

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment:13.07.2012*

+ **CO.PET. 77/2012**

Petition under Sections 391(2) & 394 of the Companies Act, 1956

ALESSA DEVELOPERS & INFRASTRUCTURES PRIVATE
LIMITED

..... FIRST PETITIONER /
TRANSFEROR COMPANY No.1

ARN BUILDCON PRIVATE LIMITED SECOND PETITIONER
/TRANSFEROR COMPANY No.2

EMERALD CONBUILD PRIVATE LIMITED
...THIRD PETITIONER /
TRANSFEROR COMPANY NO.3

SARNAFIL SECURITIES PRIVATE LIMITED
....FOURTH PETITIONER /
TRANSFEROR COMPANY No.4

SANTRIC SECURITIES PRIVATE LIMITED
....FIFTH PETITIONER /
TRANSFEROR COMPANY No.5

SUKU INFOTECH PRIVATE LIMITED
...SIXTH PETITIONER /
TRANSFEROR COMPANY No.6

SANLUIS INFRATECH PRIVATE LIMITED

...SEVENTH PETITIONER /
TRANSFEROR COMPANY No.7

AND

AAKRITI STRUCTURES PRIVATE LIMITED

... EIGHTH PETITIONER /
TRANSFeree COMPANY

Through: Mr. Manoj Kumar Garg & Mr. Animesh
K. Sinha, Advocate for the Petitioners

Mr. K.S. Pradhan, Deputy Registrar of
Companies, for the Regional Director
(Northern Region)

Mr. Rajiv Behl, Advocate for the
Official Liquidator

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion joint Petition has been filed under sections 391(2) & 394 of the Companies Act, 1956 by the Petitioner Transferor Companies and Transferee Company seeking sanction of the Scheme of Amalgamation of Transferor Companies No. 1 to 7 - Alessa Developers & Infrastructures Private Limited, ARN Buildcon Private Limited,

Emerald Conbuild Private Limited, Sarnafil Securities Private Limited, Santric Securities Private Limited, Suku Infotech Private Limited, Sanluis Infratech Private Limited with Transferee Company Aakriti Structures Private Limited.

2. The registered offices of the Petitioner Transferor Companies and Transferee Company are situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of Transferor and Transferee Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2011 of the Petitioners Transferor and Transferee Companies have also been enclosed with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Amalgamation have also been placed on record.

6. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Company shall issue shares in the following manner:

- 1 Equity Share of Rs. 10/- each, credited as fully paid-up, of the Transferee Company for every 1.36 Equity Share of Rs. 10/- each held in the Transferor Company No. 1.
- 1 Equity Share of Rs. 10/- each, credited as fully paid-up, of the Transferee Company for every 1.27 Equity Share of Rs. 10/- each held in the Transferor Company No. 2.
- 0.89 Equity Share of Rs. 10/- each, credited as fully paid-up, of the Transferee Company for every 1 Equity Share of Rs. 10/- each held in the Transferor Company No. 3.
- 1 Equity Share of Rs. 10/- each, credited as fully paid-up, of the Transferee Company for every 1.15 Equity Share of Rs. 10/- each held in the Transferor Company No. 4.

- 1 Equity Share of Rs. 10/- each, credited as fully paid-up, of the Transferee Company for every 1.17 Equity Share of Rs. 10/- each held in the Transferor Company No. 5.
- 1.10 Equity Share of Rs. 10/- each, credited as fully paid-up, of the Transferee Company for every 1 Equity Share of Rs. 10/- each held in the Transferor Company No. 6.
- 1 Equity Share of Rs. 10/- each, credited as fully paid-up, of the Transferee Company for every 1.53 Equity Share of Rs. 10/- each held in the Transferor Company No. 7.

8. The Petitioner Companies had earlier filed CA (M) No. 23 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 06.02.2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders of the Transferor Companies and the Transferee Company. None of these Companies had any Secured and Un-secured Creditors.

9. The Petitioner Transferor Companies and the Transferee Company have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 17.02.2012, 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, Delhi Edition) and 'Business Standard' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspaper on 05.03.2012. Copies of the newspapers' cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

10. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated 29.06.2012 wherein he has stated that he has not received any complaint against the proposed Scheme 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 its members, creditors or to public interest.

11. In response to the notices issued in the Petition, Mr. B.K. Bansal, Learned Regional Director, Northern Region, Ministry of Corporate

Affairs has filed his Affidavit/Report dated 28.06.2012. Relying on Clause 7 of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court.

12. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Ankur Aggarwala, Authorized Representative of Transferee Company and Mr. Manoj Kumar Garg, Learned Counsel of the Petitioner Companies, have filed an affidavit dated 06.07.2012, confirming that neither the Petitioner Companies nor their Legal Counsel has received any objection pursuant to citations published in the newspapers.

13. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court 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 the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, and in terms of the Scheme , the whole or part of the undertaking, the property, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company 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 without any further act or deed. **Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without winding up.** It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

14. Learned Counsel for the Petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs.1,00,000/- with the

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Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

15. The Petition is allowed in the above terms.

Order Dasti.

INDERMEET KAUR, J

JULY 13, 2012

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