

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 161/2016

Reserved on 11th August, 2016

Date of pronouncement: 2nd September, 2016

In the matter of

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

And

**Petition under Sections 391, 392 & 394 of the
Companies Act, 1956**

Scheme of Amalgamation and Arrangement between:

Ideal Knowledge Park Private Limited

Petitioner/Transferor Company No. 1

Madhur Buildwell Private Limited

Petitioner/Transferor Company No. 2

Prosperity Realtech Private Limited

Petitioner/Transferor Company No. 3

Smridhi Realtech Private Limited

Petitioner/Transferor Company No. 4

AND

Barberry Real Estate and Land Developers Private Limited

Petitioner/Transferee Company

**Through Mr. Vijay Nair and Mr. Rahul
Malhotra, Advocates for the petitioners
Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391, 392 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation and Arrangement between Ideal

Knowledge Park Private Limited (hereinafter referred to as the transferor company no. 1); Madhur Buildwell Private Limited (hereinafter referred to as the transferor company no. 2); Prosperity Realtech Private Limited (hereinafter referred to as the transferor company no. 3) and Smridhi Realtech Private Limited (hereinafter referred to as the transferor company no. 4) and Barberry Real Estate and Land Developers 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 20th February, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Uppal Knowledge Park Private Limited. The company changed its name to Ideal Knowledge Park Private Limited and obtained the fresh certificate of incorporation on 31st March, 2010.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 19th March, 2008 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 8th May, 2007 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 19th August, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferee company was incorporated under the Companies Act, 1956 on 30th May, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

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

9. The present authorized share capital of the transferor company no.2 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.

10. The present authorized share capital of the transferor company no.3 is Rs.5,00,000/- divided into 50,000 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.

11. The present authorized share capital of the transferor company no.4 is Rs.5,00,000/- divided into 50,000 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.

12. The present authorized share capital of the transferee company 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.

13. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

14. A copy of the Scheme of Amalgamation and Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavits.

It is submitted by the petitioners that the transferor companies are not in a position to effectively carry out its business activities in the desired manner, hence, it is considered desirable to amalgamate the transferor companies into the transferee company so that the assets and resources of the transferor companies can be conveniently and effectively utilized by the transferee company to carry on its operations more economically and efficiently. It is claimed that the amalgamation will enhance the overall shareholders' value and increase the operational efficiency of the transferee company.

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:-

“3,926 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 10,000 equity shares of Rs.10/- held in the transferor company no. 1.”

“332 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 05 equity shares of Rs.10/- held in the transferor company no. 2.”

“15 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 02 equity shares of Rs.10/- held in the transferor company no. 3.”

“53 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 10 equity shares of Rs.10/- held in the transferor company no. 4.”

16. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under the corresponding provisions of the Companies Act, 2013 are pending against the petitioner companies.

17. The Board of Directors of the transferor and transferee companies in their separate meetings held on 16th November, 2015 have unanimously approved the proposed Scheme of Amalgamation and Arrangement. 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 petitioner companies had earlier filed CA (M) No. 190/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation and Arrangement. Vide order dated 18th January, 2016, this court allowed the application and dispensed with the requirement of convening and holding the meetings of their equity shareholders and unsecured creditors, 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 and Arrangement.

19. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation and Arrangement. Vide order dated 26th 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 petitioners 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 26th March, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

20. 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 29th June, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation and Arrangement 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.

21. In response to the notices issued in the petition, Mr. Narender Kumar Bhole, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 19th July, 2016 not raising any objection to the proposed Scheme of Amalgamation and Arrangement.

22. No objection has been received to the Scheme of Amalgamation and Arrangement from any other party. Learned counsel for the petitioner has submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 26th March, 2016.

23. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and Arrangement and the affidavits filed by the Regional Director, Northern Region and the Official Liquidator having not raising any objection to the proposed Scheme of Amalgamation and Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation and Arrangement. Consequently, sanction is hereby granted to the Scheme of Amalgamation and Arrangement 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 4 shall stand dissolved without undergoing the process of winding up.

24. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- 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 11.08.2016, the petitioners 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.

25. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 02, 2016