

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 675/2014

Reserved on 16th September, 2015
Date of pronouncement: 5th October, 2015

In the matter of

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

And

**Petition under Sections 391 & 394 of the
Companies Act, 1956**

Scheme of Arrangement between:

One Star Realty Private Limited

Petitioner/Transferor Company

AND

e 2 e Solutions Private Limited

Petitioner/Transferee Company

**Through Mr. P. Nagesh and
Mr. Ashutosh Gupta, Advocates 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 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Arrangement between One Star Realty Private Limited (hereinafter referred to as the transferor company) and e 2 e Solutions 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 15th June, 2007 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 August, 2000 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

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

6. The present authorized share capital of the transferee company is Rs.10,00,00,000/- each divided into 1,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies are Rs.1,50,000/- each divided into 15,000 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, 2013, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Arrangement 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 independent operations of transferor company and transferee company leads to incurrence of significant costs and therefore the amalgamation would enable economies of scale by attaining critical mass and achieving cost saving. It is further claimed that the amalgamation would provide the transferee company a strong and focused base to undertake the business more advantageously and will also result in better management and focus on growing the businesses.

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:

“14,410 equity shares of Rs.10/- each in the transferee company for its entire investments in form of share capital and the long term liabilities of Rs.36,08,00,000/- in transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and the corresponding applicable provisions of the Companies Act, 2013 are pending against the transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 31st December, 2013 have unanimously approved the proposed Scheme of Arrangement. 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 petitioner companies had earlier filed CA (M) No. 124/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, share applicants, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 16th September, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, share applicants, secured and unsecured creditors of the transferor and transferee companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement. Since the written consents/NOC given by the corporate unsecured creditors of the transferee company, namely Greenply

Industries Limited, HSBC-Security, Vodafone Mobile Services and Williams-Sonama India Private Limited were not supported by Board Resolutions, the Court directed the petitioners to issue specific notice to the said corporate unsecured creditors at the time of moving of the second motion petition calling for their objection, if any, to the Scheme.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 5th November, 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. Affidavit of service has been filed by the petitioner 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 12th January, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit. The petitioners have also placed on record the factum of service of notices to the corporate unsecured creditors of the transferee company, in terms of order dated 16th September, 2014.

14. 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 24th July, 2015

wherein he has stated that he has not received any complaint against the proposed Scheme of Arrangement from any person/party interested in the Scheme in any manner and that the affairs of the transferor company 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.

15. 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 July, 2015. Relying on Clause 2.16 of Part-II of the Scheme, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the transferor company shall become the employees of the transferee company, without any break or interruption in their services. He has further submitted that in Clause 2 of Part-III of the Scheme, it has been stated that the amalgamation of the transferor company with the transferee company shall be accounted for as per the “Accounting Standard 14: Accounting for Amalgamation” as prescribed in the Companies (Accounting Standards) Rules, 2006 issued by the Ministry of Corporate Affairs. He further submitted that in Clause 4 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies, in the affidavits dated 27th July, 2015 of Mr. Ashim Sarin and Mr. Amit Garg, authorized signatory of the transferor company and transferee company respectively, have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 12th January, 2015.

17. Considering the approval accorded by the equity shareholders, share applicants and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of Arrangement 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. 01.04.2013, the transferor company shall stand dissolved without undergoing the process of winding up.

18. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner companies states that the same is acceptable to him. Looking to the circumstances, the petitioners shall deposit a sum of Rs.50,000/- by way of costs with the Common Pool Fund of the Official Liquidator within two weeks.

19. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

October 05, 2015