

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 401/2015

Reserved on 6th 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:

SSG Multiproducts Private Limited

Petitioner/Transferor Company No. 1

SSG Entrepreneurs Private Limited

Petitioner/Transferor Company No. 2

WITH

SSG Pharma Private Limited

Petitioner/Transferee Company

**Through Mr. Sanjay K. Maria and
Mr. Anant Vijay Maria, 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(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of SSG Multiproducts Private Limited (hereinafter referred to as the transferor company No. 1) and SSG Entrepreneurs Private Limited (hereinafter referred to as the transferor

company No. 2) with SSG Pharma 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 19th August, 2008 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 December, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was incorporated under the Companies Act, 1956 on 19th February, 1997 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The present authorized share capital of the transferor company no.1 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.42,00,000/- divided into 4,20,000 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.9,50,000/- divided into 95,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.1,50,00,000/- divided into 15,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,38,50,000/- divided into 13,85,000 equity shares of Rs.10/- each.

9. Copies of 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, have 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 submitted by the petitioners that the Scheme is proposed as a measure of corporate restructuring and to develop potential for further growth and diversification and to achieve the object of carrying on the businesses of the two companies more smoothly and profitably by rationalization of the

management and financial structure and obtaining economies of scale for further modernization growth and expansion of the respective businesses. It is claimed that the proposed amalgamation shall also result in the better and optimum utilization of the properties and assets of all the companies by pooling their resources and spreading their overheads.

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:-

“259 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 1000 equity shares of Rs.10/- each fully paid up held by the shareholders in the transferor company no. 1.”

“346 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 1000 equity shares of Rs.10/- each fully paid up held by the shareholders 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 company no. 1 in their separate meetings held on 15th December, 2014 and 10th February,

2015; the Board of Directors of the transferor company no. 2 in their separate meetings held on 15th December, 2014 & 16th February, 2015; and the Board of Directors of the transferee company in their separate meetings held on 20th December, 2014 and 10th 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.

14. The petitioner companies had earlier filed CA (M) No. 61/2015 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 21st May, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and creditors of the transferor and transferee companies, there being no secured creditors of the transferor 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 3rd 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 'Statesman' (English) and 'Veer Arjun' (Hindi) 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 23rd 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 7th 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 7th December, 2015. Relying on Clause 7.2 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 further submitted that in Clause 13.1 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 13 of his report has stated that the petitioner companies have not mentioned the method of Accounting as prescribed under the Accounting Standard-14 as notified under the Companies (Accounting Standards) Rules, 2006. In response to the above objection, the petitioner companies in the affidavit dated 11th January, 2016 of Mr. Sunil Kumar Mittal, Director of the petitioner companies, have stated that Clause 5.1 of the Scheme provides that all the assets and liabilities of the transferor companies, as on the appointed date, shall be transferred to the transferee company and the same shall be recorded in the books of account of the transferee company according to the pooling of interest method and the petitioner companies shall comply with the Accounting Standards as prescribed under the Act and the governing Rules. The petitioners undertake to comply with the same accounting method as provided in para 5.1 of the Scheme and shall remain abide by the same. 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 5th December, 2015 of Mr. Sunil Kumar Mittal, 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 23rd November, 2015.

20. Considering the approval accorded by the equity shareholders and 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.75,000/- 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 06.01.2016, the petitioners shall deposit a sum of Rs.75,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

22. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

February 18, 2016