

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 109/2016

Reserved on 3rd 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:

Marvel Institute of Technology Private Limited

Non-Petitioner/Transferor Company No. 1

Shiva Infosystem Private Limited

Non-Petitioner/Transferor Company No. 2

New Ways Buildwell Private Limited

Petitioner/Transferor Company No. 3

WITH

Yuga Estate Private Limited

Non-Petitioner/Transferee Company

**Through Mr. Naresh Kumar and Mr. R.
Khanna, Advocates for the petitioner
Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Sanjay Katyal, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 by the petitioner/transferor company no. 3 seeking sanction of the Scheme of Amalgamation of Marvel Institute of Technology Private Limited (hereinafter referred to as the transferor company no. 1); Shiva Infosystem Private Limited (hereinafter referred to as the transferor company no. 2); and New Ways Buildwell Private Limited (hereinafter referred to as the petitioner/transferor company no.3)

with Yuga Estate Private Limited (hereinafter referred to as the transferee company).

2. The registered office of the petitioner/transferor company no. 3 is situated at New Delhi, within the jurisdiction of this Court. However, the registered offices of the transferor companies no. 1 & 2 and the transferee company are situated at Haryana, outside the jurisdiction of this Court. Learned counsel for the petitioner has submitted that a similar petition has been filed by the transferor companies no. 1 & 2 and the transferee company before the court of competent jurisdiction for sanction of the Scheme of Amalgamation.

3. The petitioner/transferor company no. 3 was incorporated under the Companies Act, 1956 on 16th March, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The authorized share capital of the petitioner/transferor company no. 3 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.9,50,000/- divided into 95,000 equity shares of Rs.10/- each.

5. A copy of the Memorandum and Articles of Association of the petitioner/transferor company no. 3 has been filed on record. The audited

balance sheet, as on 31st March, 2015, of petitioner/transferor company no. 3, along with the report of the auditors, has also been filed.

6. 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 applicants that the proposed amalgamation would enable pooling of physical, financial and human resources of these companies for their most beneficial utilization in the combined entity. 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.

7. 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:

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 33 equity shares of Rs.10/- each held in the transferor company no. 1.”

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 08 equity shares of Rs.10/- each held in the transferor company no. 2.”

“07 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 04 equity shares of Rs.10/- each held in the transferor company no. 3.”

8. It has been submitted by the petitioner that no proceedings under Sections 235 and 251 of the Companies Act, 1956 are pending against the petitioner/transferor company no. 3.

9. The Board of Directors of the petitioner/transferor company no. 3 in their meeting held on 7th November, 2015 have unanimously approved the proposed Scheme of Amalgamation. A copy of the Resolution passed at the meeting of the Board of Directors of petitioner/transferor company no. 3 has been placed on record.

10. The petitioner/transferor company no. 3 had earlier filed CA (M) No. 13/2016 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 22nd January, 2016, 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 petitioner/transferor company no. 3, there being no secured creditor of the petitioner

company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

11. The petitioner/transferor company no. 3 has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 12th February, 2016, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and 'Jansatta' (Hindi) Delhi editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 31st March, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner company. Based on the information received, the Official Liquidator has filed a report dated 28th July, 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 company do not appear to have been conducted in a manner prejudicial to the

interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

13. In response to the notices issued in the petition, Mr. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 28th July, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation.

14. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner company in the affidavit dated 30th July, 2016 of Ms. Komal Jain, Director of the petitioner company, has submitted that neither the petitioner company nor their counsel have received any objection pursuant to the citations published in the newspapers on 31st March, 2016.

15. Considering the approval accorded by the equity shareholders and creditors of the petitioner company to the proposed Scheme of Amalgamation, and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator 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, subject to sanction of the Scheme in respect of the transferor companies no. 1 and 2 and the transferee company from the court of competent

jurisdiction, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner company 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 petitioner/transferor company no. 3 shall stand dissolved without undergoing the process of winding up.

16. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- should be paid by the petitioner keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 03.08.2016, the petitioner shall deposit a sum of Rs.1,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

17. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

August 29, 2016