

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 128/2015

Reserved on 15th July, 2015
Date of pronouncement: 27th July, 2015

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Sections 391 to 394A of the
Companies Act, 1956 read with Rule 9 of the
Companies (Court) Rules, 1959**

Scheme of Amalgamation and Arrangement between:

AHIPL Management Consulting Private Limited

Applicant/Transferor Company

AND

Fabindia Overseas Private Limited

Applicant/Transferee Company

**Through Mr. Karan Mehra, Mr.
Dipankar Vig and Mr. Kunal Juneja,
Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394A of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders and secured creditors and the unsecured creditors of the transferor company and for convening a meeting of the unsecured creditors of the transferee company to consider and approve, with or without modification, the proposed Scheme of Amalgamation and

Arrangement between AHIPL Management Consulting Private Limited (hereinafter referred to as the transferor company) and Fabindia Overseas 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 originally incorporated under the Companies Act, 1956 on 20th May, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Fabindia Franchise & Consulting Private Limited. The company changed its name to Artisans Holdings and Investment Private Limited and obtained the fresh certificate of incorporation on 25th November, 2011. The company again changed its name to AHIPL Management Consulting Private Limited and obtained the fresh certificate of incorporation on 11th November, 2013.

4. The transferee company was incorporated under the Companies Act, 1956 on 14th December, 1976 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.12,50,00,000/- divided into 1,25,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.12,50,00,000/- divided into 1,25,00,000 equity shares of Rs.10/- each.

6. 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.2,36,51,700/- divided into 23,65,170 equity shares of Rs.10/- each.

7. 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, 2015 and 31st March, 2014 of the transferor and transferee companies respectively, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation and Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is claimed that the proposed amalgamation will provide better financial and growth prospects through consolidation of resource base

and improvement in generation, mobilization and utilization of physical resources, financial resources, human resources, knowledge, information and other important tangible and intangible resources. It is further claimed that the proposed amalgamation will reduce managerial overlaps, which are necessarily involved in running multiple entities.

9. So far as the share exchange ratio is concerned, the Scheme provides that the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

“01 equity share of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held by the shareholders in the transferor company.”

10. 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.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 29th April, 2015 have unanimously approved the proposed Scheme of Amalgamation and Arrangement. 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 transferor company has 92 equity shareholders. 87 out of 92 equity shareholders, being 94.56% in number and 98.95% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation and Arrangement. 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 meeting of the equity shareholders of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation and Arrangement is dispensed with. There is no secured or unsecured creditor of the transferor company, as on 4th July, 2015.

13. The transferee company has 406 equity shareholders. 324 out of 406 equity shareholders, being 79.80% in number and 99.56% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation and Arrangement. 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 of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation and Arrangement is dispensed with. There is no secured creditor of the transferee company, as on 31st March, 2015.

14. The transferee company has 6200 unsecured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Amalgamation and Arrangement. Considering the facts and circumstances aforesaid, the meeting of the unsecured creditors of the transferee company shall be held on 3rd September, 2015 at 11:00 a.m. at PHD Chamber of Commerce and Industry, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi - 110016. Ms. Anita Sahni, Advocate, (Mobile No. 9810113256) is appointed as the Chairperson and Mr. Shekhar Kumar, Advocate, (Mobile No. 9871008884) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferee company shall be 500 in number and more than 25% in value of the total unsecured debt.

15. In case the quorum as noted above for the above meeting is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the registered office of the transferee company at least 48 hours before the meeting. The Chairperson and Alternate Chairperson shall ensure that the proxy register is properly maintained.

16. The Chairperson and Alternate Chairperson shall ensure that notices for convening the aforesaid meeting of the unsecured creditors of the transferee company, along with copies of the Scheme of Amalgamation and Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the unsecured creditors of the transferee company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives. Notice of the meeting shall also be published in the Delhi editions of the newspapers "Business Standard" (English) and (Hindi) editions in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meeting.

17. The Chairperson and Alternate Chairperson will be at liberty to issue suitable directions to the management of the transferee company so that the aforesaid meeting of the unsecured creditors of the transferee company is conducted in a just, free and fair manner.

18. The fee of the Chairperson and the Alternate Chairperson for the aforesaid meeting shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairperson will file his report within two weeks from the date of holding of the aforesaid meeting.

19. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

July 27, 2015