

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 726/2014

Reserved on 13th 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 & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Pranjal Fabrication Private Limited

Petitioner/Transferor Company

WITH

Pranjal Projects Private Limited

Petitioner/Transferee Company

**Through Mr. P. Nagesh and Mr. Anand
M. Mishra, Advocates for the
petitioners
Mr. Manish Bishnoi, 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 Amalgamation of Pranjal Fabrication Private Limited (hereinafter referred to as the transferor company) with Pranjal Projects 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 originally incorporated under the Companies Act, 1956 on 14th December, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of R B S. Impex Private Limited. The company changed its name to Pranjal Fabrication Private Limited and obtained the fresh certificate of incorporation on 24th January, 2011.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 13th May, 2002 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi. Thereafter, the company shifted its registered office from the State of Haryana to Delhi and obtained a certificate in this regard on 19th October, 2007.

5. The present authorized share capital of the transferor company is Rs.2,50,00,000/- each divided into 25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,49,00,000/- each divided into 24,90,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.2,54,50,000/- each divided into 25,45,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company

is Rs.13,01,950/- each divided into 1,30,195 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 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 will result in establishment of a larger company with large resources, larger capital base and a greater capacity to raise funds for expansion, modernization and development of the businesses of the companies concerned. It is further claimed that the proposed amalgamation will enable the undertakings and businesses of the said companies to obtain greater facilities possessed and enjoyed by one large company for securing and conducting its business on favourable terms and other benefits.

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:

“01 equity share of Rs.10/- each in the transferee company, credited as fully paid up, for every 114.47 equity shares of Rs.10/- each held by them in the transferor company.”

10. 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.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 12th February, 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.

12. The petitioner companies had earlier filed CA (M) No. 120/2014 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 4th September, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, 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 Amalgamation. Since the written consents/NOC given by the secured creditors of the transferee company, namely SIDBI and ICICI Bank, were not supported by Board Resolutions, the Court directed the petitioners to issue specific notice to the said secured 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 Amalgamation. Vide order dated 24th 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 6th December, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit. The petitioners have also submitted that notices, in terms of order dated 4th September, 2014, have also been served to the secured creditors of the transferee company.

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 26th 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 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 2nd March, 2015. Relying on Clause 3.1.1 (vii) of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all permanent 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 5.20 of Part-V of the Scheme, it has been stated that, subject to other clauses 5.21 to 5.22 of the Scheme, the amalgamation would be accounted for by applying the "Pooling of Interest Method" of accounting as contained in the "Accounting Standard-14: Accounting for Amalgamation" issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 3.3 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 Amalgamation from any other party. The petitioner companies, in the affidavit dated 3rd March, 2015 of Mr. Vikas Bhatia, Director of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 6th December, 2014.

17. 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, 2014, 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.1,00,000/- 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.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator within three weeks.

19. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

November 06, 2015