

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 10/2015

Reserved on 6th April, 2015
Date of pronouncement: 8th May, 2015

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Sections 391 to 394 of the
Companies Act, 1956 read with Rules 67 to 87
of the Companies (Court) Rules, 1959**

Composite Scheme of Arrangement between:

Hespera Real Estate Private Limited
Petitioner/Transferor Company No. 1

Hespera Infrastructure Private Limited
Petitioner/Transferor Company No. 2

Hespera Properties Private Limited
Petitioner/Transferor Company No. 3

Hespera Realcon Private Limited
Petitioner/Amalgamating Company No. 1

Hespera Constructions Private Limited
Petitioner/Amalgamating Company No. 2

AND

Hespera Realty Private Limited
Petitioner/Transferee Company

**Through Mr. Satwinder Singh and
Mr.N.P.S. Chawla, Advocates for the
petitioners**

**Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director**

**Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 67 to 87 of the Companies (Court)

Rules, 1959 by the petitioner companies seeking sanction of the Composite Scheme of Arrangement between Hespera Real Estate Private Limited (hereinafter referred to as the transferor company no. 1); Hespera Infrastructure Private Limited (hereinafter referred to as the transferor company no. 2); Hespera Properties Private Limited (hereinafter referred to as the transferor company no. 3); Hespera Realcon Private Limited (hereinafter referred to as the amalgamating company no. 1); Hespera Constructions Private Limited (hereinafter referred to as the amalgamating company no. 2); and Hespera Realty Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor, amalgamating and transferee companies are situated at New Delhi, within the jurisdiction of this court.

3. The transferor, amalgamating and transferee companies were incorporated under the Companies Act, 1956 on 22nd December, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the transferor, amalgamating and transferee companies are Rs.1,00,000/- each divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies are Rs.1,00,000/- each divided into 10,000 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the transferor, amalgamating and transferee companies have been filed on record with the joint application, being CA(M) 173/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor, amalgamating and transferee companies, along with the report of the auditors, and the provisional balance sheets, as on 29th October, 2014, of the transferor, amalgamating and transferee companies had also been filed.

6. A copy of the Composite Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is submitted by the petitioners that amalgamating companies no. 1 & 2 and the transferee company are wholly owned subsidiaries of Maritime India Trust, a private family trust established under the Indian Trust Act, 1882 by virtue of a trust deed dated 31st January, 2014; the transferor company no. 1 is a wholly owned subsidiary of amalgamating company no. 1; and transferor companies no. 2 & 3 are wholly owned subsidiaries of the transferee company. It is further submitted that the Scheme, *inter alia*, provides for amalgamation of transferor company no. 1 into the amalgamating company no. 1; amalgamation of transferor companies no. 2 & 3 into the transferee company; and amalgamation of amalgamating company no. 1 (including the assets and liabilities of transferor company

no. 1, pursuant to amalgamation) and amalgamating company no. 2 into the transferee company. It is further submitted that the companies had been originally incorporated with the objective of developing different real estate/infrastructure projects. However, it is now the vision of the ultimate shareholder of these companies that the businesses of the all the companies be consolidated into one single entity, for improved synergies and management focus. It is claimed that the proposed Scheme will derive synergies and achieve economies of scale arising out of consolidation of businesses of companies and will efficiently and optimally utilize resources of all businesses under a single combined entity.

7. So far as the share exchange ratio is concerned, the Scheme provides as under:

“Transferor company no. 1 is a wholly owned subsidiary of the amalgamating company no. 1. Upon the Scheme becoming effective, the entire share capital of the transferor company no. 1 shall stand cancelled and there would be no issue of shares of the amalgamating company no.1 to the shareholders of the transferor company no. 1.”

“Transferor companies no. 2 & 3 are wholly owned subsidiary of the transferee company. Upon the Scheme becoming effective, the entire share capital of the transferor companies no. 2 & 3 shall stand cancelled and there would be no issue of shares of the transferee company to the shareholders of the transferor companies no. 2 & 3.”

“A lump sum consideration of Rs.1,00,000/- each shall be paid for amalgamation of the amalgamating company no. 1 and amalgamating company no. 2 with the transferee company totaling Rs.2,00,000/-, which shall be discharged

by the transferee company through the issue of 20,000 equity shares of the transferee company having face value of Rs.10/- each, credited as fully paid up to the Maritime India Trust. Further, no shares need to be issued to the other shareholders of the amalgamating company no. 1 and amalgamating company no. 2.”

8. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferor, amalgamating and transferee companies.

9. The Board of Directors of the transferor companies, amalgamating company no. 2 and the transferee company in their separate meetings held on 14th November, 2014 and the Board of Directors of the amalgamating company no. 1 in their meeting held on 9th November, 2014 have unanimously approved the proposed Composite Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor, amalgamating and transferee companies have been placed on record.

10. The petitioner companies had earlier filed CA (M) No. 173/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Composite Scheme of Arrangement. Vide order dated 22nd December, 2014, this court allowed the application and dispensed with the

requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor, amalgamating and transferee companies, there being no secured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Composite Scheme of Arrangement.

11. The petitioner companies have thereafter filed the present petition seeking sanction of the Composite Scheme of Arrangement. Vide order dated 12th January, 2015, 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 'Financial Express' (English) and 'Jansatta' (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 5th March, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 27th March, 2015 wherein he has stated that he has not received any complaint against the proposed Composite Scheme of Arrangement from any person/party interested in the Scheme in any manner and that the affairs of the

transferor companies & amalgamating companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

13. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 27th March, 2015. Relying on Clauses 6.11.1 of Part-II, 13.1.1 of Part-II and 20.11.1 of Part-III of the Scheme, he has stated that, upon sanction of the Composite Scheme of Arrangement, all the employees of the transferor company no. 1; and all the employees of the transferor companies no. 2 & 3 and amalgamating companies no. 1 & 2 shall become the employees of the amalgamating company no. 1 and the transferee company respectively, without any break or interruption in their services. He has further submitted that in Clauses 9.1 of Part-II, 16.1 of Part-II and 23.1 of Part-III of the Scheme, it has been stated that the amalgamating company no. 1 shall account for amalgamation of transferor company no. 1 and the transferee company shall account for the amalgamation of transferor companies no. 2 & 3 and amalgamating companies no. 1 & 2, in their books of accounts as per the 'Purchase Method' specified under the Accounting Standard-14 – 'Accounting for Amalgamation'. He further submitted that in Clause 12 of Part-II, Clause 19 of Part-II and Clause 26 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor

company no. 1, transferor companies no. 2 & 3 and amalgamating companies no. 1 & 2 respectively, shall stand dissolved without the process of winding up.

14. No objection has been received to the Composite Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 4th April, 2015 of Mr. N.P.S. Chawla, Counsel of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 5th March, 2015.

15. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Composite Scheme of Arrangement and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Composite Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Composite Scheme of Arrangement. Consequently, sanction is hereby granted to the Composite Scheme of Arrangement 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 this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the

sanction becoming effective from the appointed date of Arrangement, i.e. 1st August, 2014, the transferor companies no. 1, 2 & 3 and the amalgamating companies no. 1 & 2 shall stand dissolved without undergoing the process of winding up.

16. Learned counsel for the Official Liquidator prays that costs may be imposed on the petitioner companies in view the fact that the matter has involved examination of voluminous record and prioritized hearings. He submits that cost of at least Rs.2,00,000/- be imposed. Learned counsel for the petitioners states that the petitioner companies are ready and willing to pay cost of Rs.2,00,000/-. Looking to the circumstances, the petitioner companies shall deposit cost of Rs.2,00,000/- in the Common Pool Fund of the Official Liquidator within two weeks from today.

17. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 08, 2015