

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 22/2016

Reserved on 2nd August, 2016
Date of pronouncement: 29th August, 2016

In the matter of

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

And

**Petition under Sections 391(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

AAA Medicare Private Limited	Petitioner/Transferor Company No. 1
Aditya Buildwell Private Limited	Petitioner/Transferor Company No. 2
BSA Realventures Private Limited	Petitioner/Transferor Company No. 3
Unique Buildestate Private Limited	Petitioner/Transferor Company No. 4
Vinex Bonds and Holdings Limited	Petitioner/Transferor Company No. 5
Chaman Promoters Private Limited	Petitioner/Transferor Company No. 6
Shreyan Housing Private Limited	Petitioner/Transferor Company No. 7
Frisky Infradevelopers India Private Limited	Petitioner/Transferor Company No. 8
Trystan Buildtech India Private Limited	Petitioner/Transferor Company No. 9
Endive Buildcon Private Limited	Petitioner/Transferor Company No. 10

Endive Realcon Private Limited

Petitioner/Transferor Company No. 11

Tamanna Merchants Private Limited

Petitioner/Transferor Company No. 12

Vaibhaw Traders Private Limited

Petitioner/Transferor Company No. 13

Shagun Realventure Private Limited

Petitioner/Transferor Company No. 14

Shenaya Housing Private Limited

Petitioner/Transferor Company No. 15

WITH

Aditya Limited

Petitioner/Transferee Company

**Through Mr. Mukesh Sukhija,
Advocate for the petitioners
Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of AAA Medicare Private Limited (hereinafter referred to as the transferor company No. 1); Aditya Buildwell Private Limited (hereinafter referred to as the transferor company No. 2); BSA Realventures Private Limited (hereinafter referred to as the transferor company No. 3); Unique Buildestate Private Limited (hereinafter referred to as the transferor company No. 4); Vinex Bonds and Holdings Limited (hereinafter referred to as the transferor company No. 5); Chaman Promoters Private Limited (hereinafter referred to as the

transferor company No. 6); Shreyan Housing Private Limited (hereinafter referred to as the transferor company No. 7); Frisky Infradevelopers India Private Limited (hereinafter referred to as the transferor company No. 8); Trystan Buildtech India Private Limited (hereinafter referred to as the transferor company No. 9); Endive Buildcon Private Limited (hereinafter referred to as the transferor company No. 10); Endive Realcon Private Limited (hereinafter referred to as the transferor company No. 11); Tamanna Merchants Private Limited (hereinafter referred to as the transferor company No. 12); Vaibhaw Traders Private Limited (hereinafter referred to as the transferor company No. 13); Shagun Realventure Private Limited (hereinafter referred to as the transferor company No. 14) and Shenaya Housing Private Limited (hereinafter referred to as the transferor company No. 15) with Aditya 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 27th June, 2005 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 18th April, 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 30th September, 2010 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 7th September, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferor company no. 5 was incorporated under the Companies Act, 1956 on 4th April, 1984 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The transferor company no. 6 was incorporated under the Companies Act, 1956 on 24th August, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9. The transferor company no. 7 was incorporated under the Companies Act, 1956 on 11th June, 2013 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferor company no. 8 was incorporated under the Companies Act, 1956 on 24th September, 2013 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The transferor company no. 9 was incorporated under the Companies Act, 1956 on 24th September, 2013 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

12. The transferor company no. 10 was incorporated under the Companies Act, 1956 on 4th October, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

13. The transferor company no. 11 was incorporated under the Companies Act, 1956 on 4th October, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

14. The transferor company no. 12 was originally incorporated under the Companies Act, 1956 on 28th February, 2005 with the Registrar of Companies, West Bengal. The company shifted its registered office from the State of West Bengal to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 27th February, 2015.

15. The transferor company no. 13 was originally incorporated under the Companies Act, 1956 on 22nd February, 1996 with the Registrar of Companies, West Bengal. The company shifted its registered office from the State of West Bengal to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 16th March, 2015.

16. The transferor company no. 14 was incorporated under the Companies Act, 1956 on 17th June, 2013 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

17. The transferor company no. 15 was incorporated under the Companies Act, 1956 on 10th June, 2013 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

18. The transferee company was incorporated under the Companies Act, 1956 on 13th February, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

19. The present authorized share capital of the transferor company no.1 is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each.

20. The present authorized share capital of the transferor company no.2 is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.19,70,000/- divided into 1,97,000 equity shares of Rs.10/- each.

21. The present authorized share capital of the transferor company no.3 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.

22. The present authorized share capital of the transferor company no.4 is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.19,00,000/- divided into 1,90,000 equity shares of Rs.10/- each.

23. The present authorized share capital of the transferor company no.5 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.1,12,45,700/- divided into 11,24,570 equity shares of Rs.10/- each.

24. The present authorized share capital of the transferor company no.6 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.

25. The present authorized share capital of the transferor company no.7 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.

26. The present authorized share capital of the transferor company no.8 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.

27. The present authorized share capital of the transferor company no.9 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.

28. The present authorized share capital of the transferor company no.10 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.

29. The present authorized share capital of the transferor company no.11 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.

30. The present authorized share capital of the transferor company no.12 is Rs.30,00,000/- divided into 3,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.29,15,000/- divided into 2,91,500 equity shares of Rs.10/- each.

31. The present authorized share capital of the transferor company no.13 is Rs.18,00,000/- divided into 1,80,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.17,60,000/- divided into 1,76,000 equity shares of Rs.10/- each.

32. The present authorized share capital of the transferor company no.14 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.

33. The present authorized share capital of the transferor company no.15 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.

34. The present authorized share capital of the transferee company is Rs.1,10,00,000/- divided into 11,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,07,19,780/- divided into 10,71,978 equity shares of Rs.10/- each.

35. 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) 174/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, along with the report of the auditors, and unaudited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, had also been filed.

36. 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 acquisition of related businesses can generate synergy among the companies, and the acquisition of counter-cyclical businesses can reduce the risks associated with economic, technological, regulatory, or competitive shocks. It is further claimed that the proposed scheme will result in greater integration and greater

financial strength and flexibility for the transferee company, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.

37. 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:-

“657 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.”

“788 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.”

“591 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.”

“63 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. 6.”

“74 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. 7.”

“73 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. 8.”

“73 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. 9.”

“65 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. 10.”

“82 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. 11.”

“741 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. 12.”

“52 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. 13.”

“73 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. 14”

“73 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. 15.”

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

39. The Board of Directors of the transferor companies and the transferee company in their separate meetings held on 11th June, 2015 and 10th June, 2015 respectively 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.

40. The petitioner companies had earlier filed CA (M) No. 174/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 10th December, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor and transferee companies, there being no secured creditor of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

41. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 13th January, 2016, notice in the petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. 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 Official Liquidator and the Regional Director, Northern Regional and also regarding publication of citations in the aforesaid newspapers on 16th March, 2016. Copies of the

newspaper clippings containing the publications have been filed along with the affidavit of service.

42. 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 22nd April, 2016 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 companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

43. 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 23rd April, 2016. The Regional Director in para 7 of his report has submitted that the transferor company no. 3 is a wholly owned subsidiary of the transferee company whereas as per the proposed share exchange ratio, the shareholders of the transferor company no. 3 which is itself the transferee company, shall be allotted 83 equity shares of Rs.10/- each for every 100 equity shares of Rs.10/- each held by them. The Regional Director has submitted that the transferee company may be asked as to how it will comply with the provisions of

Section 49 of the Companies Act, 1956. Further, the Regional Director in para 8 of his report has provided the details of the pending tax liabilities of the petitioner companies as on 31st March, 2015.

44. In response to the aforesaid observations, the petitioner companies have filed an application being CA 2175/2016 stating that the transferor companies no. 3 and 5 are wholly owned subsidiaries of the transferee company and in order to remove the anomaly in the Scheme of Amalgamation, the Board of Directors of the petitioner companies in their separate meetings held on 25th April, 2016 have decided to amend the Scheme of Amalgamation by deleting paras 4 (1) (i) (c) and 4 (1) (i) (e) of the Scheme. Copies of the resolutions passed by the Board of Directors of the petitioners companies have been placed on record. The said application was allowed by this Court vide order dated 02.08.2016 and the amended Scheme of Amalgamation was taken on record. With regard to the second observation regarding the pending tax liabilities, the petitioner companies in the affidavits dated 26th April, 2016 of Mr. Aditya Agarwal, Director of the transferor companies no. 1, 2, 6, 10, 11, 15 and the transferee company; Ms. Shilona Agarwal, Director of transferor companies no. 3 & 9; Mr. Subhash Chander, Director of transferor company no. 4; Mr. Bir Singh Pundir, Director of transferor company no.5; Mr. Ashish Agarwal, Director of transferor company no. 7 and 14; Ms. Kanika Agarwal, Director of transferor company no. 8 and

Mr.Kamaluddin Khan, Director of transferor companies no. 12 & 13, have submitted that in terms of para 4.2.1 of the Scheme, all the liabilities of the transferor companies shall stand vested with the transferee company, which shall be liable to pay all the income tax dues which are related to the transferor companies, subject to right of appeal available to the transferor companies. Further, the transferee company undertakes to pay all the income tax liabilities of the transferor companies. Learned counsel for the petitioners has also given an undertaking on behalf of the petitioners in this regard. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

45. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 23rd April, 2016 of Mr. Aditya Agarwal, Director of the transferor companies no. 1, 2, 6, 10, 11, 15 and the transferee company; Ms.Shilona Agarwal, Director of transferor companies no. 3 & 9; Mr.Subhash Chander, Director of transferor company no. 4; Mr. Bir Singh Pundir, Director of transferor company no.5; Mr. Ashish Agarwal, Director of transferor company no. 7 and 14; Ms. Kanika Agarwal, Director of transferor company no. 8 and Mr. Kamaluddin Khan, Director of transferor companies no. 12 & 13, have submitted that neither the petitioner companies nor their counsel have received any objection

pursuant to the citations published in the newspapers on 16th March, 2016.

46. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Official Liquidator and the Regional Director, Northern Region, 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 amended Scheme of Amalgamation annexed with CA 2175/2016 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, 2015, the transferor companies no. 1 to 15 shall stand dissolved without undergoing the process of winding up.

47. Learned counsel for the Official Liquidator prays that costs of at least Rs.2,00,000/- 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 02.08.2016, the petitioners shall deposit a sum of Rs.2,00,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

48. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

August 29, 2016