

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 142/2016

Reserved on 3rd 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(2) & 394 read with
Sections 100 to 104 of the Companies Act,
1956**

Scheme of Arrangement between:

Sugam Exim Private Limited

Petitioner/Transferor Company No. 1

Unicraft Merchandise Private Limited

Petitioner/Transferor Company No. 2

Crazy Merchandise Private Limited

Petitioner/Transferor Company No. 3

Careful Merchants Private Limited

Petitioner/Transferor Company No. 4

AND

Atlas Constructions Private Limited

Petitioner/Transferee Company

**Through Mr. Rajeev K. Goel, Advocate
for the petitioners**

**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 joint petition has been filed under Sections 391(2) & 394 read with Sections 100 to 104 of the Companies Act, 1956 by the petitioner

companies seeking sanction of the Scheme of Arrangement between Sugam Exim Private Limited (hereinafter referred to as the transferor company no. 1); Unicraft Merchandise Private Limited (hereinafter referred to as the transferor company no. 2); Crazy Merchandise Private Limited (hereinafter referred to as the transferor company no. 3) and Careful Merchants Private Limited (hereinafter referred to as the transferor company no. 4) and Atlas Constructions 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 originally incorporated under the Companies Act, 1956 on 26th February, 2008 with the Registrar of Companies, West Bengal at Kolkata. Thereafter, 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 7th March, 2014.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 30th April, 2008 with the Registrar of Companies, West Bengal at Kolkata. Thereafter, 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 13th March, 2014.

5. The transferor company no. 3 was originally incorporated under the Companies Act, 1956 on 5th May, 2010 with the Registrar of Companies, West Bengal at Kolkata. Thereafter, 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 13th February, 2014.

6. The transferor company no. 4 was originally incorporated under the Companies Act, 1956 on 5th May, 2010 with the Registrar of Companies, West Bengal at Kolkata. Thereafter, 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 18th February, 2014.

7. The transferee company was incorporated under the Companies Act, 1956 on 21st March, 1988 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.42,00,000/- divided into 4,20,000 equity shares of Rs.10/-

each. The issued, subscribed and paid-up share capital of the company is Rs.41,95,000/- divided into 4,19,500 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.2 is Rs.45,00,000/- divided into 4,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.44,45,000/- divided into 4,44,500 equity shares of Rs.10/- each.

10. 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.

11. The present authorized share capital of the transferor company no.4 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.

12. The present authorized share capital of the transferee company is Rs.7,00,00,000/- divided into 7,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.5,03,47,000/- divided into 5,03,470 equity shares of Rs.100/- each.

13. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 16/2016, earlier filed by the petitioners. 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 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 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.

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:-

“1 equity share of Rs.100/- each of the transferee company, credited as fully paid up, for every 04 equity shares of Rs.10/- held in the transferor company no. 1.”

“1 equity share of Rs.100/- each of the transferee company, credited as fully paid up, for every 02 equity shares of Rs.10/- held in the transferor company no. 2.”

“1 equity share of Rs.100/- each of the transferee company, credited as fully paid up, for every 40 equity shares of Rs.10/- held in the transferor company no. 3.”

“1 equity share of Rs.100/- each of the transferee company, credited as fully paid up, for every 40 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 13th June, 2015 & 12th September, 2015 have unanimously approved the proposed Scheme of 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. 16/2016 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 Arrangement. Vide order dated 1st February, 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 transferor companies and equity shareholders, secured and unsecured creditors of the transferee company, there being no secured creditor of the transferor companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

19. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 22nd 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 20th July, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of 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 Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 29th July, 2016 stating that he had no objection to the proposed Scheme of Arrangement subject to filing of due balance sheets by the petitioner companies and compliance of relevant NBFC Rules and Circulars issued by the Reserve Bank of India. The Regional Director in para 10 of his report has stated that the transferor companies no. 2, 3 & 4 have not filed their balance sheets at 31.03.2014

and the transferee company has not yet filed its due balance sheet at 31.03.2015. Thus, there is prima facie violation of provisions of Section 137 of the Companies Act, 2013. The Regional Director has further submitted that the principal business activities of transferor companies no. 2, 3 & 4 are acquisition of shares and financial assets of these companies constitute more than 50% of their total assets which tantamount to NBFCs activity. As such, these companies are required to be registered with the RBI as NBFCs in terms of Section 45-IA of the RBI Act. He has further submitted as per the Non-Banking Financial Companies (Approval of Acquisition of Transfer and Control) Directions, 2015 issued by RBI, these NBFCs are required to obtain prior written permission of RBI for any Scheme of acquisition/transfer of control.

22. In response to the aforesaid observation, the petitioner companies in the affidavit dated 30th July, 2016 of Mr. Subhash Gupta, Director of the transferee company, have submitted that the transferee company has already filed its audited annual accounts for the year ended 31.03.2015. Further, the transferor companies no. 2, 3 & 4 are not able to file their audited annual accounts for the year ended 31.03.2014 with the ROC as these forms are not available for filing on the MCA Portal after the implementation of the Companies Act, 2013. It has been further submitted that as per the information available on the website of MCA, these forms will be available for filing after mid August, 2016. The

transferor companies no. 2, 3 & 4 have undertaken to file the said forms with additional filing fee as soon as these forms are available for filing in the month of August, 2016, before the effective date of the Scheme. The undertaking is accepted by this Court. With regard to the second observation, it has been submitted that the transferor companies no. 2, 3 & 4 are engaged in construction business, sale of building material and other related activities. These companies have also made investments in group companies and provided loan and advances to group companies. However, more than 50% of their gross income/turnover is from the activities relating to construction business and sale of building material etc. Hence, none of these companies satisfies the dual criteria of principal business of a NBFC as provided in the circular issued by the RBI. The petitioner companies have also placed on record the certificates issued by DMR & Co., Chartered Accountants, certifying that transferor companies no. 2, 3 & 4 are not a NBFC as defined in the RBI Act, 1934 and the companies are not required to obtain RBI registration or NOC for the aforesaid Scheme of Arrangement. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

23. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 16th July, 2016 of Mr. Subhash Gupta, Director of the transferee company have 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.

24. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Arrangement and the affidavits filed by the Regional Director, Northern Region and the Official Liquidator having not raised any objection to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the Scheme of 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.

25. 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 03.08.2016, the petitioners shall deposit a sum of Rs.2,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

26. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 02, 2016