

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 597/2014

Reserved on 10th December, 2015
Date of pronouncement: 10th February, 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:

- | | |
|---|--------------------------------------|
| Estio Builders & Developers Private Limited | Petitioner/Transferor Company No. 1 |
| Fadey Builders & Developers Private Limited | Petitioner/Transferor Company No. 2 |
| Farica Builders & Developers Private Limited | Petitioner/Transferor Company No. 3 |
| Gareth Builders & Constructions Private Limited | Petitioner/Transferor Company No. 4 |
| Goodvalue Properties Private Limited | Petitioner/Transferor Company No. 5 |
| Harinakshi Estates Developers Private Limited | Petitioner/Transferor Company No. 6 |
| Kimothy Builders and Developers Private Limited | Petitioner/Transferor Company No. 7 |
| Mayukhi Real Estates Private Limited | Petitioner/Transferor Company No. 8 |
| Melisenda Builders & Developers Private Limited | Petitioner/Transferor Company No. 9 |
| Passion Builders and Developers Private Limited | Petitioner/Transferor Company No. 10 |
| Purandar Estates Developers Private Limited | Petitioner/Transferor Company No. 11 |

Tusti Builders & Developers Private Limited
Petitioner/Transferor Company No. 12

Vedavrata Builders & Constructions Private Limited
Petitioner/Transferor Company No. 13

Zenobia Builders & Developers Private Limited
Petitioner/Transferor Company No. 14

Zubeda Real Estates Private Limited
Petitioner/Transferor Company No. 15

WITH

Felicite Builders & Constructions Private Limited
Petitioner/Transferee Company

**Through Mr. Ravi Bassi, Advocate for
the petitioners**

**Mr. Sanjay Bose, Dy. 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 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the amended Scheme of Amalgamation of Estio Builders & Developers Private Limited (hereinafter referred to as the transferor company no. 1); Fadey Builders & Developers Private Limited (hereinafter referred to as the transferor company no. 2); Farica Builders & Developers Private Limited (hereinafter referred to as the transferor company no. 3); Gareth Builders & Constructions Private Limited (hereinafter referred to as the transferor company no. 4); Goodvalue Properties Private Limited (hereinafter referred to as the transferor company no. 5); Harinakshi Estates Developers Private Limited (hereinafter referred to as the transferor company no. 6); Kimothy Builders and Developers Private

Limited (hereinafter referred to as the transferor company no. 7); Mayukhi Real Estates Private Limited (hereinafter referred to as the transferor company no. 8); Melisenda Builders & Developers Private Limited (hereinafter referred to as the transferor company no. 9); Passion Builders and Developers Private Limited (hereinafter referred to as the transferor company no. 10); Purandar Estates Developers Private Limited (hereinafter referred to as the transferor company no. 11); Tusti Builders & Developers Private Limited (hereinafter referred to as the transferor company no. 12); Vedavrata Builders & Constructions Private Limited (hereinafter referred to as the transferor company no. 13); Zenobia Builders & Developers Private Limited (hereinafter referred to as the transferor company no. 14); and Zubeda Real Estates Private Limited (hereinafter referred to as the transferor company no. 15) with Felicite Builders & 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 incorporated under the Companies Act, 1956 on 23rd January, 2007 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 21st March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 21st March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferor company no. 4 was incorporated under the Companies Act, 1956 on 28th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferor company no. 5 was incorporated under the Companies Act, 1956 on 27th April, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The transferor company no. 6 was incorporated under the Companies Act, 1956 on 21st March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9. The transferor company no. 7 was incorporated under the Companies Act, 1956 on 29th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferor company no. 8 was incorporated under the Companies Act, 1956 on 29th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The transferor company no. 9 was incorporated under the Companies Act, 1956 on 28th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

12. The transferor company no. 10 was incorporated under the Companies Act, 1956 on 27th May, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

13. The transferor company no. 11 was incorporated under the Companies Act, 1956 on 21st March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

14. The transferor company no. 12 was incorporated under the Companies Act, 1956 on 10th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

15. The transferor company no. 13 was incorporated under the Companies Act, 1956 on 30th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

16. The transferor company no. 14 was incorporated under the Companies Act, 1956 on 17th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

17. The transferor company no. 15 was incorporated under the Companies Act, 1956 on 16th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

18. The transferee company was incorporated under the Companies Act, 1956 on 28th March, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

19. The present authorized share capital of the transferor company no.1 is Rs.2,00,000/- divided into 20,000 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.

20. The present authorized share capital of the transferor company no.2 is Rs.7,00,000/- divided into 70,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.6,80,000/- divided into 68,000 equity shares of Rs.10/- each.

21. The present authorized share capital of the transferor company no.3 is Rs.62,00,000/- divided into 6,20,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.44,53,310/- divided into 4,45,331 equity shares of Rs.10/- each.

22. 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.

23. The present authorized share capital of the transferor company no.5 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.

24. The present authorized share capital of the transferor company no.6 is Rs.83,00,000/- divided into 8,30,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.82,19,260/- divided into 8,21,926 equity shares of Rs.10/- each.

25. The present authorized share capital of the transferor company no.7 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.

26. The present authorized share capital of the transferor company no.8 is Rs.68,00,000/- divided into 6,80,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.4,28,660/- divided into 42,866 equity shares of Rs.10/- each.

27. The present authorized share capital of the transferor company no.9 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.

28. The present authorized share capital of the transferor company no.10 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.

29. The present authorized share capital of the transferor company no.11 is Rs.84,00,000/- divided into 8,40,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.83,93,510/- divided into 8,39,351 equity shares of Rs.10/- each.

30. The present authorized share capital of the transferor company no.12 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.

31. The present authorized share capital of the transferor company no.13 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.

32. The present authorized share capital of the transferor company no.14 is Rs.44,00,000/- divided into 4,40,000 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.

33. The present authorized share capital of the transferor company no.15 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.

34. The present authorized share capital of the transferee 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.2,01,00,000/- divided into 20,10,000 equity shares of Rs.10/- each.

35. 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) 89/2014, 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.

36. A copy of the amended 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 by the petitioners that the proposed amalgamation will achieve size, scale, integration and greater financial strength as well as flexibility and maximizing the shareholders value. It is further claimed that the financial, managerial and technical resources pooling together in the merged entity will lead to increase in competitive strength, cost reduction and efficiencies. It is also claimed that with enhanced capabilities and resources at its disposal, the transferee company will have greater flexibility and strength and will be able to compete more effectively as an efficient entity.

37. So far as the share exchange ratio is concerned, the Scheme provides that since all the transferor companies are direct or indirect wholly owned subsidiaries of the transferee company, therefore, the entire share capital of all the transferor companies shall automatically stand cancelled and extinguished, upon sanction of the Scheme and the transferee company shall not allot any shares to the shareholders of the transferor companies.

38 It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferor and transferee companies.

39. The Board of Directors of the transferor companies and the transferee company in their separate meetings held on 11th March, 2014 and 12th March, 2014 respectively 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.

40. The petitioner companies had earlier filed CA (M) No. 89/2014 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 19th May, 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 creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. Thereafter, vide order dated 16th September, 2014 passed in CA 2126/2014, the transferor company no. 12 was allowed to withdraw from the Scheme and its name stand deleted and the amended Scheme of Amalgamation was taken on record.

41. The petitioner companies have thereafter filed the present petition seeking sanction of the amended Scheme of Amalgamation. Vide order dated 27th October, 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 'Statesman' (English) and 'Veer Arjun' (Hindi) editions. Affidavit of service has been filed by the petitioner 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 December, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

42. 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 3rd July, 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.

43. 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 7th September, 2015. Relying on Clause 7 of Part-IV 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 4.10 of Part-IV of the Scheme, it has been stated that the transferee company shall follow the Accounting Standards and Principles issued by Institute of Chartered Accountants of India. He further submitted that in Clause 17.1 of Part-IV 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.

44. The Regional Director in para 8 of his report has stated that various letters have been received from the Income Tax Department stating as under:

(i) the Income Tax Department must be permitted to retain its recourse for recovery in respect of any existing or future tax liabilities of the transferor companies or the transferee company, in respect of the assets so sought to be transferred under the proposed Scheme, and this protection must be made explicit by this Court in its final order and has to bind all the parties to the Scheme, particularly the transferor and transferee companies. There should be no limitation on the powers of the Income Tax Department for recovery, including imposition of penalties etc.;

(ii) That without prejudice to the above the approval of the Scheme, should in no manner affect the tax treatments of the transactions under the Income Tax Act, 1961 or any other applicable taxing statute, nor would sanction of the scheme of the effect thereof serve as a defense for the companies against tax treatment under the aforesaid status.

45. In response to the aforesaid objections, the transferee company in the affidavit dated 7th November, 2015 of Mr. Rajesh Bhatia, authorized signatory of the transferee company, has undertaken that in case of any liability, which may be legally assessed and payable by the transferor

companies to the Income Tax Department, the same shall be paid by the transferee company. They further undertake that none of the provisions of the Scheme, shall prejudice the income tax dues and the income tax department shall be free to recover the said tax, if any, from the transferee company. The undertaking given by the transferee company is accepted and it shall remain bound by the same. In view of the aforesaid, the objection raised by the Regional Director stands satisfied.

46. No objection has been received to the Scheme of Amalgamation from any other party. The transferee company in the affidavit dated 7th November, 2015 of Mr. Rajesh Bhatia, authorized signatory of the transferee company, has submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 23rd December, 2014.

47. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation; the affidavit filed by the Official Liquidator not raising any objection to the amended Scheme of Amalgamation; and there being no surviving objection to the same by the Regional Director, Northern Region, there appears to be no impediment to the grant of sanction to the amended Scheme of Amalgamation. Consequently, sanction is hereby granted to the amended 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 to 15 shall stand dissolved without undergoing the process of winding up.

48. 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 states that the same is acceptable to him. As already directed vide order dated 10.12.2015, petitioner shall deposit a sum of Rs.1,00,000/-, by way of costs, with the Common Pool Fund of the Official Liquidator.

49. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

February 10, 2016