

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 179/2015

Reserved on 16th May, 2016
Date of pronouncement: 27th July, 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:

Kitson Enterprises Private Limited

Petitioner/Transferor Company No. 1

Avitta Realty Private Limited

Petitioner/Transferor Company No. 2

Darwin Investments Private Limited

Petitioner/Transferor Company No. 3

WITH

Scotia Enterprises Private 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 Kitson Enterprises Private Limited (hereinafter referred to as the transferor company no. 1); Avitta Realty Private Limited (hereinafter referred to as the transferor company no. 2)

and Darwin Investments Private Limited (hereinafter referred to as the transferor company no. 3) with Scotia Enterprises 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 30th August, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Casablanka Enterprises Private Limited. The company changed its name to Kitson Enterprises Private Limited and obtained the fresh certificate of incorporation on 7th December, 2007.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 20th February, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was originally incorporated under the Companies Act, 1956 on 5th August, 2004 with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Alleviate Investments Private Limited. Subsequently, the company shifted its registered office from the State of Maharashtra to Delhi and obtained

a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 22nd February, 2007. Thereafter, the company changed its name to Darwin Investments Private Limited and obtained a fresh certificate of incorporation on 2nd December, 2013.

6. The transferee company was incorporated under the Companies Act, 1956 on 12th July, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The present authorized share capital of the transferor company no.1 is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.4,64,00,000/- divided into 46,40,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferor company no.2 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.1,35,52,000/- divided into 13,55,200 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.3 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/-

each. The present issued, subscribed and paid-up share capital of the company is Rs.8,00,000/- divided into 80,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.2,34,50,000/- divided into 23,45,000 equity shares of Rs.10/- each.

11. 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) 7/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

12. 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. It is submitted by the petitioners that the proposed amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base. It is claimed that the proposed amalgamation will result in a 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.

13. 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:-

“1.10 equity share of Rs.10/- each of the transferee company for every 1 (one) fully paid up equity share of Rs.10/- each held in the transferor company no. 1.”

“1.20 equity share of Rs.10/- each of the transferee company for every 1 (one) fully paid up equity share of Rs.10/- each held in the transferor company no. 2.”

“96 equity shares of Rs.10/- each of the transferee company for every 1 (one) fully paid up equity share of Rs.10/- each held in the transferor company no. 3.”

14. 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.

15. The Board of Directors of the transferor and transferee companies in their separate meetings held on 24th November, 2014 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.

16. The petitioner companies had earlier filed CA (M) No. 7/2015 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. Vide order dated 23rd March, 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 and transferee companies, there being no secured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

17. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 23rd April, 2015, 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) 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 23rd May, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

18. 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 2nd November, 2015 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.

19. The Official Liquidator in para 21 of his report has submitted that the authorized share capital of the transferee company, post amalgamation, is not sufficient to issue fresh shares to the shareholders of the transferor companies. In response to the aforesaid objection, learned counsel for the petitioners submitted that the transferee company undertakes to raise further its authorized capital as and when required.

The undertaking of counsel for the petitioner is accepted and the petitioner shall remain bound by the same. In view of the above, the objection raised by the Official Liquidator stands satisfied.

20. 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 3rd November, 2015. Relying on Clause 8(a) of Section-D 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 15(a) of Section-G of the Scheme, it has been stated that the 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 Accounting Standard. He further submitted that in Clause 10 of Section-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.

21. Although the Regional Director has not raised any objection to the proposed Scheme, but in para 8 of his report he has stated that the Board of Directors of the petitioner companies have approved the

proposed Scheme in their meetings held on 24.11.2014. Accordingly, in terms of provisions of Section 117(3) read with 179(3) of the Companies Act, 2013, the companies are required to file such resolution (e-form MGT-14) with the ROC within 30 days of passing the resolutions whereas none of the companies have filed the said resolutions so far thereby prima facie violated the provisions of Section 117(3) of the Companies Act, 2013.

22. In response to the aforesaid observation of the Regional Director, the petitioner companies in the affidavits dated 19th January, 2016 of Mr.Suresh Kumar, Director the transferor company no. 1 and the transferee company and Mr. Praveen Kumar, Director of the transferor companies no. 2 & 3 have submitted that the petitioner companies have already filed the necessary e-form MGT-14 on 22.12.2014. Copies of the said forms evidencing filing of e-form MGT-14 have also been placed on record. In view of the above, the observation made by the Regional Director stands satisfied.

23. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 31st October, 2015 of Mr. Suresh Kumar, Director the transferor company no. 1 and the transferee company and Mr. Praveen Kumar, Director of the transferor companies no. 2 & 3 have submitted that neither the

petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 23rd May, 2015.

24. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region not raising any objection to the proposed Scheme of Amalgamation and there being no surviving objection to the same by the Official Liquidator, 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, 2014, the transferor companies no 1 to 3 shall stand dissolved without undergoing the process of winding up.

25. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,50,000/- 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 company states that the same is acceptable to him. As already directed vide order dated 16.05.2016, the petitioners shall deposit a sum of Rs.1,50,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

26. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

July 27, 2016