

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 417/2015

Reserved on 23rd December, 2015
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 Section 391, 392 & 394 of the
Companies Act, 1956**

Scheme of Amalgamation and Arrangement of:

Treasured Developers Private Limited

Petitioner/Transferor Company

WITH

Suncity Dhoot Colonizers Private Limited

Petitioner/Transferee Company

**Through Mr. Vijay Nair, 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, 392 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation and Arrangement of Treasured Developers Private Limited (hereinafter referred to as the transferor company) with Suncity Dhoot Colonizers 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 27th October, 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 27th July, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.22,50,00,000/- divided into 2,25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.22,33,75,590/- divided into 2,23,37,559 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.21,55,00,000/- divided into 2,15,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.21,44,83,800/- divided into 2,14,48,380 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 reports of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation and Arrangement 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 promoters of the transferee company approached the transferor company to enter into an agreement with them to participate in the joint construction, development sale and management of an integrated township project in Indore, Madhya Pradesh, by acquiring 1/3rd stake in the transferee company. It is further submitted that since the transferee company is not in a position to effectively carry out its business activities in the desired manner, therefore, it is considered desirable to amalgamate the transferor company into the transferee company so that the assets and resources of both the companies can be conveniently and effectively utilized by the transferee company to carry on its operations more economically and efficiently. It is claimed that the proposed amalgamation will reduce the overheads and other expenses facilitating administrative convenience and ensuring optimum utilization of various sources and resources.

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 equity shares to the shareholders of the transferor company in the following ratio:

“4800 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 10,000 equity shares of Rs.10/- each held in transferor company.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or other applicable provisions of the Companies Act, 2013 are pending against the petitioner companies.

11. The Board of Directors of the transferor company and the transferee company in their separate meetings held on 30th March, 2015 and 1st April, 2015 respectively have unanimously approved the proposed Scheme of Amalgamation and Arrangement. 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. 86/2015 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 and Arrangement. Vide order dated 25th 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 creditor of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation and Arrangement.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation and Arrangement. Vide order dated 8th 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 'Indian Express' (English) and 'Jansatta' (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 12th 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 November,

2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation and Arrangement 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 9th December, 2015. Relying on Clause 8.1 of the Scheme, he has stated that, the transferor company does not have any employees. He has further submitted that in Clause 9.1 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 16.1 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 and Arrangement from any other party. The petitioner companies, in the

affidavits dated 2nd January, 2016 of Mr. Vijay Kumar Rastogi, Director of the transferor company and Mr. Varun Aggarwal, Director of the transferee company, have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 12th August, 2015.

17. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and Arrangement and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation and Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation and Arrangement. Consequently, sanction is hereby granted to the Scheme of Amalgamation and Arrangement 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.

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 already directed vide order dated 23.12.2015, 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.

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SUDERSHAN KUMAR MISRA, J.

February 18, 2016