18. Mr Chinmoy Pradeep Sharma, Advocate and Mr SK Sharma, Advocate, were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of secured creditors of the Transferor company no.1. The required quorum was fixed at 2 in number and 15% of the total secured debt in value. The Chairperson of the said meeting, in his report dated 19th September 2007, has reported that out of the 3 secured creditors of the Transferor company no.1, 2 attended the meeting through their authorized representatives representing 99.74% of the total secured debt of the Transferor company no.1. The said Scheme was approved unanimously. The copy of the Chairperson's report has been filed for record.

19. Mr Rajdipa Behura, Advocate and Mr DK Batra, Registrar (Protocol), were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of secured creditors of the Demerged company. The required quorum was fixed at 1 in number and 15% of the total secured debt in value. The Chairperson of the said meeting, in his report dated 19th September 2007, has reported that out of the 2 secured creditors of the Demerged company, 1 attended the meeting through its authorized representative representing 99.35% of the total secured debt of the Demerged company. The secured creditor present in the meeting gave his approval to the Scheme. The Chairperson further states that the other

secured creditor who did not attend the meeting has given its NOC. The copy of the Chairperson's report has been filed on record.

20. Mr Sunil Kumar Sharma, Advocate and Mr KK Sharma, AO(M), were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of secured creditors of the Transferee company. The required quorum was fixed at 1 in number and 15% of the total secured debt in value. The Chairperson of the said meeting, in his report dated 19th September 2007, has reported that out of the 2 secured creditors of the Transferee company, 1 attended the meeting through its authorized representative representing 90.89% of the total secured debt of the Transferee company. The secured creditor present in the meeting gave his approval to the Scheme. The Chairperson further states that the other secured creditor who did not attend the meeting has given its NOC. The copy of the Chairperson's report has been filed on record.

21. The Court directed the separate meetings of the unsecured creditors of the Transferee companies 1 & 2, Demerged company and the Transferee company to be convened at Amaltas Hall, Habitat World, India Habitat Centre, Lodhi Road, New Delhi on 19th May 2007 at 12 noon, 12.45 pm, 2.00 pm and 2.45 pm respectively, for the purpose of considering and, if thought fit, approving the said Scheme of Amalgamation.

22. Mr Abhik Mazumdar, Advocate and Mr Abhinav Jain, Advocate

were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of secured creditors of the Transferor company no.1. The required quorum was fixed at 15 in number and 15% of the total unsecured debt in value. The Chairperson of the said meeting, in his report dated 30th May 2007, has reported that out of 195 unsecured creditors of the Transferor company no.1, 30 attended the meeting either personally or through authorized representative/proxy, representing 26.31% of the total unsecured debt of the Transferor company no.1. The said Scheme was approved unanimously. The copy of the Chairperson's report has been filed for record.

23. Mr Abhik Mazumdar, Advocate and Mr Ankit Jain, Advocate were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of unsecured creditors of the Transferor company no.2. The required quorum was fixed at 10 in number and 15% of the total unsecured debt in value. The Chairperson of the said meeting, in his report dated 30th May 2007, has reported that out of 66 unsecured creditors of the Transferor company no.2, 21 attended the meeting either personally or through authorized representative/proxy representing 22.47% of the total unsecured debt of the Transferor company no.2. The said Scheme was approved unanimously. The copy of the Chairperson's report has been filed for record.

24. Mr PPS Premi, Advocate and Mr KK Sharma, AO(M) were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of unsecured creditors of the Demerged company. The required quorum was fixed at 10 in number and 15% of the total unsecured debt in value. The Chairperson of the said meeting, in his report dated 30th May 2007, has reported that out of 107 unsecured creditors of the Demerged company, 17 attended the meeting either personally or through authorized representative/proxy representing 52.27% of the total unsecured debt of the Demerged company. The said Scheme was approved unanimously. The copy of the Chairperson's report has been filed for record.

25. Mr Mayank Goel, Advocate and Mr DK Batra, Registrar (Protocol) were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of unsecured creditors of the Transferee company. The required quorum was fixed at 15 in number and 15% of the total unsecured debt in value. The Chairperson of the said meeting, in his report dated 30th May 2007, has reported that out of 136 unsecured creditors of the Transferee company, 38 attended the meeting either personally or through authorized representative/proxy representing 18.52% of the total unsecured debt of the Transferee company. The said Scheme was approved unanimously. The copy of the Chairperson's report has been filed for

record.

26. Vide order dated 1st October 2007, citations were directed to be published in “The Financial Express” (English edition) and “Jansatta” (Hindi edition), in terms of Companies (Court) Rules, 1959. An affidavit dated 31st December, 2007 has been filed by one Mr. Naresh Kumar, the authorized signatory of the petitioner companies about the publication of the citations in “The Financial Times” (English) and “Jansatta” (Hindi) on 21st December, 2007. The said publication containing the said citations were also produced along with the affidavit.

27. However, as mentioned before, the transferor company no.2 decided to withdraw from the on-going amalgamation, which was allowed by the Court while disposing off CA 1167/2007 on 14th November, 2007. the Court further replaced the initial Composite Scheme of amalgamation/demerger with the revised scheme.

28. Notices were issued to the OL and the Regional Director (Northern Region) vide order dated 1st October 2007. Pursuant to the notice issued to the OL, a report dated 30th January 2008 has been filed by the Official Liquidator. The Official Liquidator sought information from the petitioner companies vide its letter no. OL/TECH/AMAL/85 dated 23rd November 2007, upon which the requisite information was furnished by the Petitioner companies.

29. The OL has considered the report of the Chairpersons of the

meetings of secured creditors of the Transferor company no.1, the Demerged company and the Transferee company, and of the unsecured creditors of the Transferor company no.1, the Demerged company and the Transferee company, as well as the accounts of Petitioner companies as on 31st March 2007. The OL in its report has stated that he has not received any complaint against the Scheme of Amalgamation from any person/parties interested in the scheme in any manner whatsoever, and on the basis of information submitted by the petitioner companies. Thus it was inferred that the affairs of the petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors, or public , and well in accordance with the provisions of Section 394(1) of the Companies Act, 1956.

30. The report has also been filed by Shri Dhan Raj, Regional Director (Northern Region) by an affidavit, dated 2nd January 2008. Relying on Clause 5.2.1 of Part 5 of the Scheme of Amalgamation, it was submitted that all the employees of the Transferor company shall become the employees of the Transferee company without any break or interruption in their services upon the sanctioning of the said Scheme of Amalgamation. The Regional Director further submitted that the Central Government does not have any objection to the Scheme of Amalgamation/Arrangement.

31. There is no other legal impediment to sanction of the Scheme of

Amalgamation which is annexed to the petition. Consequently, sanction is hereby granted to the composite Scheme of Amalgamation of Transferor companies no. 1, 3, 4, 5 & 6 with the Transferee company and Demerger of the retail division of the Demerged company into the Transferee company, under Sections 391 and 394 of the Companies Act, 1956. The Transferee company will comply with the statutory requirements in accordance with law. Certified copies of this order be filed with the Registrar of Companies within five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty that is payable in accordance to law. Upon sanction becoming effective from the appointed date of amalgamation, that is 1st October 2006, the Transferor companies no. 1, 3, 4, 5 & 6 stand dissolved without being wound up. Cost quantified at Rs.10,000/- be deposited in aggregate in the Common Pool Fund within three weeks.

32. The petition is disposed of in terms of the above order.

February 04, 2008
aj

VIPIN SANGHI, J.