

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 373/2015

Reserved on 10th May, 2016
Date of pronouncement: 19th July, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Sections 391 to 394 of the Companies Act, 1956

Scheme of Amalgamation of:

Unison Developers Private Limited

Petitioner/Transferor Company

WITH

Unison Infratech Private Limited

Petitioner/Transferee Company

**Through Mr. V.V. Manoharan with
Mr. Awanish Kumar and Ms. Rupbala,
Advocates 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 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Unison Developers Private Limited (hereinafter referred to as the transferor company) with Unison Infratech 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 originally incorporated under the Companies Act, 1956 on 20th October, 2003 with the Registrar of Companies, U.P. & Uttaranchal at Kanpur. The company shifted its registered office from the state of Uttarakhand to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 26th August, 2014.

4. The transferee company was incorporated under the Companies Act, 1956 on 23rd October, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.64,62,500/- divided into 6,46,250 equity shares of Rs.10/- each.

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

company is Rs.90,86,000/- divided into 9,08,600 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, and the provisional accounts of the transferor and transferee companies, as on 30th November, 2014, have 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 submitted by the petitioners that since both companies are engaged in same line of business, the proposed amalgamation will consolidate their business operations and provide significant impetus to their growth. It is claimed that the proposed amalgamation will result in reduction of overheads, administrative, managerial and other expenditure and bring about operational rationalization, efficiency and lead to optimal utilization of resources.

9. So far as the share exchange ratio is concerned, the Scheme provides that 27.68% of the share capital representing 2,51,500 equity

shares of the transferee company is held by the transferor company. Therefore, no shares of the transferee company shall be allotted to the extent of transferor's company holding in the transferee company. It is further provided that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

“166 equity shares of Rs.10/- each of the transferee company, credited as fully paid-up, for every 100 fully paid-up equity shares of Rs.10/- each held in the transferor company.”

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 15th December, 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.

12. The petitioner companies had earlier filed CA (M) No. 28/2015 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 14th May, 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.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 28th July, 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 21st August, 2015 and 22nd August, 2015 respectively. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

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 4th January, 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 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. Although the Official Liquidator has not raised any objection to the proposed Scheme of Amalgamation but in para 9 of his report he has submitted that the transferor company has filed an appeal before the Commissioner of Income Tax (Appeals) against the order of assessment dated 29.03.2014 made under Section 143(3)/148 of the Income Tax Act for the assessment year 2008-09. In response to the aforesaid observation, the applicant companies in the affidavit dated 12th January, 2016 of Mr. Amit Agarwal, authorized signatory of the transferor company, while referring to para 12.1 of the Scheme, has submitted that the transferee company undertakes to have all legal or other proceedings initiated by or against the transferor company referred to in clause 12.1 of the Scheme, transferred in its name and to have the same continued, prosecuted and enforced by or against the transferee company, to the exclusion of the transferor company. In view of the aforesaid, the observation made by the Official Liquidator stands satisfied.

16. 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 23rd March, 2016 stating that the ROC in his report has not made any adverse comments against the Scheme of Amalgamation and that the Regional Director has no objection to the proposed Scheme.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 8th April, 2016 of Mr. Amit Aggarwal, director of the transferor company and Mr. Anuj Aggarwal, 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 21st August, 2015 and 22nd August, 2015.

18. 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 company shall stand dissolved without undergoing the process of winding up.

19. 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 company states that the same is acceptable to him. As already directed vide order dated 10.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

July 19, 2016