

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CP No.95 of 2016 (O&M) connected with
CP No.68 of 2016
Date of Decision: 30.08.2016**

IN THE MATTER OF:

Scheme of Arrangement between:

Hans Buildcon Private Limited.

. . . . Petitioner/Amalgamating Company No.1

And

Best Dwellers Private Limited.

. . . . Petitioner/Amalgamating Company No.2

And

SKR Properties Private Limited.

. . . . Petitioner/Amalgamating Company No.3

And

DS Realty and Realtor Private Limited.

. . . . Petitioner/Demerged/Amalgamated Company

And

Luxury Warehousing Private Limited.

. . . . Petitioner/Resulting Company No.1

And

DS Realty Arawli Private Limited.

. . . . Petitioner/Resulting Company No.2

And

Modern Facilitators Private Limited.

. . . . Petitioner/Resulting Company No.3

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN.

**Present: - Mr.Rohit Khanna, Advocate,
for the petitioner-companies.**

**Mr.Deepak Aggarwal, Advocate, with
Mr.Manjit Singh, Deputy Official Liquidator.**

RAKESH KUMAR JAIN, J.

This petition is filed under Section 391-394 of the Companies Act, 1956 [for short ‘the Act’], duly supported by affidavits of the petitioner-Amalgamating Companies No.1 to 3, Demerged/Amalgamated Company and Resulting Companies No.1 to 3, seeking sanction of the Scheme of Arrangement (Annexure P-1) [for short ‘the Scheme’] vide which Amalgamating Companies Nos.1 to 3 shall merge into Demerged/Amalgamated company, transfer by way of demerger of the “Warehousing Undertaking” of the Demerged Company into the Resulting Company No.1, transfer by way of demerger of the “Housing Project Undertaking” of the Demerged Company into Resulting Company No.2 and the transfer by way of demerger of the “Low Height Warehousing and Vehicle Parking Undertaking” of the Demerged Company into Resulting Company No.3.

The main objects of the petitioner-Amalgamating Companies No.1 to 3, Demerged/Amalgamated Company and Resulting Companies No.1 to 3 are detailed in their respective Memorandum and Articles of Association, which are annexed with the petition as Annexures P-2, P-4, P-6, P-8, P-10, P-12 and P-14, respectively.

The Registered Office of the Petitioner-Amalgamating Companies No.1 to 3, Demerged/Amalgamated Company and Resulting Companies No.1 to 3 is situated at Gurgaon, Haryana.

The Board of Directors of the Petitioner-Amalgamating Companies No.1 to 3, Demerged/Amalgamated Company and Resulting Company No.1 to 3 have approved the Scheme in their respective meetings

held on 15.2.2016 vide Resolutions annexed with the petition as Annexures P-16 to P-22, respectively.

Earlier, the Petitioner-Amalgamating Companies No.1 to 3, Demerged/Amalgamated Company and Resulting Companies No.1 to 3 had approached this Court by way of Company Petition No.68 of 2016 and vide order passed on 11.04.2016 therein, holding of meetings of the Equity Shareholders of the Petitioner-Amalgamating Companies No.1 to 3, Demerged/Amalgamated Company and Resulting Companies No.1 to 3 and Unsecured Creditors of Amalgamating Company No.1 to 3, Demerged/Amalgamated Company, Preference Shareholders of Amalgamating Companies No.2 and 3 and Demerged/Amalgamated Company were dispensed with and the first motion petition was disposed of accordingly.

Notice of the present petition was issued on 20.05.2016 to the Regional Director, Ministry of Corporate Affairs, Northern Region, New Delhi and the Official Liquidator and was also ordered to be published in the newspapers, namely, 'Indian Express' (English Edition) and 'Jansatta' (Hindi Edition) both Delhi/NCR Editions and was also ordered to be uploaded on the official website of the Official Liquidator. The said order has been complied with and the affidavit of Publication has been placed on record.

Pursuant thereto, report by way of an affidavit of Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, dated 05.08.2016 has been placed on record, in which it is averred in Para No.12, which read as under:-

“12. That as per clause 4.5.4 of the Part II of Section B it has been inter alia stated that the difference, between the

value of assets and the value of the liabilities transferred to the Amalgamated Company, after making adjustment as mentioned in Clause 4.5.3 above, in case of excess of assets over liabilities shall be credited to “business restructuring reserve” and in case of shortfall, be debited to “business restructuring reserve” to the extent available and balance if any shall be treated as “Goodwill Account” in the Financial Statements of Amalgamated Company.

The deponent is to say that difference, if any, in the value of assets and liabilities transferred to the amalgamated company is in the nature of ‘capital reserve’, hence, the same should be transferred to ‘capital reserve’ instead of ‘business restructuring reserve’. The Hon’ble Court may direct the petitioner companies to comply with the Accounting Standard-14 issued by the Institute of Chartered Accountants of India.”

Learned counsel for the petitioner-Companies, in view of the above averment made in para 12 of the representation/affidavit of the Regional Director has submitted that the Petitioner/Amalgamated Company shall comply with the Accounting Standard-14 upon the Scheme being sanctioned.

The Official Liquidator in its report dated 11.08.2016 has submitted that in view of the observations of M/s Navneet & Company, Chartered Accountant, made in his report at para No.4, the affairs of the Petitioner/Amalgamating Companies No.1 to 3 have not been conducted in a manner prejudicial to the interest of its members, creditors or to public at large and has not taken any objection.

It is further submitted by counsel for the Petitioner-Companies that there are no investigation proceedings have been instituted and/or are pending against the Petitioner-Companies under Sections 235 to 250A of the Act or the applicable provision of the Companies Act, 2013.

For the reasons mentioned hereinabove and on the consideration of all the relevant facts and the procedural requirements contemplated under Sections 391 & 394 of the Act and the relevant Rules and on due consideration of the report of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and Official Liquidator, the Scheme of Arrangement is hereby sanctioned and as a result thereof, the assets and liabilities of the Petitioner-Amalgamating Companies No.1 to 3 shall stand vested in the Demerged/Amalgamated Company. Similarly “Warehousing Undertaking” of the Demerged/Amalgamated Company shall stand vested into the Resulting Company No.1, “Housing Project Undertaking” of the Demerged/Amalgamated Company shall stand vested into Resulting Company No.2 and “Low Height Warehousing and Vehicle Parking Undertaking” of the Demerged/Amalgamated Company shall stand vested into Resulting Company No.3. The Petitioner-Amalgamating Companies No.1 to 3 shall be dissolved without being wound up. The Petitioner/Demerged/Amalgamated Company shall comply with the

procedural requirement as per the Accounting Standard-14 issued by the Institute of Chartered Accountants of India.

The Scheme of Arrangement shall be binding on the Petitioner/Amalgamating Companies No.1 to 3, Demerged/Amalgamated companies and Resulting Companies No.1 to 3, their respective shareholders, creditors and all concerned.

Let formal order of sanction of the Scheme be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

A notice of the order be published in the newspapers, namely, 'Indian Express' (English Edition) and 'Jansatta' (Hindi Edition) both Delhi/NCR Editions and in the Official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the Petitioner-Companies states that the Petitioner-Companies would voluntarily deposit a sum of ₹1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

30.08.2016

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**