

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 404/2015

Reserved on 5th 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 Section 391(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

PSB Properties Private Limited

Petitioner/Transferor Company No. 1

Sonastar Electronics Private Limited

Petitioner/Transferor Company No. 2

WITH

Parkwood Infrastructure Private Limited

Petitioner/Transferee Company

**Through Mr. Amit Goel, Advocate 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(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of PSB Properties Private Limited (hereinafter referred to as the transferor company no. 1) and Sonastar Electronics Private Limited (hereinafter referred to as the transferor

company no. 2) with Parkwood Infrastructure 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 21st May, 1981 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 20th June, 1990 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 30th March, 1977 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Hemkunt Construction Company Limited. The company changed its name to Hemkunt Construction Company Private Limited and obtained a fresh certificate of incorporation on 11th May, 1988. The company again changed its name to Parkwood Infrastructure Private Limited and obtained the fresh certificate of incorporation on 3rd April, 2007.

6. The present authorized share capital of the transferor company no.1 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,03,000/- divided into 10,300 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2, is Rs.2,00,000/- divided into 2,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 1,000 equity shares of Rs.100/- each.

8. The present authorized share capital of the transferee company is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each.

9. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record along with CA(M) 92/2015 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.

10. 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 create greater synergies between the businesses of the three companies and would enable them to manage their business more efficiently by effectively pooling the technical and marketing skills of both the companies as an integrated entity and also enable effective management and unified control of operations. It is further claimed that the proposed amalgamation will result in better administration and cost reduction, including reduction in administrative and other common costs.

11. 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:-

“335 equity shares of Rs.10/- each fully paid up of the transferee company for every 100 equity shares of Rs.10/- each fully paid up held in the transferor company no. 1.”

“2180 equity shares of Rs.10/- each fully paid up of the transferee company for every 100 equity shares of Rs.100/- each fully paid up held in the transferor company no. 2.”

12. 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.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 31st January, 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.

14. The petitioner companies had earlier filed CA (M) No. 92/2015 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 25th May, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferor and transferee companies to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

15. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 6th 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) editions. An affidavit has been filed by the petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 16th November, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

16. 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 2nd December, 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.

17. 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 4th December, 2015. Relying on Clause 3.2(i) of Part-II 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 6.1 of Part-II 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 Rules, 2006. He further submitted that in Clause 7 of Part-II 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.

18. The Regional Director in para 8 of his report has stated that the transferor company no. 2 has not filed its annual return & balance sheet for the financial year ended 31.03.2014 thereby prima facie violated the provisions of Section 137 r/w Section 403 of the Companies Act, 2013. In response to the above objection, the petitioner companies in the affidavit dated 11th January, 2016 of Mr. Dakshdeep Singh, Director of the transferee company, have stated that the transferor company no. 2 had already filed its annual return for the financial year ending 31.03.2014 on 25th December, 2014. A copy of Form 20B evidencing filing of the annual report has also been placed on record. So far as the balance sheet of the transferor company no. 2 for the year ending 31.03.2014 is concerned, it has been stated that the same has been filed on 5th December, 2015 and the copies of the Forms 23AC and 23ACA along with challan evidencing filing of balance sheet have been placed on record. In view of the aforesaid, the objection raised by the Regional Director stands satisfied.

19. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 3rd December, 2015 of Mr. Dakshdeep Singh, 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 16th November, 2015.

20. Considering the approval accorded by the equity shareholders, secured and unsecured creditors of the petitioner companies to the proposed Scheme of Amalgamation; the affidavit filed by the Official Liquidator not raising any objection to the proposed 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 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 company 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 & 2 shall stand dissolved without undergoing the process of winding up.

21. 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 05.01.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

22. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

February 18, 2016