

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 619/2014

Reserved on 13th 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(1) & 394 of the Companies Act, 1956

Scheme of Amalgamation of:

C.P. Paper Private Limited

Petitioner/Transferor Company No. 1

Vatanukulit Financial Services Private Limited

Petitioner/Transferor Company No. 2

O.S.S. Garments Private Limited

Petitioner/Transferor Company No. 3

Finex Advertising Private Limited

Petitioner/Transferor Company No. 4

WITH

Thakurji Towers Private Limited

Petitioner/Transferee Company

**Through Mr. Ashish Middha, 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(1) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction

of the Scheme of Amalgamation of C.P. Paper Private Limited (hereinafter referred to as the transferor company no. 1); Vatanukulit Financial Services Private Limited (hereinafter referred to as the transferor company no. 2); O.S.S. Garments Private Limited (hereinafter referred to as the transferor company no. 3); and Finex Advertising Private Limited (hereinafter referred to as the transferor company no. 4) with Thakurji Towers 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 18th October, 1994 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 17th March, 1994 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 9th March, 1994 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferor company no. 4 was incorporated under the Companies Act, 1956 on 27th May, 1993 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferee company was incorporated under the Companies Act, 1956 on 22nd June, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The present authorized share capital of the transferor company no.1 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,84,000/- divided into 28,400 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.2 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,31,000/- divided into 23,100 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferor company no.3 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,39,200/- divided into 33,920 equity shares of Rs.10/- each.

11. The present authorized share capital of the transferor company no.4 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,73,700/- divided into 27,370 equity shares of Rs.10/- each.

12. The present authorized share capital of the transferee company is 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 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each.

13. 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) 121/2014, earlier filed by the petitioners. 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.

14. 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 that the proposed amalgamation will result in reduction in overheads and other expenses, reduction in administrative and procedural work,

eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity. It is further claimed that the Scheme will enable the companies concerned to rationalize and streamline their management, businesses and finances and lead to a better and more economic control, over the running and management of the businesses and undertakings of the said companies.

15. So far as the share exchange ratio is concerned, the Scheme provides that the transferee company shall not issue any equity shares to the holder of shares in the transferor companies as all the transferor companies are wholly owned subsidiaries of the transferee company.

16. 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.

17. The Board of Directors of the transferor and transferee companies in their separate meetings held on 24th December, 2013 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.

18. The petitioner companies had earlier filed CA (M) No. 121/2014 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 Scheme of Amalgamation. Vide order dated 24th September, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor companies and equity shareholders and unsecured creditors of the transferee company, there being no secured or unsecured creditors of the transferor companies and no secured creditors of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

19. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 10th 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 'Business Standard' (English) and (Hindi) editions. The petitioners have filed an affidavit showing compliance regarding publication of citations in the aforesaid newspapers on 10th November, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

20. 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 23rd April, 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.

21. 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 29th April, 2015. Relying on Clause 10 of Part-III 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 14.1.3 of Part-III 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 24.1 of Part-III of the Scheme, it has

been stated that upon this scheme becoming effective, the transferor companies no. 1 to 4 shall stand dissolved without the process of winding up.

22. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 13th May, 2015 of Mr. Vikas Jain, Director of the transferee company, have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 10th November, 2014.

23. Considering the approval accorded by the equity 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, 2013, the transferor companies no. 1 to 4 shall stand dissolved without undergoing the process of winding up.

24. 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.

25. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 21, 2015