

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 271/2015

Reserved on 4th November, 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 Section 391(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Padmesh Realtors Private Limited

Petitioner/Transferor Company

WITH

Suncity Infrastructures Private Limited

Petitioner/Transferee Company

Through Mr. Mukesh Sukhija,
Advocate for the petitioners
Mr. Sanjay Bose, Dy. 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(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Padmesh Realtors Private Limited (hereinafter referred to as the transferor company) with Suncity Infrastructures 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 was incorporated under the Companies Act, 1956 on 2nd September, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 17th February, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.16,00,00,000/- divided into 1,60,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,11,200/- divided into 11,120 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.40,00,000/- divided into 2,90,000 equity shares of Rs.10/- each aggregating to Rs.29,00,000/- and 1,10,000 preference shares of Rs.10/- each aggregating to Rs.11,10,000/-. The issued, subscribed and paid-up share capital of the company is Rs.18,70,600/- divided into 80,000 equity shares of Rs.10/- each aggregating to Rs.8,00,000/- and 1,07,060 12%

optionally convertible cumulative preference shares of Rs.10/- each aggregating to Rs.10,70,600/-.

7. 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) 54/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee company, along with the report of the auditors, and the unaudited balance sheets, as on 28th February, 2015, of the Petitioner companies had also been filed.

8. 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 by the petitioners that the proposed Amalgamation would have the benefit of simplification of group structure; reduce managerial overlaps, which are necessarily involved in running multiple entities; reduce administrative cost; remove multiple layer inefficiencies; and achieving management efficiency.

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

1 (one) 12% optionally convertible cumulative preference share of Rs.10/- each to be issued and allotted by the Transferee Company in lieu of every 1656 equity shares of Rs.10/- each fully paid up held by the shareholders in the transferor company, as per the terms and conditions mentioned in Annexure – ‘A’ to the Scheme.”

10. 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.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 2nd April 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.

12. The petitioner companies had earlier filed CA (M) No. 54/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 5th May, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity

shareholders, preference shareholder and creditors of the transferor and transferee companies, there being no secured creditor of the transferor company and no secured or unsecured creditor of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 25th May, 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 Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 24th August, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

14. 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 5th October, 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 company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. 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 5th October, 2015. Relying on Clause 5.4(i) of Part-V of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 4.2.1(vi) of Part-IV of the Scheme, it has been stated that the transferee company shall account for amalgamation in its books in accordance with the applicable accounting standards prescribed by the Institute of Chartered Accountants of India. He further submitted that in Clause 5.6 of Part-V of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 3rd October, 2015 of Sh. Rohit Gupta, authorized signatory of the transferor

company and Sh. Dharmender Gupta, 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 24th August, 2015.

17. 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, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

18. 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 directed vide order dated 04.11.2015, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

19. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

February 10, 2016