IN THE HIGH COURT OF DELHI

COMPANY APPLICATION (MAIN) NO. 147/2015

Reserved on 1st September, 2015

Date of pronouncement: 21st September, 2015

In the matter of

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

And

Application under Sections 391(1) of the Companies Act, 1956

Scheme of Amalgamation of:

BGK Commodities Private Limited
Applicant/Transferor Company No. 1

BGNS Infratech Private Limited
Applicant/Transferor Company No. 2

Kay Ess Aar Infratech Private Limited
Applicant/Transferor Company No. 3

Panjwani Properties Private Limited
Applicant/Transferor Company No. 4

WITH

BGK Infratech 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 BGK Commodities Private Limited (hereinafter referred to as the transferor company No. 1), BGNS Infratech Private Limited (hereinafter referred to as the transferor company No. 2); Kay Ess Aar Infratech Private Limited (hereinafter referred to as the transferor company No. 3) and Panjwani Properties Private Limited (hereinafter referred to as the transferor company No. 4) with BGK Infratech 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 24th October, 2008 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 31st January, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 17th November, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferor company no. 4 was incorporated under the Companies Act, 1956 on 5th November, 1986 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferee company was originally incorporated under the Companies Act, 1956 on 17th December, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of S. S. Horticultures Private Limited. The company changed its name to BGK Infratech Private Limited and obtained the fresh certificate of incorporation on 15th April, 2015.

8. The present authorized share capital of the transferor company no.1 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.1,50,000/- divided into 15,000 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.2 is Rs.1,50,00,000/- divided into 15,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,50,00,000/- divided into 15,00,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferor company no.3 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.22,00,000/- divided into 2,20,000 equity shares of Rs.10/- each.

11. The present authorized share capital of the transferor company no.4 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.1,24,90,000/- divided into 12,49,000 equity shares of Rs.10/- each.

12. The present authorized share capital of the transferee company is Rs.7,68,00,000/- divided into 62,30,000 equity shares of Rs.10/- each aggregating to Rs.6,23,00,000/-; 10,50,000 18% non-cumulative redeemable optionally convertible preference shares of Rs.10/- each aggregating to Rs.1,05,00,000/-; and 4,00,000 9% non-cumulative redeemable optionally convertible preference shares of Rs.10/- aggregating to Rs.40,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.3,23,00,200/- divided into 32,30,020 equity shares of Rs.10/- each.

13. Copies of 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.

14. 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 affidavit. It is submitted by the applicants that the transferor companies no. 1, 2 & 4 are earning income out of sale of plants; transferor company no. 3 is not engaged in any business activity and the transferee company is engaged in the agricultural activities. It is claimed 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 further claimed that the proposed amalgamation will result in 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 resource 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.

15. 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:-

> "2538 equity shares of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held in the transferor company no. 1."

> "19 equity shares of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held in the transferor company no. 2."
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> "25 equity shares of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held in the transferor company no. 3."
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> "10 equity shares of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held in the transferor company no. 4."

16. 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.

17. The Board of Directors of the transferor and transferee companies in their separate meetings held on 30th May, 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.

18. The transferor company no. 1 has 03 equity shareholders and 11 unsecured creditors. All the equity shareholders and 10 out of 11 unsecured creditors, being 90.90% in number and 99.96% in value, 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, as on 31st March, 2015.

19. The transferor company no. 2 has 02 equity shareholders and 06 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. 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 31st March, 2015.

20. The transferor company no. 3 has 03 equity shareholders and 05 unsecured creditors. All 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 31st March, 2015.

21. The transferor company no. 4 has 07 equity shareholders and 10 unsecured creditors. All 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. 4 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. 4, as on 31st March, 2015.

22. The transferee company has 19 equity shareholders, 01 secured creditor and 13 unsecured creditors. All the equity shareholders, the sole secured creditor 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, secured 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.

23. The Application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

September 21, 2015