IN THE HIGH COURT OF DELHI

COMPANY PETITION NO. 663/2014

Reserved on 26th February, 2015
Date of pronouncement: 23rd March, 2015

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

And

Petition under Sections 391(2) & 394 of the Companies Act, 1956

Scheme of Amalgamation of:

M/s. Dugar Capital Services Private Limited
Petitioner/Transferor Company No. 1

M/s. Hina Overseas Private Limited
Petitioner/Transferor Company No. 2

WITH

M/s. Dipankur Ceroils Private Limited
Petitioner/Transferee Company

Through Mr. P. K. Mittal and Ms. Mehak 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(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of M/s. Dugar Capital Services Private Limited (hereinafter referred to as the transferor company no. 1) and M/s.Hina Overseas Private Limited (hereinafter referred to as the

transferor company no. 2) with M/s. Dipankur Ceroils 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 13th August, 1993 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 October, 1993 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was incorporated under the Companies Act, 1956 on 29th July, 1994 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The present authorized share capital of the transferor company no.1 is Rs.2,80,00,000/- divided into 28,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,80,00,000/- divided into 28,00,000 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.2,10,00,000/- divided into 21,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,78,11,360/- divided into 17,81,136 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.2,01,00,000/- divided into 20,10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.74,23,550/- divided into 7,42,355 equity shares of Rs.10/- each.

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) 141/2014, 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 submitted by the petitioners that the transferor companies are subsidiaries of the transferee company and the proposed amalgamation would create greater synergies between the businesses of these three companies and would enable them to manage their business more efficiently by

effectively pooling the technical and marketing skills of both the companies as an integrated entity and also enable effective management and unified control of operations. It is claimed that the proposed amalgamation will result in creating better synergies and optimal utilization of resources built by the transferor companies and provide better administration and cost reduction.

11. So far as the share exchange ratio is concerned, the Scheme provides that 98.33% share capital of the transferor company no. 1 is held by the transferee company and balance 1.67% share capital is held by the transferor company no. 2. Further, the transferor company no. 2 is a wholly owned subsidiary of the transferee company. Therefore, upon coming into effect of this Scheme, the share capital of both the transferor companies will stand automatically cancelled, extinguished and there will be no issue and allotment of shares of the transferee company.

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 18th September, 2014, 19th September, 2014 and 18th September, 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. 141/2014 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 14th October, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor and transferee companies, there being no secured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

15. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 14th 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 'Statesman' (English) and 'Veer Arjun' (Hindi) editions. The petitioners have filed the affidavit showing publication of citations in the aforesaid newspapers on 1st December,

2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

16. 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 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 no. 1 & 2 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.

17. 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 February, 2015. Relying on Clause 4.2(h) of Part-II of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies no. 1 & 2 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-II the Scheme, it has been stated that the transferee company shall follow the method of accounting as prescribed for Pooling of Interest method under Accounting Standard-14 as notified under the

Companies Accounting Rules, 2006. He further submitted that in Clause 8 of Part-II of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies no. 1 & 2 shall stand dissolved without the process of winding up.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 12th February, 2015 of Mr. V. K. Saxena, Director of the petitioner companies, have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 1st December, 2014.

19. Considering the approval accorded by the equity shareholders 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, 2014, the transferor companies no. 1 & 2 shall stand dissolved without undergoing the process of winding up.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

March 23, 2015