

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 408/2015

Reserved on 9th 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 Section 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Spring Tex Private Limited

Petitioner/Transferor Company

WITH

Navair International Private Limited

Petitioner/Transferee Company

**Through Mr. Saurabh Kalia with
Mr. Gursat Singh, Advocates 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 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Spring Tex Private Limited (hereinafter referred to as the transferor company) with Navair International 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 incorporated under the Companies Act, 1956 on 2nd September, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 23rd April, 1982 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Navair Private Limited. Thereafter, the word 'Private' was deleted from the name of the company. The company changed its name to Navair International Limited and obtained the fresh certificate of incorporation on 28th May, 1992. Learned counsel for the petitioners submitted that thereafter the company became a private limited company and the word 'Private' was added in the name of the company.

5. The present authorized share capital of the transferor company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,20,25,000/- divided into 12,02,500 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.3,00,00,000/- divided into 29,00,000 equity shares of Rs.10/- each aggregating to Rs.2,90,00,000/- and 10,000 non cumulative preference shares of Rs.100/- each aggregating to Rs.10,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.2,45,04,000/- divided into 24,50,400 equity shares of Rs.10/- each.

7. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 76/2015, 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.

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 petition and the accompanying affidavit. It is claimed by the petitioners that the proposed amalgamation will enable both the companies to consolidate their business operations and provide significant impetus to their growth since both companies are engaged in same line of business and under the same management. It is further claimed that the proposed amalgamation will result in reduction in overheads, administrative, managerial and other expenditure, and bring

about operational rationalization, efficiency and optimal utilization of various resources.

9. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company is a wholly owned subsidiary of the transferee company and the entire share capital of the transferor company is held by the transferee company. Accordingly, pursuant to amalgamation, no shares of the transferee company shall be allotted in respect of its holding in the transferor company and all the shares held by the transferee company in the transferor company shall stand cancelled upon this Scheme becoming effective.

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and under Sections 206 to 229 of the Companies Act, 2013 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 5th 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.

12. The petitioner companies had earlier filed CA (M) No. 76/2015 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, secured and unsecured creditors of the petitioner companies, there being no secured creditor of the transferor company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 7th 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) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 9th September, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

14. 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 18th November, 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 company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. 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 26th November, 2015. Relying on Clause 9 of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 6 of Part-II of the Scheme, it has been stated that the transferee company shall follow the method of accounting as prescribed for the pooling of interest method under Accounting Standard-14 as notified under the Companies (Accounting Standard) Rules, 2006. He has further submitted that in Clause 14 of Part-III of the Scheme, it has been stated

that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 30th November, 2015 of Sh. Asheet Taneja, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 9th September, 2015.

17. Considering the approval accorded by the 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, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

18. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- 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 petitioner companies states that the same is acceptable to him. As already directed vide order dated 09.12.2015, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

19. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

December 23, 2015