

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 7/2015

Reserved on 12th 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 Section 391(1) of the Companies Act, 1956

Scheme of Amalgamation of:

M/s. Kitson Enterprises Private Limited

Applicant/Transferor Company No. 1

M/s. Avitta Realty Private Limited

Applicant/Transferor Company No. 2

M/s. Darwin Investments Private Limited

Applicant/Transferor Company No. 3

WITH

M/s. Scotia Enterprises Private Limited

Applicant/Transferee Company

Through Mr. Mukesh Sukhija,
Advocate for the applicants

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Section 391(1) of the Companies Act, 1956 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. Kitson Enterprises Private Limited (hereinafter

referred to as the transferor company no. 1); M/s. Avitta Realty Private Limited (hereinafter referred to as the transferor company no. 2) and M/s.Darwin Investments Private Limited (hereinafter referred to as the transferor company no. 3) with M/s. Scotia Enterprises 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 30th August, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Casablanka Enterprises Private Limited. The company changed its name to Kitson Enterprises Private Limited and obtained the fresh certificate of incorporation on 7th December, 2007.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 20th February, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was originally incorporated under the Companies Act, 1956 on 5th August, 2004 with the Registrar of Companies, Mumbai at Maharashtra under the name and style of Alleviate Investments Private Limited. Subsequently, the company shifted

its registered office from Mumbai to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 22nd February, 2007. Thereafter, the company changed its name to Darwin Investments Private Limited and obtained a fresh certificate of incorporation on 2nd December, 2013.

6. The transferee company was incorporated under the Companies Act, 1956 on 12th July, 2006 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.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.4,64,00,000/- divided into 46,40,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferor company no.2 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.1,35,52,000/- divided into 13,55,200 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.3 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/-

each. The present issued, subscribed and paid-up share capital of the company is Rs.8,00,000/- divided into 80,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.2,34,50,000/- divided into 23,45,000 equity shares of Rs.10/- each.

11. 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, have 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 application. It is submitted by the applicants that the proposed amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base. It is claimed that the proposed amalgamation will result in a usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more

productive utilization of human and other resources and enhancement of overall business efficiency. It will enable these companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

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:-

“1.10 equity share of Rs.10/- each of the transferee company for every 1 (one) fully paid up equity share of Rs.10/- each held in the transferor company no. 1.”

“1.20 equity share of Rs.10/- each of the transferee company for every 1 (one) fully paid up equity share of Rs.10/- each held in the transferor company no. 2.”

“96 equity shares of Rs.10/- each of the transferee company for every 1 (one) fully paid up equity share of Rs.10/- each held in the transferor company no. 3.”

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

15. The Board of Directors of the transferor and transferee companies in their separate meetings held on 24th 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.

16. The transferor company no. 1 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. 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, as on 9th October, 2014.

17. 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, as on 9th October, 2014.

18. The transferor company no. 3 has 02 equity shareholders and 03 unsecured creditors. Both the equity shareholders and all 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. 3 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. 3, as on 9th October, 2014.

19. The transferee company has 02 equity shareholders and 04 unsecured creditors. Both equity shareholders and all 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 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, as on 9th October, 2014.

20. The application stands allowed in the aforesaid terms.

Dasti

SUDERSHAN KUMAR MISRA, J.

January 20, 2015