

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

% *Date of Judgment: 10.12.2012*

+ **COMPANY PETITION NO.386 OF 2012**

IN THE MATTER OF:

Kalakriti Engineers India Limited ... Transferor
Company No. 1

Kalakriti Infratrade Private Limited ... Transferor
Company No. 2

First Realtrade Private Limited ... Transferor
Company No. 3

Richi Look Marketing Private Limited ... Transferor
Company No. 4

Swami Foods Limited ... Transferor
Company No. 5

Jagriti Tradecon Private Limited ...Transferor
Company No. 6

MK Realtrade Private Limited ...Transferor
Company No. 7

Bholeyji Infratrade Private Limited ...Transferor
Company No. 8

Three-D Food and Beverages Private Limited ...Transferor
Company No. 9

Exclusive Agencies Limited ...Transferor

	Company No. 10
Sauda Securities Private Limited	...Transferor Company No. 11
Aakash Infratrade Private Limited	...Transferor Company No. 12
Ahead Enterprises Limited	...Transferor Company No. 13
Arambh Tradecon Private Limited	...Transferor Company No. 14

WITH

Akriti Realtech Limited	...Transferee Company
Through	Mr.Rakesh Kumar, Adv.

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 (for short “the Act”) seeking sanction of the Scheme of Amalgamation of **KALAKRITI ENGINEERS INDIA LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 1”), **KALAKRITI INFRATRADE PRIVATE LIMITED** (hereinafter referred to as “the

Applicant/Transferor Company No. 2”), **FIRST REALTRADE PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 3”), **RICHI LOOK MARKETING PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 4”), **SWAMI FOODS LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 5”), **JAGRITI TRADECON PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 6”), **MK REALTRADE PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 7”), **BHOLEYJI INFRATRADE PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 8”), **THREE-D FOOD AND BEVERAGES PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 9”), **EXCLUSIVE AGENCIES LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 10”), **SAUDA SECURITIES PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 11”), **AAKASH INFRATRADE PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 12”), **AHEAD**

ENTERPRISES LIMITED (hereinafter referred to as “the Applicant/Transferor Company No. 13”) and **ARAMBH TRADECON PRIVATE LIMITED** (hereinafter referred to as “the Applicant/Transferor Company No. 14”) (hereinafter collectively be referred as “the Applicant / Transferor Companies) with **AKRITI REALTECH LIMITED** (“the Applicant/Transferee Company”).

2. The Registered Office of the Applicant/Transferor Companies and of the Applicant/Transferee Company is situated at New Delhi, within the jurisdiction of this Hon’ble Court.

3. Details with regard to the date of Incorporation of Applicant / Transferor Companies and Applicant / Transferee Company, their Authorized, Issued, Subscribed and Paid up Capital have been given in the Petition.

4. Copy of the Memorandum and Articles of Association as well as the latest Audited Annual Accounts for the year ended 31st March, 2012 of the Applicant/Transferor Companies and the Applicant/Transferee Company have also been enclosed with the Petition.

5. Copy of the Resolution passed by the Board of Director of the Applicant / Transferor Companies and the Applicant / Transferee

Company approving the Scheme of Amalgamation has 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 Applicant/Transferor Companies and the Applicant/Transferee Company.

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:

Kalakriti Engineers India Limited (Transferor Company No.1)	10 Shares of Transferee Company for every 26 shares
Kalakriti Infratrade Private Limited (Transferor Company No.2)	10 Shares of Transferee Company for every 28 shares
First Realtrade Private Limited (Transferor Company No.3)	10 Shares of Transferee Company for every 10 shares
Richi Look Marketing Private Limited (Transferor Company No.4)	10 Shares of Transferee Company for every 14 shares
Swami Foods Limited (Transferor Company No.5)	10 Shares of Transferee Company for every 12 shares

Jagriti Tradecon Private Limited (Transferor Company No.6)	1 Share of Transferee Company to every Shareholder irrespective of their holding
MK Realtrade Private Limited (Transferor Company No.7)	10 Shares of Transferee Company for every 17 shares
Bholeyji Infratrade Private Limited (Transferor Company No.8)	10 Shares of Transferee Company for every 17 shares
Three-D Food & Beverages Private Limited (Transferor Company No.9)	10 Shares of Transferee Company for every 32 shares
Exclusive Agencies Limited (Transferor Company No.10)	1 Share of Transferee Company to every Shareholder irrespective of their holding.
Sauda Securities Private Limited (Transferor Company No.11)	10 Shares of Transferee Company for every 7 shares
Aakash Infratrade Private Limited (Transferor Company No.12)	10 Shares of Transferee Company for every 176 shares
Ahead Enterprises Limited (Transferor Company No.13)	10 Shares of Transferee Company for every 23 shares
Arambh Tradecon Private Limited (Transferor Company No.14)	10 Shares of Transferee Company for every 11 shares

8. The Applicant/Transferor Companies No. 1 to 14 and the Applicant/Transferee had earlier filed CA (M) No.119 of 2012 seeking directions of this Court for dispensation/convening of the meetings of its equity shareholders and the unsecured creditors. Vide order dated 31st July 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of its equity Shareholders and unsecured creditors.

9. The Applicant / Transferor Companies and the Applicant / Transferee Company have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 22nd August 2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region and to the Official Liquidator. Citations were also directed to be published in “The Times of India (English)” and “Jansatta (Hindi)” and in the official Gazette of Delhi. Affidavit of Service and Publication has been filed by the Applicant / Transferee Company 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 1st September 2012 and in the official gazette on 18th October, 2012.

Copies of the newspaper's cuttings, in original, containing the publications have been filed along with the Affidavit of Service. The copy of the Official Gazette published has also been filed through an affidavit.

10. In response to the notices issued in the Petition, Shri Rakesh Chandra, Regional Director, Northern Region, Ministry of Corporate Affairs (for short "RD") has filed his Affidavit dated 27 November 2012. In the said Affidavit, he raised the certain objections / observations. The Applicant/Transferee Company has also filed reply affidavit to the objection / observation raised by the RD. The details of the said observations / objection of the RD and the reply thereto of the Applicant / Transferee Company are as under :

- (a) That in response to the Para 3, 4 and 5 of the affidavit filed by the Regional Director, Northern Region, the Applicant/transferee Company has conceded that all the staff / employees of all 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 the Amalgamation by this Court, the transferee Company undertakes to comply

Accounting Standard – 14 issued by the ICAI and further undertakes that any amendment in the MOA & AOA for adopting the object of the transferor Companies by the Transferee Company shall be carried out after complying the provision prescribed under the Companies Act, 1956.

(b) In response to Para 6 of the affidavit, the Applicant / transferee Company has given its justification for issuances of shares on premium @ Rs. 490 per share to the Transferor Companies as referred in the para. The justification is that the Transferor Companies are majorly dealing with the SRS Group of Companies that has made substantial growth during the previous couple of years in the various sectors. Further, the said Transferor Companies had the potential projects to carry out in association with the SRS Group of Companies. The said Transferor Companies are the closely held companies related to the close family / friends / associates. In view of the said cumulative reasons, the justification has been given for the allotment of the said shares at a premium of Rs.490/- per share as at 31st March, 2011. It has further been stated that there is no bar under the

Companies Act, 1956 for the issuance of the share capital on premium by the Company. It has further been stated that even the Government of India has only latest recognized the issuance of the share capital on premium by issuing a proviso in the Financial Bill, 2012 by making an amendment in Section 56(2) of the Income Tax Act. In view of the said section, now if any Private Limited Company issue shares on premium, the same shall be subject to tax under the head “Income from other sources”. In view of the said reasons, the Applicant/Transferee Company has stated in its affidavit that it had valid justification for the issuance of shares at a premium of Rs.490/- per share as at 31st March, 2011 in favour of the said Transferee Company.

(c) Further in response to Para-7 of the Affidavit, the Applicant /Transferee Company has stated that it had already replied to the office of the Regional Director, vide its letter dated 25th October, 2012, by stating that their registered office at 3125, Gali No.34, Beadonpura, Karol Bagh, New Delhi-110005 is the regular running office since 31st December, 2010. The

Applicant/Transferee Company further undertook and declared in

the affidavit that it is running its office at the said address. The photographs of the said office of the Applicant/Transferee Company indicating its office operation has also been attached with the reply to the affidavit filed by the Applicant/Transferee Company.

11. That pursuant to the notices issued, the Official Liquidator sought information from the Applicant / Transferor Companies and the Applicant / Transferee Company. Based on the information received, the Official Liquidator has filed his report dated 7-12-2012 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 Applicant / Transferor Companies and the Applicant / Transferee Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest. Hence, there were no objections reported from the Official Liquidator.

12. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Vishal Sorout, Director of the Applicant/Transferee Company, has filed an Affidavits dated 25-9-2012

and dated 1-12-2012, confirming that the Applicant /Transferee Company has not received any objection pursuant to citations published in the newspapers and in the official Gazette of Delhi.

13. In view of the approval accorded by the Equity Shareholders and the unsecured creditors of the Applicant / Transferor Companies and the Applicant / Transferee Company; 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 Act, 1956. The Applicant / Transferee Company will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty 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 undertaking, the property, rights and powers of the Applicant / Transferor Companies be transferred to and vest in the Applicant / Transferee Company without any further act or deed.

Similarly, in terms of the Scheme, all the liabilities and duties of the Applicant / Transferor Companies be transferred to the Applicant / Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Applicant / 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, taxes or any other charges, if payable in accordance with 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 Applicant / transferee Company would voluntarily deposit a sum of Rs. 1 lac in the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.

15. The Petition is allowed in the above terms.

Order Dasti.

INDERMEET KAUR, J

DECEMBER 10, 2012

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