

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 2/2015

Reserved on 5th January, 2015
Date of pronouncement: 20th January, 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 Rules 67 to 87 of Companies (Court) Rules, 1959 and the Companies Act, 2013 (to the extent applicable)

Scheme of Amalgamation of:

M/s. Priapus Real Estate Private Limited

Applicant/Transferor Company No. 1

M/s. Priapus Properties Private Limited

Applicant/Transferor Company No. 2

WITH

M/s. Priapus Developers Private Limited

Applicant/Transferee Company

**Through Mr. D. Bhattacharyya and
Ms. D. Ojha, Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 and the Companies Act, 2013 (to the extent applicable) 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 M/s. Priapus Real Estate Private Limited (hereinafter referred to as the

transferor company no. 1) and M/s. Priapus Properties Private Limited (hereinafter referred to as the transferor company no. 2) with M/s.Priapus 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 22nd December, 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 11th December, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was incorporated under the Companies Act, 1956 on 22nd December, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

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

The issued, subscribed and paid up capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.1,70,00,000/- divided into 17,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company 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.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

9. 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, of the transferor and transferee companies, along with the report of the auditors, as well as the provisional financial statements of the applicant companies, as on 15th December, 2014, have also been filed.

10. 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 affidavits. It is

submitted by the applicants that the Scheme is designed to consolidate the businesses of the applicant companies with an overall objective of ensuring focused management in a single combined entity and for administrative and compliance convenience to obtain better control and running of the businesses. It is claimed that the scheme shall enable the transferee company to consolidate the business activities of the group thereby attaining economies of scale and the combined net-worth in a single entity shall also facilitate in attracting funds from strategic investors.

11. So far as the share exchange ratio is concerned, the Scheme provides that since transferor companies no. 1 and 2 are wholly owned subsidiaries of the transferee company and their entire issued, subscribed and paid-up share capital is held by the transferee company, therefore, upon the scheme becoming effective, the entire share capital of the transferor companies no. 1 and 2 shall stand cancelled and there would be no issue of shares of the transferee company to the shareholders of transferor companies no. 1 and 2 pursuant to amalgamation of transferor companies with the transferee company.

12. It has been submitted by the applicants that no investigation proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the applicant companies.

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

14. The transferor company no. 1 has 02 equity shareholders and 01 unsecured creditor. Both the equity shareholders and the unsecured 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 unsecured creditor of the transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company no. 1.

15. The transferor company no. 2 has 02 equity shareholders and 02 unsecured creditors. Both the equity shareholders and both the unsecured creditors 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 unsecured creditors of the transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company no. 2.

16. The transferee company has 02 equity shareholders and 01 unsecured creditor. Both the equity shareholders and the unsecured 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 unsecured creditor of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferee company.

17. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

January 20, 2015