

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 219/2016

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 & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Trophy Holdings Private Limited

Petitioner/Transferor Company

WITH

Liquid Investment and Trading Company Private Limited

Petitioner/Transferee Company

**Through Mr. N. Ganpathy and
Mr. Mukul Talwar, Sr. Advocates with
Ms. Vatsalya Rai and Ms. Anindita Roy
Chowdhary, Advocates for the
petitioners**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Trophy Holdings Private Limited (hereinafter referred to as the transferor company) with Liquid Investment and Trading Company 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 was incorporated under the Companies Act, 1956 on 19th February, 2003 with the Registrar of Companies, NCT of Delhi & Haryana.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 24th May, 1982 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Liquid Investment and Trading Company. The company changed its name to Liquid Investment and Trading Company Private Limited and obtained the fresh certificate of incorporation on 15th April, 2011.

5. The present authorized share capital of the transferor company is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,90,24,110/- divided into 29,02,411 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.27,00,00,000/- divided into 1,85,00,000 equity shares of Rs.10/- each aggregating to Rs.18,50,00,000/-; 10,000 11% non-cumulative redeemable preference shares of Rs.100/- each aggregating to

Rs.10,00,000/-; 3,40,000 12.5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.3,40,00,000/-; and 5,00,000 5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.5,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.24,50,27,000/- divided into 1,82,50,600 equity shares of Rs.10/- each aggregating to Rs.18,25,06,000/-; 210 11% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.21,000/-; 3,00,000 12.5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.3,00,00,000/-; and 3,25,000 5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.3,25,00,000/-.

7. 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) 177/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the reports of the auditors, had also been filed.

8. 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 that

the proposed amalgamation would lead to more efficient utilization of capital and create a stronger capital base for future growth of the amalgamated entity which will be beneficial for all its stakeholders. It is further claimed that the proposed amalgamation will lead to reduction of administrative cost and overhead expenses which would further lead to greater and effective executive control, synergy of operations and optimum utilization of available resources.

9. 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 company in the following ratio:

“25 equity shares of Rs.10/- each, credited as fully paid up, of the transferee company for every 100 equity shares of Rs.10/- each fully paid up held in the transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 237, 250, 250A and 251 of the Companies Act, 1956 are pending against the petitioner companies.

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

12. The petitioner companies had earlier filed CA (M) No. 177/2015 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 23rd 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 company and equity shareholders, preference shareholders, secured and unsecured creditors of the transferee company, there being no secured creditor of the transferor company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 14th March, 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 'Jansatta' (Hindi) Delhi editions. An affidavit has been filed by the petitioners showing compliance regarding publication of citations in the

aforesaid newspapers on 26th June, 2016. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

14. 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 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.

15. 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 7th August, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation subject to the objections, if any, raised by the Income Tax Department and compliance of the provisions of the company law by the petitioner companies. The Regional Director in para 10 of this report has submitted that the transferor company has disputed outstanding demand of Rs.28,39,691/- as on date for AY 2010-11 pending for tax liability

towards Income Tax. Further, the Regional Director in para 11 of his report has submitted that the transferee company has not appointed Whole Time Company Secretary, thereby violated the provisions of Section 203 of the Companies Act, 2013. It is further submitted that the transferee company is a loss making company.

16. In response to the aforesaid observations, learned counsel for the petitioners has submitted that in terms of the Scheme, the liabilities of the transferor company shall be taken over by the transferee company, which shall remain in existence even after sanction of the Scheme. Learned counsel further submitted that the petitioner companies are non-banking finance companies (NBFC) registered with the Reserve Bank of India, which has not raised any objection to the proposed Scheme. He has further submitted that, after amalgamation, the petitioner shall be functioning as a core investment company and that they have also sought a registration as a core investment company and shall take all necessary steps in this behalf pursuant to sanction of the Scheme by this Court. Since the transferee company is not the subject matter of dissolution and will remain in existence even after the sanction of the Scheme, therefore, in case of any default by the company, the ROC/other statutory authorities would be at liberty to take appropriate action, as permissible in law, against the petitioner company.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 3rd August, 2016 of Mr. Alok Goel, authorized signatory of the transferor company and Mr. Arvind Aggarwal, authorized signatory 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 June, 2016.

18. Considering the approval accorded by the 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 Scheme of Amalgamation 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

company shall stand dissolved without undergoing the process of winding up.

19. 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 02.08.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 29, 2016