

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 817/2014

Reserved on 24th March, 2015
Date of pronouncement: 23rd April, 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:

Vendee Builders Private Limited	Petitioner/Transferor Company No. 1
A-One Infratech Private Limited	Petitioner/Transferor Company No. 2
Holofix Urban Infrastructure Private Limited	Petitioner/Transferor Company No. 3
Genius Infratech Private Limited	Petitioner/Transferor Company No. 4
Laurel Real Estates Private Limited	Petitioner/Transferor Company No. 5
A to Z Infratech Private Limited	Petitioner/Transferor Company No. 6
RC Properties Private Limited	Petitioner/Transferor Company No. 7
AC Infratech Private Limited	Petitioner/Transferor Company No. 8
Ultimate Enterprises Private Limited	Petitioner/Transferor Company No. 9
AKC Investments Private Limited	Petitioner/Transferor Company No. 10
Ganadhipati Investments Private Limited	Petitioner/Transferor Company No. 11

Ultimate Energy Limited

Petitioner/Transferor Company No. 12

SK Buildpro Private Limited

Petitioner/Transferor Company No. 13

Sungrace Buildwell Private Limited

Petitioner/Transferor Company No. 14

WITH

Sungrace Products (India) Private Limited

Petitioner/Transferee Company

**Through Mr. Ashish Middha, Advocate
for the petitioners**

**Mr. Atma Sah, Assistant Registrar of
Companies for the Regional Director**

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 Vendee Builders Private Limited (hereinafter referred to as the transferor company no. 1); A-One Infratech Private Limited (hereinafter referred to as the transferor company no. 2); Holofix Urban Infrastructure Private Limited (hereinafter referred to as the transferor company no. 3); Genius Infratech Private Limited (hereinafter referred to as the transferor company no. 4); Laurel Real Estates Private Limited (hereinafter referred to as the transferor company no. 5); A to Z Infratech Private Limited (hereinafter referred to as the transferor company no. 6); RC Properties Private Limited (hereinafter referred to as the transferor company no. 7); AC Infratech Private Limited (hereinafter referred to as the transferor company no. 8);

Ultimate Enterprises Private Limited (hereinafter referred to as the transferor company no. 9); AKC Investments Private Limited (hereinafter referred to as the transferor company no. 10); Ganadhipati Investments Private Limited (hereinafter referred to as the transferor company no. 11); Ultimate Energy Limited (hereinafter referred to as the transferor company no. 12); SK Buildpro Private Limited (hereinafter referred to as the transferor company no. 13); and Sungrace Buildwell Private Limited (hereinafter referred to as the transferor company no. 14) with Sungrace Products (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 no. 1 was originally incorporated under the Companies Act, 1956 on 4th August, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Vendee Flexipack Private Limited. The company changed its name to Vendee Builders Private Limited and obtained the fresh certificate of incorporation on 11th April, 2007.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 5th August, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and

style of A-One Printo Flexipack Private Limited. The company changed its name to A-One Infratech Private Limited and obtained the fresh certificate of incorporation on 20th March, 2007.

5. The transferor company no. 3 was originally incorporated under the Companies Act, 1956 on 9th September, 1998 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Holofix India Private Limited. The company changed its name to Holofix Urban Infrastructure Private Limited and obtained the fresh certificate of incorporation on 1st June, 2007.

6. The transferor company no. 4 was incorporated under the Companies Act, 1956 on 22nd February, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferor company no. 5 was originally incorporated under the Companies Act, 1956 on 9th January, 1991 with the Registrar of Companies, West Bengal. Thereafter, the company shifted its registered office from the State of West Bengal to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 14th September, 2011.

8. The transferor company no. 6 was incorporated under the Companies Act, 1956 on 28th January, 2008 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 28th January, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferor company no. 8 was incorporated under the Companies Act, 1956 on 28th January, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The transferor company no. 9 was originally incorporated under the Companies Act, 1956 on 31st August, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Royale Garden Hotels & Resorts Private Limited. The company changed its name to Ultimate Enterprises Private Limited and obtained the fresh certificate of incorporation on 20th May, 2003.

12. The transferor company no. 10 was incorporated under the Companies Act, 1956 on 9th April, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

13. The transferor company no. 11 was incorporated under the Companies Act, 1956 on 9th April, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

14. The transferor company no. 12 was incorporated under the Companies Act, 1956 on 16th December, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

15. The transferor company no. 13 was incorporated under the Companies Act, 1956 on 12th September, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

16. The transferor company no. 14 was incorporated under the Companies Act, 1956 on 22nd February, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

17. The transferee company was incorporated under the Companies Act, 1956 on 14th October, 1982 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

18. The present authorized share capital of the transferor company no.1 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.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each.

19. The present authorized share capital of the transferor company no.2 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.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each.

20. The present authorized share capital of the transferor company no.3 is Rs.1,25,00,000/- divided into 12,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,01,54,000/- divided into 10,15,400 equity shares of Rs.10/- each.

21. The present authorized share capital of the transferor company no.4 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each.

22. The present authorized share capital of the transferor company no.5 is Rs.1,07,00,000/- divided into 1,07,00,000 equity shares of Rs.1/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,01,90,000/- divided into 1,01,90,000 equity shares of Rs.1/- each.

23. The present authorized share capital of the transferor company no.6 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/-

each. The issued, subscribed and paid-up share capital of the company is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

24. The present authorized share capital of the transferor company no.7 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

25. The present authorized share capital of the transferor company no.8 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

26. The present authorized share capital of the transferor company no.9 is Rs.6,00,00,000/- divided into 2,25,000 non-cumulative preference shares of Rs.100/- each aggregating to Rs.2,25,00,000/-; and 37,50,000 equity shares of Rs.10/- each aggregating to Rs.3,75,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.3,74,00,000/- divided into 37,40,000 equity shares of Rs.10/- each.

27. The present authorized share capital of the transferor company no.10 is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each.

28. The present authorized share capital of the transferor company no.11 is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each.

29. The present authorized share capital of the transferor company no.12 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.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each.

30. The present authorized share capital of the transferor company no.13 is Rs.2,50,000/- divided into 25,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

31. The present authorized share capital of the transferor company no.14 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

32. The present authorized share capital of the transferee company is Rs.1,00,00,000/- divided into 1,00,000 equity shares of Rs.100/- each.

The issued, subscribed and paid-up share capital of the company is Rs.55,80,000/- divided into 55,800 equity shares of Rs.100/- each.

33. 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) 170/2014, 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.

34. 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 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. It is further claimed that the Scheme will enable the companies concerned to rationalize and streamline their management, businesses and finances and lead to a better and more economic control, over the running and management of the businesses and undertakings of the said companies.

35. 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:

“84 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 1.”

“89 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 2.”

“62 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 3.”

“43 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 4.”

“66 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.1/- each held in the transferor company no. 5.”

“38,843 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 6.”

“33,566 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 7.”

“37,908 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 8.”

“24 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 9.”

“39 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 10.”

“39 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 11.”

“51 equity shares of Rs.100/- each of the transferee company credited as fully paid up for every 1000 equity shares of Rs.10/- each held in the transferor company no. 12.”

“01 equity share of Rs.100/- each of the transferee company credited as fully paid up for every 5000 equity shares of Rs.10/- each held in the transferor company no. 13.”

“01 equity share of Rs.100/- each of the transferee company credited as fully paid up for every 5000 equity shares of Rs.10/- each held in the transferor company no. 14.”

36. 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.

37. The Board of Directors of the transferor and transferee companies in their separate meetings held on 17th November, 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.

38. The petitioner companies had earlier filed CA (M) No. 170/2014 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 17th December, 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.

39. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 24th 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. The petitioners have filed an affidavit showing compliance regarding publication of citations in the aforesaid newspapers on 31st January, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

40. 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 19th 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.

41. 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 18th March, 2015. Relying on Clause 10 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 13.8 of Part-III 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 21.1 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies no. 1 to 14 shall stand dissolved without the process of winding up.

42. Although the Regional Director in his report has not raised any objection to the proposed Scheme, but he has pointed out that while the companies have filed their balance sheets upto 31st March, 2014, the proposed appointed date of the Scheme is 1st April, 2015, i.e. after nearly

one year, therefore, there is uncertainty with regard to the status of the assets and liabilities that would ultimately stand transferred under the proposed Scheme. In reply to aforesaid, the petitioner companies have filed an affidavit dated 26th March, 2015 of Mr. Anuj Sharma, Director of the transferee company stating that the transferor companies have been carrying on their business in a prudent manner and after filing of their balance sheets, as on 31st March, 2014, there have been no material change in the financial position of the companies. He has further submitted that the petitioner companies shall file their balance sheet as on 31st March, 2015 and shall also file their Schedule of Properties as on 31st March, 2015, which will become a part of the Formal Order required to be filed with the Registrar of Companies. He also undertakes to inform the Court if there is any material change in the financial or other affairs in the companies. In view of the above, the observation raised by the Regional Director stands satisfied.

43. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 19th March, 2015 of Mr. Anuj Sharma, Director of 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 31st January, 2015.

44. 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, 2015, the transferor companies no. 1 to 14 shall stand dissolved without undergoing the process of winding up.

45. Learned counsel for the Official Liquidator prays that costs of Rs.5.0 lakhs 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 petitioners states that the same is acceptable to him. Looking to the circumstances, the petitioner shall deposit a sum of Rs.5.0 lakhs by way of costs with the Common Pool Fund of the Official Liquidator within four weeks from today.

46. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

April 23, 2015