**IN THE HIGH COURT OF DELHI**
COMPANY PETITION NO. 393/2015

**Reserved on 15th December, 2015**
**Date of pronouncement: 23rd December, 2015**

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

And

**Petition under Sections 391(1) to 394 read with Section 100 of the Companies Act, 1956**

Scheme of Amalgamation of:

Pratibha Buildtech Private Limited
Petitioner/Transferor Company No. 1

Competent Freight Carriers Private Limited
Petitioner/Transferor Company No. 2

Flying Computers Private Limited
Petitioner/Transferor Company No. 3

Gramin Vikas Infratech Private Limited
Petitioner/Transferor Company No. 4

Sanchiya Cabletronics (India) Private Limited
Petitioner/Transferor Company No. 5

Loyal Lands & Infrastructure Private Limited
Petitioner/Transferor Company No. 6

Mahan Infratech Private Limited
Petitioner/Transferor Company No. 7

WITH

Sunplus Developers Private Limited
Petitioner/Transferee Company

**Through Mr. Ashish Middha, Advocate for the petitioners**
**Mr. Sanjay Bose, Dy. 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(1) to 394 read with Section 100 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Pratibha Buildtech Private Limited (hereinafter referred to as the transferor company no. 1); Competent Freight Carriers Private Limited (hereinafter referred to as the transferor company no. 2); Flying Computers Private Limited (hereinafter referred to as the transferor company no. 3); Gramin Vikas Infratech Private Limited (hereinafter referred to as the transferor company no. 4); Sanchiya Cabletronics (India) Private Limited (hereinafter referred to as the transferor company no. 5); Loyal Lands & Infrastructure Private Limited (hereinafter referred to as the transferor company no. 6); and Mahan Infratech Private Limited (hereinafter referred to as the transferor company no. 7) with Sunplus Developers 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 9th July, 2009 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 23rd November, 1989 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 July, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferor company no. 4 was incorporated under the Companies Act, 1956 on 1st July, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferor company no. 5 was incorporated under the Companies Act, 1956 on 23rd March, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The transferor company no. 6 was incorporated under the Companies Act, 1956 on 2nd July, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9. The transferor company no. 7 was incorporated under the Companies Act, 1956 on 2nd July, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferee company was incorporated under the Companies Act, 1956 on 20th May, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The present authorized share capital of the transferor company no.1 is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.3,12,000/- divided into 31,200 equity shares of Rs.10/- each.

12. The present authorized share capital of the transferor company no.2 is Rs.25,00,000/- divided into 25,000 equity shares of Rs.100/- each. The issued, subscribed and paid up capital of the company is Rs.3,55,500/- divided into 3,555 equity shares of Rs.100/- each.

13. The present authorized share capital of the transferor company no.3 is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.2,87,500/- divided into 28,750 equity shares of Rs.10/- each.

14. The present authorized share capital of the transferor company no.4 is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

The issued, subscribed and paid up capital of the company is Rs.2,91,000/- divided into 29,100 equity shares of Rs.10/- each.

15. The present authorized share capital of the transferor company no.5 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.2,77,000/- divided into 27,700 equity shares of Rs.10/- each.

16. The present authorized share capital of the transferor company no.6 is Rs.7,00,000/- divided into 70,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.5,58,000/- divided into 55,800 equity shares of Rs.10/- each.

17. The present authorized share capital of the transferor company no.7 is Rs.11,00,000/- divided into 1,10,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.6,10,000/- divided into 61,000 equity shares of Rs.10/- each.

18. The present authorized share capital of the transferee company is Rs.26,00,000/- divided into 2,60,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.8,58,500/- divided into 85,850 equity shares of Rs.10/- each.

19. 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) 78/2015, 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, have also been filed.

20. 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 affidavits. It is claimed by the petitioners that the proposed scheme will result in formation of a larger company enabling further growth and development of the businesses of the said company thus enabling the said company to obtain greater facilities possessed and enjoyed by one large company compared to a small company for raising capital, securing and conducting trade and business on favourable terms and other related benefits. It is further claimed that the proposed amalgamation will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity.

21. 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:-

> "02 equity shares of Rs.10/- each of the transferee company for every 01 equity share of Rs.10/- each held in the transferor company no. 1."
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> "19 equity shares of Rs.10/- each of the transferee company for every 01 equity share of Rs.100/- each held in the transferor company no. 2."
>
> "02 equity shares of Rs.10/- each of the transferee company for every 01 equity share of Rs.10/- each held in the transferor company no. 3."
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> "02 equity shares of Rs.10/- each of the transferee company for every 01 equity share of Rs.10/- each held in the transferor company no. 4."
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> "02 equity shares of Rs.10/- each of the transferee company for every 01 equity share of Rs.10/- each held in the transferor company no. 5."
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> "14 equity shares of Rs.10/- each of the transferee company for every 10 equity shares of Rs.10/- each held in the transferor company no. 6."
>
> "05 equity shares of Rs.10/- each of the transferee company for every 04 equity shares of Rs.10/- each held in the transferor company no. 7."

22. 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.

23. The Board of Directors of the transferor and transferee companies in their separate meetings held on 20th February, 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.

24. The petitioner companies had earlier filed CA (M) No. 78/2015 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 25th May, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and creditors of the transferor and transferee companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

25. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 1st July, 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) editions. The petitioners have filed an affidavit showing

compliance regarding publication of citations in the aforesaid newspapers on 23rd September, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

26. 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 December, 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.

27. 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 December, 2015. Relying on Clause 10 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 14.9 of the Scheme, it has been stated that amalgamation shall be an 'amalgamation in the nature of merger' as defined in Accounting

Standard-14 as prescribed under Companies (Accounting Standards) Rules, 2006 and shall be accounted for under the 'pooling of interest' method in accordance with the said accounting standard. He further submitted that in Clause 23.1 of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company nos. 1 to 7 shall stand dissolved without the process of winding up.

28. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 10th December, 2015 of Mr. Ashish Midha, counsel for the petitioner companies, have submitted that they have not received any objection pursuant to the citations published in the newspapers on 23rd September, 2015.

29. 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 having not raised 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 nos. 1 to 7 shall stand dissolved without undergoing the process of winding up.

30. Learned counsel for the Official Liquidator prays that keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings costs of at least Rs.50,000/- should be paid by the petitioners. Learned counsel for the petitioners submits that they have no objection to the prayer being granted and that they shall pay costs of Rs.50,000/-. As already directed vide order dated 15.12.2015, petitioner shall deposit a sum of Rs.50,000/-, by way of costs, with the Common Pool Fund of the Official Liquidator.

31. The petition is allowed in the above terms.

**Dasti.**

**SUDERSHAN KUMAR MISRA, J.**

**December 23, 2015**