

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 188/2016

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 to 394 read with
Sections 100 to 103 of the Companies Act,
1956**

Scheme of Amalgamation and Arrangement between:

AWB Krishi Suvidha Parisar (Kota) Private Limited
Petitioner/Transferor Company No. 1

AWB Krishi Upaaj Vipnan Parisar (Talera) Private Limited
Petitioner/Transferor Company No. 2

AND

AWB India Private Limited
Petitioner/Transferee Company

**Through Mr. Rajeev Kumar, 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 to 394 read with Sections 100 to 103 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation and Arrangement between AWB Krishi Suvidha Parisar (Kota) Private Limited (hereinafter referred to as the transferor company no. 1); AWB Krishi Upaaj Vipnan Parisar (Talera) Private Limited (hereinafter referred to as

the transferor company no. 2) and AWB India 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 17th November, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Kota Agri Infrastructure Private Limited. The company changed its name to AWB Krishi Suvidha Parisar (Kota) Private Limited and obtained the fresh certificate of incorporation on 25th January, 2006.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 26th April, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was incorporated under the Companies Act, 1956 on 22nd February, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The present authorized share capital of the transferor company no.1 is Rs.6,00,00,000/- divided into 60,00,000 equity shares of Rs.10/-

each. The issued, subscribed and paid up capital of the company is Rs.4,62,32,700/- divided into 46,23,270 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.4,00,00,000/- divided into 40,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.2,80,21,270/- divided into 28,02,127 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.37,00,00,000/- divided into 37,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid up capital of the company is Rs.32,89,50,800/- divided into 32,89,508 equity shares of Rs.100/- each.

9. 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) 31/2016, 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.

10. 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 affidavit.

It is claimed by the petitioners that the proposed amalgamation would result into a simple corporate structure and reduction of regulatory compliances and costs. It is further claimed that the proposed Scheme would also result in achieving better efficiency and streamlining management control and operation of businesses and activities, optimum resource utilization and correspondingly bring economy in administration and operational overheads and elimination of inter-company transactions.

11. 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 shares to the shareholders of the transferor companies in the following ratio:-

“60 fully paid-up compulsorily convertible preference shares of Rs.100/- each for every 809 equity shares of Rs.10/- each held in the transferor company no. 1.”

“01 fully paid-up compulsorily convertible preference shares of Rs.100/- each for every 4,33,530 equity shares of Rs.10/- each held in the transferor company no. 2.”

12. 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.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 12th January, 2016 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.

14. The petitioner companies had earlier filed CA (M) No. 31/2016 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 Amalgamation and Arrangement. Vide order dated 22nd 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 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 and Arrangement.

15. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation and Arrangement. Vide order dated 8th March, 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 compliance regarding publication of citations in the aforesaid newspapers on 5th April, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

16. 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 18th July, 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.

17. 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 15th July, 2016. The Regional Director in

para 8 of his report has submitted that the transferee company is a wholly owned subsidiary of AWB (Australia) Limited and the proposed Scheme also involved capital reduction of the transferee company thereby payment is due of an amount of Rs.20,25,72,262.20 (Aggregate Distributable amount) mainly to AWB (Australia) Limited, Australia, a non-resident shareholder which requires approval from the Reserve Bank of India. Further, in para 10 of his report, the Regional Director has provided the details of Income Tax demand/TDS assessment pending against the petitioner companies. The said details have also been provided by the Official Liquidator in para 4 of his report.

18. In response to the aforesaid observations, the petitioner companies in the affidavit dated 16th July, 2016 of Mr. Rahul Kumar Shrivastava, authorized signatory of the transferee company, have undertaken that the transferee company will take all necessary approvals of the Reserve Bank of India, if required, in relation to the amount to be paid to non-resident shareholders upon capital reduction of the transferee company. The transferee company has further undertaken that it shall be liable in respect of the disputed income tax demand/TDS assessments that are pending against the petitioner companies. The undertakings given by the transferee company are accepted and it shall remain bound by the same. Further, 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 or other statutory authorities would be at liberty to take appropriate action, as permissible in law, against the petitioner company. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

19. No objection has been received to the Scheme of Amalgamation and Arrangement from any other party. The petitioner companies, in the affidavits dated 16th July, 2015 of Mr. Chetan Dhingra, authorized signatory of the transferor company no. 1; Mr. Kamal Kandhari, authorized signatory of the transferor company no. 2 and Mr. Rahul Kumar Shrivastava, 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 5th April, 2016.

20. 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 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 & 2 shall stand dissolved without undergoing the process of winding up.

21. 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 Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

22. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 29, 2016