

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 762/2014

Reserved on 16th March, 2015
Date of pronouncement: 16th April, 2015

In the matter of

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

And

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

Scheme of Amalgamation of:

Shivraj Exim Private Limited

Petitioner/Transferor Company No. 1

MAR Fashions Private Limited

Petitioner/Transferor Company No. 2

Funny Time Finvest Private Limited

Petitioner/Transferor Company No. 3

WITH

ASM Pipes Private Limited

Petitioner/Transferee Company

**Through Mr. Rajeev Kumar, 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 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Shivraj Exim Private Limited (hereinafter referred to as the transferor company no. 1); MAR Fashions Private

Limited (hereinafter referred to as the transferor company no. 2); and Funny Time Finvest Private Limited (hereinafter referred to as the transferor company no. 3) with ASM Pipes 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 29th April, 2005 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 6th April, 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 19th July, 1996 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferee company was incorporated under the Companies Act, 1956 on 20th April, 2005 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.21,00,000/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and 2,00,000 preference shares of Rs.10/- each aggregating to Rs.20,00,000. The issued, subscribed and paid-up share capital of the company is Rs.2,08,400/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and share forfeiture account of Rs.1,08,400/-.

8. The present authorized share capital of the transferor company no.2 is Rs.21,00,000/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and 2,00,000 preference shares of Rs.10/- each aggregating to Rs.20,00,000. The issued, subscribed and paid-up share capital of the company is Rs.1,52,700/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and share forfeiture account of Rs.52,700/-.

9. The present authorized share capital of the transferor company no.3 is Rs.1,50,00,000/- divided into 15,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,22,52,200/- divided into 12,25,220 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.21,00,000/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and 2,00,000 preference shares of Rs.10/-

each aggregating to Rs.20,00,000. The issued, subscribed and paid-up share capital of the company is Rs.1,49,605/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and share forfeiture account of Rs.49,605/-.

11. 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) 160/2014, 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.

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 claimed that the proposed amalgamation would benefit the companies and its stakeholders by reduction of the group companies engaged in similar activities. It is further claimed that the amalgamation will result in reduction in overheads, administrative, managerial, and other expenditure, and optimal utilization of various resources due to consolidation of activities.

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:

“07 equity shares of Rs.10/- each, credited as fully paid up, of the transferee company for every 03 equity shares of Rs.10/- each fully paid up held in transferor company no. 1.”

“99 equity shares of Rs.10/- each, credited as fully paid up, of the transferee company for every 100 equity shares of Rs.10/- each fully paid up held in transferor company no. 2.”

It is provided that no shares shall be issued against the shares forfeited by the transferor company nos. 1 and 2.

It is further provided that pursuant to the merger of the transferor company no. 1 and transferor company no. 2 with the transferee company, Sainty Financial Services Private Limited will become the wholly owned subsidiary of the transferee company. Therefore, the entire share capital of the transferor company no. 3 is held by the transferee company directly or indirectly through its subsidiary company. Therefore, the transferee company shall not be required to issue any shares or pay any consideration to the transferor company no. 3 or to its shareholders.

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 transferor and transferee companies.

15. The Board of Directors of the transferor and transferee companies in their separate meetings held on 8th 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.

16. The petitioner companies had earlier filed CA (M) No. 160/2014 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 28th November, 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.

17. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 8th December, 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 17th January, 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 11th March, 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 March, 2015. Relying on Clause 9 of Part-II and Clause 20.1 of Part-III 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 6 of Part-II and Clause 17 of Part-III of the Scheme, it has been stated that amalgamation of the transferor companies shall be accounted for as per Accounting Standard-14 issued

by the Institute of Chartered Accountants of India. He further submitted that in Clause 14 of Part-II and Clause 25 of Part-III 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. The Regional Director has not raised any objection to the proposed Scheme of Amalgamation. However, in Para 18 of his report, he has submitted that the transferor company no. 3 had filed its balance sheet for the period ended 31.03.2014 and the appointed date mentioned in the Scheme for transferor company no. 3 is 02.04.2015. Therefore, the assets and liabilities of the transferor company no. 3 to be transferred on 02.04.2014 are not known. He, therefore, prays that the transferor company no. 3 may be directed to provide the list of its assets and liabilities to be transferred on 02.04.2014. In response to the aforesaid observation, the transferor company no. 3 had filed the list of its assets & liabilities as on 2.4.2014, the appointed date of amalgamation. Therefore, 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 March, 2015 of Mr. Ajay Garg, Authorized Signatory 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 17th January, 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 1 of Amalgamation, i.e. 1st April, 2014, the transferor company nos. 1 and 2; and from the appointed date 2 of amalgamation i.e. 2nd April, 2014, the transferor company no. 3 shall stand dissolved without undergoing the process of winding up.

23. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

April 16, 2015