

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 294/2015

Reserved on 15th 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 Section 391(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Apex Safety Glass Private Limited

Petitioner/Transferor Company No. 1

Narang Academic Private Limited

Petitioner/Transferor Company No. 2

S P Solutions Private Limited

Petitioner/Transferor Company No. 3

WITH

New Delhi Realcon Private Limited

Petitioner/Transferee Company

Through Mr. Mukesh Sukhija,
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(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Apex Safety Glass Private Limited (hereinafter referred to as the transferor company No. 1), Narang

Academic Private Limited (hereinafter referred to as the transferor company No. 2), and S P Solutions Private Limited (hereinafter referred to as the transferor company No. 3) with New Delhi Realcon 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 5th March, 2003 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 22nd August, 2005 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 2nd February, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferee company was incorporated under the Companies Act, 1956 on 23rd April, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The present authorized share capital of the transferor company no.1 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.46,44,500/- divided into 4,64,450 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferor company no.2 is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.16,00,000/- divided into 1,60,000 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.3 is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.9,00,000/- divided into 90,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.43,01,100/- divided into 4,30,110 equity shares of Rs.10/- each.

11. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the

joint application, being CA(M) 55/2015, 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.

12. 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 no. 1 to 3 are having an interest income and the transferee company is engaged in the business of Real Estates and also having an interest income. It is claimed that the proposed Amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base. It is further claimed that the proposed Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

13. 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:-

“01 equity share of Rs.10/- each of transferee company for every 02 equity shares of Rs.10/- each held in the transferor company no. 1.”

“02 equity shares of Rs.10/- each of transferee company for every 05 equity shares of Rs.10/- each held in the transferor company no. 2.”

“24 equity shares of Rs.10/- each of transferee company for every 01 equity share of Rs.10/- each held in the transferor company no. 3.”

14. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

15. The Board of Directors of the transferor and transferee companies in their separate meetings held on 1st January 2015 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.

16. The petitioner companies had earlier filed CA (M) No. 55/2015 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 5th May, 2015, 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.

17. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 20th May, 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 'Business Standard' (English) and (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 25th June, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

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 7th September, 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 11th September, 2015. Relying on Clause 8(a) of Section D 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 15(a) of Section G of the Scheme, it has been stated that amalgamation shall be an 'amalgamation in the nature of merger' as defined in Accounting Standard-14 issued by the Institute of Chartered Accountants of India and shall be accounted for under the 'pooling of interest' method in accordance with the said AS-14. He further submitted that in Clause 10 of Section E of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies shall stand dissolved without the process of winding up.

20. Although no objection has been raised by the Regional Director, Northern Region, however, in Para 8 of his report, he has observed that the present authorized share capital of the transferee company is not sufficient for allotment of shares to the shareholders of the transferor companies. However, as per Clause 14.1 and 14.2 in the Scheme regarding merger of the authorized share capital of the transferor companies with the transferee company and further increase/modification in the latter's authorized share capital for implementing the terms of Scheme, to the extent necessary. The Assistant Registrar of Companies also pointed out that the petitioners are obliged to effect appropriate increase in the authorized capital to bring it within the norms prescribed. In response to the aforesaid observation, learned counsel for the petitioner states that the relevant increase in the authorized capital as required is contemplated in paragraph 14.2 of the Scheme propounded and the said increase shall be duly effected by the transferee company and all necessary steps in connection therewith shall be duly taken. The statement of the counsel for the petitioners is accepted by this Court. In view of the aforesaid, the observation raised by the Regional Director stands satisfied.

21. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 11th

September, 2015 of Sh. Naveen Narang, Director of the transferor companies no. 1 & 2 and 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 25th June, 2015.

22. Considering the approval accorded by the 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, 2015, the transferor companies no. 1, 2 & 3 shall stand dissolved without undergoing the process of winding up.

23. 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 two weeks.

24. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

October 05, 2015