

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 447/2014

Reserved on 26th July, 2016

Date of pronouncement: 12th 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:

ASM Merchandisers Private Limited

Petitioner/Transferor Company No. 1

Shivshambu Traders Private Limited

Petitioner/Transferor Company No. 2

WITH

Ikta Aromatics Limited

Petitioner/Transferee Company

**Through Mr. Mukesh Sukhija,
Advocate 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(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of ASM Merchandisers Private Limited (hereinafter referred to as the transferor company no. 1) and Shivshambu Traders Private Limited (hereinafter referred to as the transferor company

no. 1) with Ikta Aromatics 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 23rd December, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 13th May, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 18th May, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Som Santi F&F Limited. The company changed its name to Ikta Aromatics Limited and obtained the fresh certificate of incorporation on 2nd February, 2010.

6. The present authorized share capital of the transferor company no.1 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/-

each. The issued, subscribed and paid-up share capital of the company is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company 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.40,10,000/- divided into 4,01,000 equity shares of Rs.10/- each.

9. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 108/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2013, 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 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 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 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.

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

“01 equity share of Rs.10/- each of the transferee company for every 01 equity share of Rs.10/- each held in the transferor company no. 1.”

“01 equity share of Rs.10/- each of the transferee company for every 01 equity share 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 are pending against the petitioner companies.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 31st March, 2014 have 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.

14. The petitioner companies had earlier filed CA (M) No. 108/2014 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. Vide order dated 8th July, 2014, 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.

15. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 23rd July, 2014, 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

(Hindi) editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 18th August, 2014. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

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 26th February, 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 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. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 11th November, 2014. Relying on Clause 8(a) of Part-D of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies shall become the employees of the transferee company without any

break or interruption in their services. He has further submitted that in Clause 16(a) of Part-G of the Scheme, it has been stated that amalgamation shall be an 'amalgamation in the nature of merger' as defined in Accounting Standard-14 issued by the Institute of Chartered Accountants of India and shall be accounted for under the 'pooling of interest' method in accordance with the said AS-14. He further submitted that in Clause 10 of Part-E of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies shall stand dissolved without the process of winding up.

18. Although no objection has been raised by the Regional Director to the proposed Scheme of Amalgamation but in Para 10 of his report, he has stated that the transferee company may be asked about compliance of Section 295 of the Companies Act, 1956 in respect of loan given to both the transferor companies. The petitioner companies in the affidavit dated 21st March, 2015 of Mr. Raja Varshney, Director of the transferee company, have undertaken to file the necessary compounding application for compliance of the provisions of Section 295 of the Companies Act, 1956. The undertaking given by the transferee company is accepted. In case of any default by the company, the ROC is at liberty to take appropriate proceedings, as permissible in law, against the transferee company.

19. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 9th October, 2014 of Sh. Shyama Charan Varshney, Director of the transferor company no. 1; Mr. Sanjay Varshney, Director of the transferor company no. 2 and Mr. Raja Varshney, 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 18th August, 2014.

20. 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 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, 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, 2013, the transferor

companies no. 1 and 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.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 07.12.2015, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

22. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 12, 2016