

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 59/2015

Reserved on 25th August, 2015

Date of pronouncement: 21st September, 2015

In the matter of

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

And

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

Scheme of Amalgamation of:

Spectrum Realty Private Limited

Petitioner/Transferor Company No. 1

Jubliant Financial Consultants Private Limited

Petitioner/Transferor Company No. 2

Avalon Financial Services Private Limited

Petitioner/Transferor Company No. 3

WITH

Arvind Estates Private Limited

Petitioner/Transferee Company

**Through Mr. Rajeev Kumar Goel,
Advocate 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(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Spectrum Realty Private Limited (hereinafter referred to as the transferor company no. 1); Jubliant

Financial Consultants Private Limited (hereinafter referred to as the transferor company no. 2) and Avalon Financial Services Private Limited (hereinafter referred to as the transferor company no. 3) with Arvind Estates Private 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 no. 1 was incorporated under the Companies Act, 1956 on 1st February, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 7th February, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Jubliant Estates Private Limited. The company changed its name to Jubliant Financial Consultants Private Limited and obtained a fresh certificate of incorporation on 15th June, 2009.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 5th February, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferee company was incorporated under the Companies Act, 1956 on 15th February, 1996 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The present authorized share capital of the transferor company no.1 is Rs.51,00,000/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and 5,00,000 preference shares of Rs.10/- each aggregating to Rs.50,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.49,00,000/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and 4,80,000 10% redeemable non-cumulative optionally convertible preference shares of Rs.10/- each aggregating to Rs.48,00,000/-.

8. The present authorized share capital of the transferor company no.2 is Rs.51,00,000/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and 5,00,000 preference shares of Rs.10/- each aggregating to Rs.50,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.49,00,000/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and 4,80,000 10% redeemable non-cumulative optionally convertible preference shares of Rs.10/- each aggregating to Rs.48,00,000/-.

9. The present authorized share capital of the transferor company no.3 is Rs.2,00,00,000/- divided into 15,00,000 equity shares of Rs.10/- each aggregating to Rs.1,50,00,000/- and 5,00,000 preference shares of Rs.10/- each aggregating to Rs.50,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.58,00,000/- divided into 1,00,000 equity shares of Rs.10/- each aggregating to Rs.10,00,000/- and 4,80,000 10% redeemable non-cumulative optionally convertible preference shares of Rs.10/- each aggregating to Rs.48,00,000/-.

10. The present authorized share capital of the transferee company is Rs.1,50,35,900/- divided into 5,000 equity shares of Rs.100/- each aggregating to Rs.5,00,000/- and 1,45,359 preference shares of Rs.100/- each aggregating to Rs.1,45,35,900/-. The present issued, subscribed and paid-up share capital of the company is Rs.1,48,93,800/- divided into 3,580 equity shares of Rs.100/- each aggregating to Rs.3,58,000/- and 1,45,358 10% redeemable non-cumulative optionally convertible preference shares of Rs.100/- each aggregating to Rs.1,45,35,800/-.

11. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 4/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and

transferee companies, along with the report of the auditors, had also been filed.

12. 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 petition and the accompanying affidavit. It is submitted by the petitioners that the transferor and transferee companies are closely held group companies and the proposed amalgamation would result in business synergy, consolidation and pooling of their resources for their most beneficial utilization in the combined entity. It is claimed that the proposed amalgamation will result in usual economies of a centralized and large company, including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resources and enhancement of overall business efficiency. It will enable these companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their business.

13. 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 companies in the following ratio:-

“1 (one) equity share of Rs.100/- each of the transferee company, credited as fully paid up, for every 961 equity shares of Rs.10/- each held in the transferor company no. 1.”

“1 (one) equity share of Rs.100/- each of the transferee company, credited as fully paid up, for every 34 equity shares of Rs.10/- each held in the transferor company no. 2.”

“1 (one) equity share of Rs.100/- each of the transferee company, credited as fully paid up, for every 284 equity shares of Rs.10/- each held in the transferor company no. 3.”

Further, the transferee company will also issue 1 (one) 10% non-cumulative optionally convertible preference share of Rs.100/- each, credited as fully paid-up, to the preference shareholders for every 10 (ten) preference shares of Rs.10/- each held in each of the transferor companies.

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

15. The Board of Directors of the transferor and transferee companies in their separate meetings held on 15th November, 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.

16. The petitioner companies had earlier filed CA (M) No. 4/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference

shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 20th January, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, preference shareholders, secured and unsecured creditors of the transferor and transferee companies, there being no secured or unsecured creditors of the transferor companies no. 1 & 3 and no secured creditors of the transferor company no. 2, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

17. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 5th February, 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 'Business Standard' (English) and (Hindi) editions. Affidavit of Service has been filed by the petitioners 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 21st March, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

18. 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 13th July, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation 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 their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

19. 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 17th July, 2015. Relying on Clause 7(a) of the Scheme, 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. He has further submitted that in Clause 11(a) of the Scheme, it has been stated that amalgamation shall be an 'amalgamation in the nature of merger' as defined in Accounting Standard-14 as prescribed under Companies (Accounting Standards) Rules, 2006 and shall be accounted for under the 'pooling of interest' method in accordance with the said accounting standard. He further submitted that in Clause 6 of the Scheme, it has been stated that upon

this scheme becoming effective, the transferor companies no. 1 to 3 shall stand dissolved without the process of winding up.

20. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 14th July, 2015 of Mr. Arvind Verma, Director of the transferee company, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 21st March, 2015.

21. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection 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 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 Amalgamation, i.e. 1st April, 2014, the transferor companies no. 1 to 3 shall stand dissolved without undergoing the process of winding up.

22. Learned counsel for the Official Liquidator prays that costs may also be imposed keeping in view the fact that the matter has involved examination of extensive records and prioritized hearings. He submits that at least costs of Rs.1,00,000/- should be paid by the petitioners. Learned counsel for the petitioners states that the same is acceptable to him. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs in the Common Pool Fund of the Official Liquidator, within two weeks.

23. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 21, 2015