

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 54/2015

Reserved on 15th April, 2015
Date of pronouncement: 5th May, 2015

In the matter of

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

And

**Application under Sections 391(1) of the
Companies Act, 1956**

Scheme of Amalgamation of:

Padmesh Realtors Private Limited

Applicant/Transferor Company

WITH

Suncity Infrastructures Private Limited

Applicant/Transferee Company

Through Mr. Mukesh Sukhija,
Advocate for the applicants

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Section 391(1) of the Companies Act, 1956 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors to consider and approve with or without modification, the proposed Scheme of Amalgamation of Padmesh Realtors Private Limited (hereinafter referred to as the transferor company) with Suncity Infrastructures 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 was incorporated under the Companies Act, 1956 on 2nd September, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 17th February, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.16,00,00,000/- divided into 1,60,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,11,200/- divided into 11,120 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.40,00,000/- divided into 2,90,000 equity shares of Rs.10/- each aggregating to Rs.29,00,000/- and 1,10,000 preference shares of Rs.10/- each aggregating to Rs.11,10,000/-. The issued, subscribed and paid-up share capital of the company is Rs.18,70,600/- divided into 80,000 equity shares of Rs.10/- each aggregating to Rs.8,00,000/- and 1,07,060 12% optionally convertible cumulative preference shares of Rs.10/- each aggregating to Rs.10,70,600/-.

7. Copies of 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 company, along with the report of the auditors, and the unaudited balance sheets, as on 28th February, 2015, of the applicant companies 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 claimed by the applicants that the proposed Amalgamation would have the benefit of simplification of group structure; reduce managerial overlaps, which are necessarily involved in running multiple entities; reduce administrative cost; remove multiple layer inefficiencies; and achieving management efficiency.

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 preference shares to the shareholders of the transferor companies in the following ratio:-

1 (one) 12% optionally convertible cumulative preference share of Rs.10/- each to be issued and allotted by the Transferee Company in lieu of every 1656 equity shares of Rs.10/- each fully paid up held by the shareholders in the transferor company, as per the terms and conditions mentioned in Annexure – ‘A’ to the Scheme.”

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 2nd April 2015 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 05 equity shareholders and 01 unsecured creditor. 04 out of 05 equity shareholders, being 80% in number and 99.1% in value, and the only unsecured creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditor of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company, as on 2nd April 2015.

13. The transferee company has 22 equity shareholders and 03 preference shareholders. All the equity and preference shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity and preference shareholders of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured or unsecured creditor of the transferee company, as on 2nd April 2015.

14. The Application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

May 05, 2015