

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 585/2015

Reserved on 20th May, 2016
Date of pronouncement: 27th 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:

Mallet Properties Private Limited

Petitioner/Transferor Company No. 1

Alight Advisory Services Private Limited

Petitioner/Transferor Company No. 2

Suprava Agro Estates Private Limited

Petitioner/Transferor Company No. 3

WITH

Bahri Estates Private Limited

Petitioner/Transferee Company

**Through Mr. Saurabh Kalia, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director**

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 Mallet Properties Private Limited (hereinafter referred to as the transferor company no. 1); Alight Advisory Services Private Limited (hereinafter referred to as the transferor

company no. 2) and Suprava Agro Estates Private Limited (hereinafter referred to as the transferor company no. 3) with Bahri Estates 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 originally incorporated under the Companies Act, 1956 on 6th February, 2007 with the Registrar of Companies, West Bengal under the name and style of Mallet Dealcomm Private Limited. The company changed its name to Mallet Properties Private Limited. Thereafter, the company shifted its registered office from the State of West Bengal to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 26th November, 2009.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 2nd March, 2005 with the Registrar of Companies, West Bengal. The company shifted its registered office from the State of West Bengal to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 8th October, 2012.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 17th April, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferee company was incorporated under the Companies Act, 1956 on 26th December, 1996 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The present authorized share capital of the transferor company no.1 is Rs.21,00,000/- divided into 2,10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.20,95,000/- divided into 2,09,500 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferor company no.2 is Rs.36,00,000/- divided into 3,60,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.35,45,000/- divided into 3,54,500 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.3 is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.4,20,00,000/- divided into 42,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,05,22,580/- divided into 20,52,258 equity shares of Rs.10/- each.

11. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 59/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, along with the reports of the auditors, of the transferor and transferee companies had also been filed.

12. 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 amalgamation will provide greater efficiency in cash management of the amalgamated entity & unfettered access to cash flow generated by combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders' value. It is further claimed that the proposed Scheme will provide greater integration and greater financial strength for the transferee company, which would result in maximizing overall

shareholders' value and will improve the competitive position of the combined entity.

13. 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:

“13 equity shares of Rs.10/- each of the transferee company for every 02 equity shares of Rs.10/- each held by the shareholders in the transferor company no. 1.”

“04 equity shares of Rs.10/- each of the transferee company for every 03 equity shares of Rs.10/- each held by the shareholders in the transferor company no. 2.”

“01 equity share of Rs.10/- each of the transferee company for every 01 equity share of Rs.10/- each held by the shareholders in the transferor company no. 3.”

14. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 206 to 229 of the Companies Act, 2013 are pending against the petitioner companies.

15. The Board of Directors of the transferor and transferee companies in their separate meetings held on 30th 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.

16. The petitioner companies had earlier filed CA (M) No. 59/2015 seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the transferor companies and equity shareholders of the transferee company and for convening of separate meetings of the secured and unsecured creditors of the transferee company, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 29th 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 companies and equity shareholders of the transferee company and directed convening of separate meetings of the secured and unsecured creditors of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

17. The Chairpersons of the ordered meetings of the secured and unsecured creditors of the transferee company have filed their reports stating that the meetings were duly held on 10th July, 2015, as directed, and that the Scheme of Amalgamation has been approved unanimously

by the secured and unsecured creditors of the transferee company, present and voting, in the meetings.

18. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 19th August, 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 'Jansatta' (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 12th January, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

19. 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 February, 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 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.

20. 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 15th January, 2016. Relying on Clause 3.1.2(g) of Part-III 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 5.2(c) of Part-V of the Scheme, it has been stated that the accounting for all the transferor companies and treatment of goodwill or reserves, if any, in the books of the transferee company shall be in accordance with the provisions of the Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 5.19 of Part-V 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.

21. Although the Regional Director has not raised any objection to the proposed Scheme, but in para 6 of his report he has stated that as per the letter dated 31.12.2015 received from the Income Tax Department, the transferor company no. 1 has an outstanding demand amount of

Rs.1,415/- for A.Y. 2009-10. In response to the aforesaid observation, the petitioner companies in the affidavit dated 13th May, 2016 of Ms.Sangeeta Bahri, Director of the petitioner companies, have stated that the transferor company no. 1 has paid the outstanding amount of Rs.1,415/- on 18.01.2016. A copy of the challan evidencing payment has also been annexed with the said affidavit. In view of the above, the observation made by the Regional Director stands satisfied.

22. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 17th May, 2016 of Mr. Hemant Bahri, Director of the petitioner companies have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 12th January, 2016.

23. 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 companies no. 1 to 3 shall stand dissolved without undergoing the process of winding up.

24. 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 20.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

25. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

July 27, 2016