

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 188/2015

Reserved on 15th October, 2015

Date of pronouncement: 6th November, 2015

In the matter of

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

And

**Petition under Sections 391 to 394 read with
Sections 100 to 103 of the Companies Act,
1956**

Scheme of Amalgamation of:

A.M. Bros. Fintrade Private Limited

Petitioner/Transferor Company No. 1

Dhanuka Finvest Private Limited

Petitioner/Transferor Company No. 2

WITH

Dhanuka Agritech Limited

Petitioner/Transferee Company

**Through Mr. Mahesh Agarwal,
Mr. Rajeev and Ms. Snigdha Sharma,
Advocates for the petitioners
Mr. Manish Raj, Co. Prosecutor 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 read with Sections 100 to 103 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of A. M. Bros. Fintrade Private Limited (hereinafter referred to as the transferor company no. 1) and Dhanuka Finvest Private Limited (hereinafter

referred to as the transferor company no. 2) with Dhanuka Agritech 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 22nd January, 2014 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 12th December, 2013 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 13th February, 1985 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Dhanuka Pesticides Limited. The company changed its name to Dhanuka Agritech Limited and obtained a fresh certificate of incorporation on 9th February, 2007.

6. The authorized share capital of the transferor company no. 1, as on 10th December, 2014 was Rs.2,00,00,000/- divided into 17,50,000

equity shares of Rs.10/- each aggregating to Rs.1,75,00,000/- and 2,50,000 redeemable non-cumulative preference shares of Rs.10/- each aggregating to Rs.25,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.1,00,10,000/- divided into 10,01,000 equity shares of Rs.10/- each fully paid-up.

7. The authorized share capital of the transferor company no. 2, as on 10th December, 2014 was Rs.13,00,00,000/- divided into 1,26,70,000 equity shares of Rs.10/- each aggregating to Rs.12,67,00,000/- and 3,30,000 redeemable non-cumulative preference shares of Rs.10/- each aggregating to Rs.33,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each fully paid-up.

8. The present authorized share capital of the transferee company is Rs.14,00,00,000/- divided into 7,00,00,000 equity shares of Rs.2/- each. The present issued, subscribed and paid-up share capital of the company is Rs.10,00,39,000/- divided into 5,00,19,500 equity shares of Rs.2/- each fully paid-up.

9. 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) 12/2015, 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.

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 would not only lead to simplification of the shareholding structure and reduction of shareholding tiers but also demonstrate promoter's group directed commitment to and engagement with the transferee company.

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:-

“55,33,350 fully paid up equity shares of the face value of Rs.2/- each of the transferee company to be issued and allotted to the shareholders of the transferor company no. 1 in the proportion of the number of equity shares held by them in transferor company no. 1.”

“3,09,58,890 fully paid up equity shares of the face value of Rs.2/- each of the transferee company to be issued and allotted to the shareholders of the transferor company no. 2 in the proportion of the number of equity shares held by them in transferor company no. 2.”

12. Vide order dated 5th October, 2015 the petitioners were directed to file the affidavits of the shareholders of the transferor companies with regard to exact number of shares that are to be allotted to them pursuant to the Scheme, as certified and worked out by the Chartered Accountant. In terms of the aforesaid directions, the petitioners have placed on record the individual affidavit of each of the shareholders of the transferor companies no. 1 & 2 along with the certificates issued by J. N. Sharma & Co., Chartered Accountants dated 11th September, 2015 showing the exact number of equity shares to be allotted to each of the shareholder upon sanction of the Scheme of Amalgamation.

13. It has been submitted by the petitioners that no proceedings under Sections 237, 243, 247(1A), 250A and 251 or any other applicable provisions of the Companies Act, 1956 or under Sections 210, 211, 212(1) to (7) & (11) to (17), 214, 215, 216(1) & (3), 217, 219, 220, 223, 224(1), (3) and (4) and 225 or any other applicable provisions of the Companies Act, 2013 are pending against the petitioner companies.

14. The Board of Directors of the transferor and transferee companies in their separate meetings held on 6th October, 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.

15. The petitioner companies had earlier filed CA (M) No. 12/2015 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 20th February, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and creditors of the transferor companies and secured and unsecured creditors of the transferee company, and directed convening of a meeting of the equity shareholders of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

16. The Chairperson of the ordered meeting of the equity shareholders of the transferee company has filed his report stating that the meeting was duly held on 4th April, 2015, as directed, and that the Scheme of Amalgamation has been approved by majority by the equity shareholders of the transferee company, present and voting, in the meeting.

17. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 23rd April, 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 'Financial Express' (English) and 'Jansatta' (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 21st May, 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 24th August, 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 24th August, 2015. Relying on Clause 8.1 of Part-B 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 7 of Part-B of the Scheme, it has been stated that the amalgamation of the transferor companies with the transferee company shall be accounted as per the 'Purchase method' as defined in Accounting Standard-14 "Accounting for Amalgamation" issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 14 of Part-B of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies 1 & 2 shall stand dissolved without the process of winding up.

20. Although the Regional Director, Northern Region has not raised any objection to the Scheme of Amalgamation, However, in Para 6.2 of his report he has submitted that the main objects of the transferor companies, as stated in their memorandum of association, are to carry on the business of NBFC. There is no mention as to whether the companies are registered with RBI as NBFC, and if so, whether they have obtained the 'No Objection' from the RBI with regard to the proposed Scheme of Amalgamation. In response to the aforesaid observation, the petitioner companies in the affidavit dated 26th August, 2015 of Ms.Shubha Singh, authorized signatory of the transferee company, have submitted that both the transferor companies primarily

hold investments in group companies and are therefore Core Investment Company (CIC) and are not engaged in NBFC activity. Therefore, neither the registration from the RBI nor their No Objection is required for the proposed Scheme of Amalgamation. Further, the petitioner companies vide their additional affidavit dated 19th September, 2015 have placed on record certificates dated 17th September, 2015 and 18th September, 2015 from Goyal Malhotra & Associates, Chartered Accountants, and Manoj Ritu & Associates, Chartered Accountants respectively certifying that the transferor companies no. 1 and 2 are Core Investment Company (CIC) and not non-banking finance company (NBFC) and are not required to be registered as NBFC with RBI. The transferee company has also undertaken that it will be bound for any action which may be taken by the RBI in future for any act of commission or omission by the petitioner companies with regard to NBFC regulations. Learned counsel for the petitioners also relies on paragraphs 11, 12 & 13 of this Court's order passed on 06.08.2014 in Co.Pet. 174/2014 titled **Yasaki Exports (P) Ltd.**. In view of the aforesaid, the observation raised by the Regional Director stands satisfied. It is, however, clarified that in case it is found that petitioner companies have violated any provision of the Reserve Bank of India Act, then the Directors of the petitioner companies found guilty of said violation shall remain liable, irrespective of the sanction of the Scheme.

21. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 24th August, 2015 of Mr. Ghanshayam Dass Gupta, authorized representative of the transferor company no. 1; Mr. Mahendra Kumar Dhanuka, authorized representative of transferor company no. 2 and Ms. Shubha Singh, authorized representative 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 May, 2015.

22. 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 January, 2015, the transferor companies no. 1 & 2 shall stand dissolved without undergoing the process of winding up.

23. 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.

24. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

November 06, 2015