

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 213/2015

Reserved on 7th January, 2016
Date of pronouncement: 18th 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:

Bali Projects Private Limited

Petitioner/Transferor Company No. 1

Decowel Housing Private Limited

Petitioner/Transferor Company No. 2

Himal Projects & Investments Private Limited

Petitioner/Transferor Company No. 3

WITH

Ramesh Aggarwal & Associates Private Limited

Petitioner/Transferee Company

**Through Mr. P. K. Mittal and Mr. M.K.
Sinha, Advocates for the petitioners
Ms. Aparna Mudiam, Assistant
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 Scheme of Amalgamation of Bali Projects Private Limited (hereinafter referred to as the transferor company no. 1); Decowel Housing Private

Limited (hereinafter referred to as the transferor company no. 2); and Himal Projects & Investments Private Limited (hereinafter referred to as the transferor company no. 3) with Ramesh Aggarwal & Associates 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 11th July, 1994 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 11th July, 2000 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 2nd August, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferee company was incorporated under the Companies Act, 1956 on 5th March, 1992 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.15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.9,60,000/- divided into 96,000 equity shares of Rs.10/- each fully paid up.

8. The present authorized share capital of the transferor company no.2 is Rs.40,00,000/- divided into 4,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.39,02,000/- divided into 3,90,200 equity shares of Rs.10/- each fully paid up.

9. The present authorized share capital of the transferor company no.3 is Rs.70,00,000/- divided into 70,000 equity shares of Rs.100/- each. The present issued, subscribed and paid-up share capital of the company is Rs.68,82,000/- divided into 68,820 equity shares of Rs.100/- each fully paid up.

10. 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 present issued, subscribed and paid-up share capital of the

company is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each fully paid up.

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) 38/2015, 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 and the accompanying affidavit. It is submitted by the petitioners that the shareholders of the transferor and transferee companies are almost common. It is claimed that the Scheme will result in pooling of their financial, commercial and other resources, economies of scales and reduction of overheads. It is further claimed that with enhanced capabilities and resources at its disposal, the transferee company will have greater flexibility and strength to meet requirements for further growth of business activities.

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:-

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 2.5 equity shares of Rs.10/- each fully paid up held in the transferor company no. 1.”

“01 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 02 equity shares of Rs.10/- each fully paid up held in the transferor company no. 2.”

“07 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 01 equity share of Rs.100/- each fully paid up 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 16th February, 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.

16. The petitioner companies had earlier filed CA (M) No. 38/2015 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 16th April, 2015, this court

allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor companies and equity shareholders and unsecured creditors of the transferee company, there being no secured or unsecured creditors of the transferor companies and no secured creditors of the transferee company, 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 28th 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 'Statesman' (English) and 'Veer Arjun' (Hindi) editions. The petitioners have filed the affidavit showing compliance regarding publication of citations in the aforesaid newspapers on 14th July, 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 10th 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. 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 20th November, 2015. Relying on Clause 9 of Part-III 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 6 of Part-III of the Scheme, it has been stated that the transferee company shall follow the method of accounting as prescribed for the pooling of interest method under Accounting Standard-14 as notified under the Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 21.2 of Part-III 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.

20. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 28th October, 2015 of Mr. Ramesh Aggarwal, Director of the petitioner

companies, have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 14th July, 2015.

21. 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, 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, 2014, the transferor companies no. 1 to 3 shall stand dissolved without undergoing the process of winding up.

22. 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 07.01.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

23. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

February 18, 2016