

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 117/2015

Reserved on 25th August, 2015
Date of pronouncement: 28th September, 2015

In the matter of

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

And

**Application under Sections 391 to 394 of the
Companies Act, 1956 read with Rule 9 of the
Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Puriflair India Private Limited

Applicant/Transferor Company

WITH

Delair India Private Limited

Applicant/Transferee Company

**Through Mr. Ashim Sood, Advocate for
the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Puriflair India Private Limited (hereinafter referred to as

the transferor company) with Delair India 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 23rd May, 1997 with the Registrar of Companies, Gujarat. Thereafter, the company shifted its registered office from the State of Gujarat to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 11th July, 2014.

4. The transferee company was incorporated under the Companies Act, 1956 on 14th December, 1988 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.7,00,00,000/- divided into 70,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.6,59,06,650/- divided into 65,90,665 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.50,00,000/- divided into 5,000 equity shares of Rs.1,000/- each. The issued, subscribed and paid-up share capital of the company is Rs.27,00,000/- divided into 2,700 equity shares of Rs.1,000/- 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, 2014, along with the report of the auditors, and the unaudited financial statements, as on 31st March, 2015, of transferor and transferee companies, 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 application and the accompanying affidavit. It is claimed by the applicants that the proposed amalgamation would create greater synergies between the businesses of both the companies and would enable them to have large asset base, access to better financial resources as well as enable them to manage their business more efficiently by effectively pooling the infrastructure and other resources of each other. It is further claimed that the proposed amalgamation shall result in enhancement of net worth of the combined business to capitalize on future growth potential.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, no consideration shall be payable by the transferee company since the transferee company (itself and through its nominee) is the only shareholder of the transferor company, and no shares shall be allotted by the transferee company either to itself or to any of its nominee shareholders holding shares in the transferor company.

10. It has been submitted by the applicants that no proceedings under Sections 235 and 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 24th July, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of transferor and transferee companies have been placed on record.

12. The transferor company has 02 equity shareholders and 01 secured creditor. Both the equity shareholders and the sole secured creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In

view thereof, the requirement of convening the meetings of the equity shareholders and secured creditor of the transferor company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

13. As on 31.03.2015, the transferor company has 137 unsecured creditors to whom a sum of Rs.1,31,58,015/- was payable. Learned counsel for the applicants has submitted that one unsecured creditor namely Sh. Deepak Pahawa, who is a stated to be the Director and shareholder of both the companies, and to whom a sum of Rs.50,00,000/- is payable, has given his consent/no objection to the proposed Scheme of Amalgamation. However, the consents/no objections or the remaining 136 unsecured creditors to the tune of Rs.81,58,015/- have not been placed on record. Learned counsel for the applicants has submitted that these creditors are sundry and trade creditors and the transferor company meets its obligations towards them in the ordinary course of business and that post amalgamation, the transferee company will continue to pay their dues in its normal payment cycle. In support of his submissions, learned counsel has placed on record a comparative chart showing the payments made to these creditors during the period from April to June, 2015. He has further submitted that a perusal of the said chart reveals that the debt of substantial number of unsecured creditors have been paid and as on 30th

June, 2015, only a sum of Rs.11,23,059/- is payable to these unsecured creditors as compared to Rs.81,77,719/- that was payable as on 31st March, 2015. Learned counsel has further submitted that the transferee company has sufficient financial resources to pay the amounts due to these creditors and neither the amounts nor any of the rights of these creditors will be varied pursuant to the Scheme. In support of his submission, learned counsel has also placed on record a certificate issued by Shailender K. Bajaj & Co., Chartered Accountants, showing the pre and post amalgamation net worth of the transferee company, according to which, post amalgamation, the net worth of the transferee company will increase from Rs.5,32,33,866/- to Rs.13,28,31,303/-. Learned counsel, therefore, prays that the requirement of convening and holding the meeting of the unsecured creditors of the transferor company may kindly be dispensed with. In view of the submissions made at the bar and the fact that the trade creditors are day-to-day creditors, whose sum will be payable in normal course of business, the requirement of convening the meeting of the unsecured creditors of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

14. The transferee company has 02 equity shareholders and 01 secured creditor. Both the equity shareholders and the sole secured creditor have given their consents/no objections in writing to the

proposed Scheme of Amalgamation. There consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and secured creditor of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

15. As on 31.03.2015, the transferee company has 83 unsecured creditors to whom a sum of Rs.1,24,30,896/- was payable but their consents/no objections to the Scheme of Amalgamation has not been placed on record. Learned counsel for the applicants has submitted that these creditors are sundry and trade creditors, who are suppliers and traders conducting regular business with the transferee company. He has further submitted that the transferee company has been repaying its unsecured creditors in a regular and timely manner. In support of his submissions, learned counsel has placed on record a comparative chart showing the payments made to these creditors. He has further submitted that a perusal of the said chart reveals that the debt of substantial number of unsecured creditors have been paid and as on 30th June, 2015, only a sum of Rs.28,64,389/- is payable to these unsecured creditors as compared to Rs.1,27,43,078/- that was payable as on 31st March, 2015. Learned counsel has further submitted that the transferee company has sufficient financial resources to pay the amounts due to

these creditors and neither the amounts nor any of the rights of these creditors will be varied pursuant to the Scheme. In support of his submission, learned counsel has also placed on record a certificate issued by Shailender K. Bajaj & Co., Chartered Accountants, showing the pre and post amalgamation net worth of the transferee company, according to which, post amalgamation, the net worth of the transferee company will increase from Rs.5,32,33,866/- to Rs.13,28,31,303/-. Learned counsel, therefore, prays that the requirement of convening and holding the meeting of the unsecured creditors of the transferee company may kindly be dispensed with. In view of the submissions made at the bar and the fact that the trade creditors are day-to-day creditors, whose sum will be payable in normal course of business, the requirement of convening the meeting of the unsecured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

16. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

September 28, 2015