IN THE HIGH COURT OF DELHI

COMPANY APPLICATION (MAIN) NO. 148/2015

Reserved on 2nd 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 Section 391(1) of the Companies Act, 1956

Scheme of Amalgamation of:

Bankey Bihari Marketing Private Limited
Applicant/Transferor Company No. 1

Suridhi Retail Private Limited
Applicant/Transferor Company No. 2

WITH

Suridhi Commercial Infra Private Limited
Applicant/Transferee Company

Through Mr. Rajeev K. Goel, 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 Bankey Bihari Marketing Private Limited (hereinafter referred to as the transferor company no. 1) and Suridhi Retail Private Limited (hereinafter referred to as the transferor company no. 2) with

Suridhi Commercial Infra 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 5th November, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 19th November, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was incorporated under the Companies Act, 2013 on 5th March, 2015 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 share 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.1,93,00,000/- divided into 19,30,000 equity shares of Rs.10/- each. The issued and subscribed capital of the company is Rs.97,43,210/- divided into 9,74,321 equity shares of Rs.10/- each including 2,36,588 equity shares which were forfeited. The paid-up share capital of the company is Rs.85,56,563 divided into 7,36,834 equity shares of Rs.10/- each, fully paid up, aggregating to Rs.73,68,340/-; 315 equity shares of Rs.10/- each, partly paid up to the extent of Rs.7.50/- per share, aggregating to Rs.2363/-; 584 equity shares of Rs.10/- each, partly paid up to the extent of Rs.5/- per share, aggregating to Rs.2,920/-; and Rs.11,82,940/- being amount paid on 2,36,588 equity shares which were forfeited due to non-payment of call money.

8. The present authorized share capital of the transferee company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share 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, 2015, of the transferor and transferee companies, along with the report of the auditors, 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 transferor and transferee companies are closely held group companies and the proposed amalgamation would result in business synergy, pooling of their resources and consolidation of these companies. It is 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 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.

11. 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:-

> "785 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 200 equity shares of Rs.10/- held in the transferor company no. 1."
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> "96 equity shares of Rs.10/- each of the transferee company, credited as fully or partly paid up, for every 100 equity shares

> of Rs.10/- held in the transferor company no. 2. In case of partly paid shares in the transferor company no. 2, the transferee company will issue equity shares credited as partly paid up to the same extent as in the transferor company no. 2 as on the record date."

12. 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.

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

14. The transferor company no. 1 has 03 equity shareholders and 05 unsecured creditors. In addition to 05 unsecured creditors, the transferor company no. 1 has statutory dues payable which has been paid by the company and the proof of said payment has been placed on record. All the equity shareholders and 03 out of 05 unsecured creditors, being 60% in number and 98.62% 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 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 31st March, 2015.

15. The transferor company no. 2 has 06 equity shareholders (including fully and partly paid up) and 22 unsecured creditors. In addition to 22 unsecured creditors, the transferor company no. 2 has certain statutory dues payable which have been paid by the company and the proof of said payments has been placed on record. All the equity shareholders and 18 out of 22 unsecured creditors, being 81.82% in number and 99.42% 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 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 one secured creditor of the transferor company no. 2 namely ICICI Bank Limited, as on 31st March, 2015, whose dues have been paid in full and a certificate in this regard is placed on record.

Therefore, at present there is no secured creditor of the transferor company no. 2.

16. The transferee company 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 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 31^{st} March, 2015.

17. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

September 21, 2015