

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 607/2014

Reserved on 21st July, 2015

Date of pronouncement: 9th September, 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**

Scheme of Amalgamation of:

NEC Industrial Projects Limited

Petitioner/Transferor Company No. 1

Hunt Formwork Services Limited

Petitioner/Transferor Company No. 2

WITH

BSL Scaffolding Limited

Petitioner/Transferee Company

**Through Ms. Jyoti Sharma, 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 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of NEC Industrial Projects Limited (hereinafter referred to as the transferor company no. 1) and Hunt Formwork Services Limited (hereinafter referred to as the transferor

company no. 2) with BSL Scaffolding 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 originally incorporated under the Companies Act, 1956 on 16th August, 1988 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of ENEC Engineering Industries Private Limited. The company changed its name to NEC Industrial Projects Private Limited w.e.f. 21st July, 1993. The company again changed its name to NEC Industrial Projects Limited and obtained a fresh certificate of incorporation on 25th March, 2009.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 1st February, 1999 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of NEC Chemicals Limited. The company changed its name to BSL Tractors Limited and obtained the fresh certificate of incorporation on 24th March, 2006. The company again changed its name to Hunt Formwork Services Limited and obtained the fresh certificate of incorporation on 21st June, 2011.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 22nd August, 1984 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of SGB India Limited. The company changed its name to British Scaffolding (India) Limited and obtained the fresh certificate of incorporation on 1st February, 1994. The company again changed its name to BSL Scaffolding Limited and obtained the fresh certificate of incorporation on 8th February, 2006.

6. The authorized share capital of the transferor company no. 1, as on 1st February, 2014 was Rs.1,79,00,000/- divided into 17,90,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company was Rs.1,79,00,000/- divided into 17,90,000 equity shares of Rs.10/- each fully paid up.

7. The authorized share capital of the transferor company no. 2, as on 1st February, 2014 was Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company was Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each fully paid up.

8. The authorized share capital of the transferee company, as on 1st February, 2014, was Rs.15,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.5,93,63,460/- divided into 59,36,346 equity shares of Rs.10/- each fully paid up.

9. 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, 2013, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

10. 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 claimed by the petitioners that the proposed amalgamation will result in greater economies of scale, reduction in overheads and other expenses. It is further claimed that the proposed amalgamation will enable pooling of resources of all the companies to their common advantage, resulting in more productive utilization of the said resources, cost & operational efficiencies which would be beneficial for all stakeholders.

11. 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:

“1.7 new equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.10/- each fully paid up held by the shareholders in the transferor company no. 1.”

“0.3 new equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.10/- each fully paid up held by the shareholders in the transferor company no. 2.”

12. 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 and transferee companies.

13. The Board of Directors of the transferor company no. 1, transferor company no. 2 and the transferee company in their separate meetings held on 13th February, 2014, 20th February, 2014 and 12th February, 2014 respectively 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.

14. The petitioner companies had earlier filed CA (M) No. 75/2014 seeking directions of this court to dispense with the requirement of

convening the meetings of their equity shareholders, and for convening of separate meetings of their secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 25th April, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor and transferee companies and directed convening of separate meetings of the secured creditors of the transferee company and the unsecured creditors of the transferor and transferee companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. The Court further directed the transferor companies to approach their respective secured creditors to secure their consents and to file the same before this Court along with the second motion petition. Thereafter, vide order dated 6th May, 2014, this court extended the date of the aforesaid meetings from 20th May, 2014 to 18th June, 2014.

15. The Chairpersons of the ordered meetings of the secured creditors of the transferee company and the unsecured creditors of the transferor and transferee companies have filed their reports stating that the meetings were duly held on 18th June, 2014, as directed, and that the Scheme of Amalgamation has been approved unanimously/by majority by the secured creditors of the transferee company and the unsecured

creditors of the transferor and transferee companies, present and voting, in their respective meetings.

16. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 1st October, 2014, 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 'Statesman' (English) and 'Veer Arjun' (Hindi) editions. The petitioners have filed an affidavit showing compliance regarding publication of citations in the aforesaid newspapers on 13th November, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit. The transferor companies nos. 1 & 2 have also annexed the no objections received from their secured creditor namely Bank of Baroda to the proposed Scheme of Amalgamation, in terms of order dated 25th April, 2014 passed by this Court.

17. 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 February, 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 its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

18. 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 February, 2015. Relying on Clause 8.1 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 13.1 of the Scheme, it has been stated that the amalgamation shall be accounted for in the books of accounts of the transferee company according to 'Pooling of Interest Method' prescribed under Accounting Standard-14 i.e. 'Accounting for Amalgamation' issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 9 of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies shall stand dissolved without the process of winding up.

19. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 4th April, 2015 of Mr. Rakesh Kumar Singh, Director of the transferee

company, have submitted that they have not received any objection pursuant to the citations published in the newspapers on 13.11.2014.

20. Considering the approval accorded by the equity shareholders, secured and unsecured 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, 2013, the transferor companies no. 1 & 2 shall stand dissolved without undergoing the process of winding up.

21. Learned counsel for the Official Liquidator prays that costs may be imposed on the petitioner company in view the fact that the matter has involved examination of extensive records and prioritized hearings.

Looking to the circumstances, the petitioner companies shall deposit cost of Rs.25,000/- each, in all amounting to Rs.75,000/-, in the Common Pool Fund of the Official Liquidator within four weeks. Learned counsel for the petitioners submitted that the same is acceptable to her clients.

22. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

September 09, 2015