

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 25/2015

Reserved on 19th February, 2015
Date of pronouncement: 26th March, 2015

In the matter of

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

And

Application under Sections 391 & 394 of the Companies Act, 1956

Scheme of Amalgamation of:

Esugarindia Clearing Corporation Limited

Applicant/Transferor Company

WITH

Esugarindia Limited

Applicant/Transferee Company

**Through Mr. Alok Krishan Aggarwal,
Mr. Naveen Chawla and Mr. Mayank
Bhugani, Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 & 394 of the Companies Act, 1956 by the applicant companies seeking directions of this court to convene the meetings of their equity shareholders, there are no secured or unsecured creditors of the applicant companies, to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Esugarindia Clearing Corporation Limited (hereinafter referred to as the transferor company) with Esugarindia Limited (hereinafter referred to as the transferee company).

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

3. The transferor company was originally incorporated under the Companies Act, 1956 on 20th May, 2002 with the Registrar of Companies, Maharashtra at Mumbai. It is submitted by the applicants that the company shifted its registered office from the State of Maharashtra to NCT of Delhi vide order dated 12th September, 2014 of the Regional Director, Western Region.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 17th October, 2000 with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Esugarindia Private Limited. The company changed its name to Esugarindia Limited and obtained a fresh certificate of incorporation on 27th June, 2002. It is submitted by the applicants that the company shifted its registered office from the State of Maharashtra to NCT of Delhi vide order dated 12th September, 2014 of the Regional Director, Western Region.

5. The authorized share capital of the transferor company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.25,00,070/- divided into 2,50,007 equity shares of Rs.10/- each.

6. The authorized share capital of the transferee company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,10,15,200/- divided into 31,01,520 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is submitted by the applicants that it is proposed to downwards integrate the business activities of the companies in one company to create a larger unified entity thereby creating various area of work facilities for the transferee company and enabling optimum utilization of resources and synergy of operations, thus, resulting in better profitability, increased fund mobilization capacity and downwards business integration.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee

company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:-

“18 equity shares of Rs.10/- each of the transferee company, credited as fully paid-up, for every 10 equity shares of Rs.10/- each held by the shareholders in the transferor company.”

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 12th September, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 27 equity shareholders and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the equity shareholders of the transferor company is directed to be held on 9th May, 2015 at 11:30 am at the registered office of the company at S-3, 2nd Floor, Opp. Pocket-1, Local Shopping Centre (LSC), DDA, West of Trilokpuri, Mayur Vihar Phase-I, Delhi – 110091. Ms. Kaadambari Puri, Advocate, (Mobile No. 9811111892) is appointed as the Chairperson and Mr. Ranjan Roy,

Advocate, (Mobile No. 9810157399) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the equity shareholders of the transferor company shall be 5 in number and more than 15% in value of the total equity share capital.

13. The transferee company has 38 equity shareholders and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the equity shareholders of the transferee company is directed to be held on 9th May, 2015 at 12:30 pm at the registered office of the company at S-3, 2nd Floor, Opp. Pocket-1, Local Shopping Centre (LSC), DDA, West of Trilokpuri, Mayur Vihar Phase-I, Delhi – 110091. Mr. Abhijat, Advocate, (Mobile No. 9582585083) is appointed as the Chairperson and Mr. Rahul Chauhan, Advocate, (Mobile No. 9650802472) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the equity shareholders of the transferee company shall be 7 in number and more than 15% in value of the total equity share capital.

14. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form

duly signed by the person entitled to attend and vote at the meetings is filed with the registered offices of the transferor and transferee company at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

15. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the equity shareholders of the transferor and transferee companies, along with copies of the Scheme of Amalgamation and the statement under Section 393 of the Companies Act, 1956, shall be sent to the equity shareholders of the transferor and transferee companies by speed post at their registered or last known addresses at least 21 days before the date appointed for the meetings, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the Delhi editions of the newspapers "Statesman" (English) and "Veer Arjun" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

16. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the transferor and transferee companies so that the aforesaid meetings of the equity shareholders of the transferor and transferee companies are conducted in a just, free and fair manner.

17. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

18. There are no secured or unsecured creditors of the transferor and transferee companies, as on 31st March, 2014. Therefore, the requirement of convening the meetings of the secured and unsecured creditors of the transferor and transferee companies does not arise.

19. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

March 26, 2015