

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 683/2015

Reserved on 29th April, 2016
Date of pronouncement: 16th May, 2016

In the matter of

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

And

Petition under Sections 391(1) & 394 of the Companies Act, 1956

Scheme of Amalgamation of:

Naveen Import Private Limited

Petitioner/Transferor Company No. 1

Garg Travel & Tours Private Limited

Petitioner/Transferor Company No. 2

Latex Enterprises Private Limited

Petitioner/Transferor Company No. 3

Pine Mercantile Private Limited

Petitioner/Transferor Company No. 4

Ramesh Pandit Builders & Promoters Private Limited

Petitioner/Transferor Company No. 5

Sun Alucop Private Limited

Petitioner/Transferor Company No. 6

Madhur Muskan Buildcon Private Limited

Petitioner/Transferor Company No. 7

WITH

Ekta Infratech Private Limited

Petitioner/Transferee Company

**Through Mr. Ashish Midha, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Kanwal Chaudhary, Advocate for
the Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391(1) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Naveen Import Private Limited (hereinafter referred to as the transferor company no. 1); Garg Travel & Tours Private Limited (hereinafter referred to as the transferor company no. 2); Latex Enterprises Private Limited (hereinafter referred to as the transferor company no. 3); Pine Mercantile Private Limited (hereinafter referred to as the transferor company no. 4); Ramesh Pandit Builders & Promoters Private Limited (hereinafter referred to as the transferor company no. 5); Sun Alucop Private Limited (hereinafter referred to as the transferor company no. 6); and Madhur Muskan Buildcon Private Limited (hereinafter referred to as the transferor company no. 7) with Ekta 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 no. 1 was incorporated under the Companies Act, 1956 on 18th June, 2009 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 October, 1996 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 7th August, 2000 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferor company no. 4 was incorporated under the Companies Act, 1956 on 18th May, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferor company no. 5 was incorporated under the Companies Act, 1956 on 26th June, 1998 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The transferor company no. 6 was incorporated under the Companies Act, 1956 on 21st June, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9. The transferor company no. 7 was incorporated under the Companies Act, 1956 on 17th March, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferee company was incorporated under the Companies Act, 1956 on 17th June, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The present authorized share capital of the transferor company no.1 is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.2,64,600/- divided into 26,460 equity shares of Rs.10/- each.

12. The present authorized share capital of the transferor company no.2 is Rs.35,00,000/- divided into 3,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.16,01,000/- divided into 1,60,100 equity shares of Rs.10/- each.

13. The present authorized share capital of the transferor company no.3 is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.6,06,000/- divided into 60,600 equity shares of Rs.10/- each.

14. The present authorized share capital of the transferor company no.4 is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/-

each. The issued, subscribed and paid up capital of the company is Rs.3,60,000/- divided into 36,000 equity shares of Rs.10/- each.

15. The present authorized share capital of the transferor company no.5 is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.3,78,000/- divided into 37,800 equity shares of Rs.10/- each.

16. The present authorized share capital of the transferor company no.6 is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.2,87,000/- divided into 28,700 equity shares of Rs.10/- each.

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

18. The present authorized share capital of the transferee company is Rs.16,00,000/- divided into 1,60,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.3,82,000/- divided into 38,200 equity shares of Rs.10/- each.

19. 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) 112/2015, 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.

20. 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 affidavits. It is claimed by the petitioners that the proposed scheme will result in formation of a larger company enabling further growth and development of the businesses of the said company thus enabling the said company to obtain greater facilities possessed and enjoyed by one large company compared to a small company for raising capital, securing and conducting trade and business on favourable terms and other related benefits. It is further claimed that the proposed amalgamation will enable the company concerned to rationalize and streamline their management, businesses and finances and lead to a better and more economic control, over the running and management of the businesses and undertakings of the said company.

21. 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:-

“01 equity share of Rs.10/- each, credited as fully paid-up, of the transferee company for every 01 equity share of Rs.10/- each fully paid-up held in the transferor company no. 1.”

“01 equity share of Rs.10/- each, credited as fully paid-up, of the transferee company for every 01 equity share of Rs.10/- each fully paid-up held in the transferor company no. 2.”

“01 equity share of Rs.10/- each, credited as fully paid-up, of the transferee company for every 01 equity share of Rs.10/- each fully paid-up held in the transferor company no. 3.”

“01 equity share of Rs.10/- each, credited as fully paid-up, of the transferee company for every 01 equity share of Rs.10/- each fully paid-up held in the transferor company no. 4.”

“01 equity share of Rs.10/- each, credited as fully paid-up, of the transferee company for every 01 equity share of Rs.10/- each fully paid-up held in the transferor company no. 5.”

“01 equity share of Rs.10/- each, credited as fully paid-up, of the transferee company for every 01 equity share of Rs.10/- each fully paid-up held in the transferor company no. 6.”

“01 equity share of Rs.10/- each, credited as fully paid-up, of the transferee company for every 01 equity share of Rs.10/- each fully paid-up held in the transferor company no. 7.”

22. 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.

23. The Board of Directors of the transferor and transferee companies in their separate meetings held on 25th March, 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.

24. The petitioner companies had earlier filed CA (M) No. 112/2015 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 July, 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 unsecured creditors of the transferor companies no. 3, 5, 7 and the transferee company and no secured creditor of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

25. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 9th September, 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 29th January, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

26. 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 8th 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.

27. 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 February, 2016 stating that the ROC in his report has not made any adverse comments to the Scheme of Amalgamation and that the Regional Director has no objection to the proposed Scheme of Amalgamation.

28. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 6th February, 2016 of Mr. Deepak Kumar Sharma, 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 29th January, 2016.

29. 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 having not raised 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 7 shall stand dissolved without undergoing the process of winding up.

30. 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 29.04.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

31. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

May 16, 2016