

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 702/2015

Reserved on 11th July, 2016
Date of pronouncement: 12th August, 2016

In the matter of

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

And

**Petition under Sections 391 to 394(A) of the
Companies Act, 1956**

Scheme of Amalgamation and Arrangement between:

AHIPL Management Consulting Private Limited

Petitioner/Transferor Company

AND

Fabindia Overseas Private Limited

Petitioner/Transferee Company

**Through Mr. Aman Sinha, Sr. Advocate
with Mr. Dipankar Vig, Mr. Kunal
Juneja and Mr. Pravesh Thakur,
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 to 394(A) of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation and Arrangement between AHIPL Management Consulting Private Limited (hereinafter referred to as the transferor company) and Fabindia Overseas 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 originally incorporated under the Companies Act, 1956 on 20th May, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Fabindia Franchise & Consulting Private Limited. The company changed its name to Artisans Holdings and Investment Private Limited and obtained the fresh certificate of incorporation on 25th November, 2011. The company again changed its name to AHIPL Management Consulting Private Limited and obtained the fresh certificate of incorporation on 11th November, 2013.

4. The transferee company was incorporated under the Companies Act, 1956 on 14th December, 1976 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.12,50,00,000/- divided into 1,25,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.12,50,00,000/- divided into 1,25,00,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.2,36,51,700/- divided into 23,65,170 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 with the joint application, being CA (M) 128/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2015 and 31st March, 2014 of the transferor and transferee companies respectively, along with the report of the auditors, had also been filed.

8. A copy of the Scheme of Amalgamation and Arrangement 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 claimed that the proposed amalgamation will provide better financial and growth prospects through consolidation of resource base and improvement in generation, mobilization and utilization of physical resources, financial resources, human resources, knowledge, information and other important tangible and intangible resources. It is further claimed that the proposed amalgamation will

reduce managerial overlaps, which are necessarily involved in running multiple entities.

9. So far as the share exchange ratio is concerned, the Scheme provides that the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

“01 equity share of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held by the shareholders in the transferor company.”

10. 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.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 29th April, 2015 have unanimously approved the proposed Scheme of Amalgamation and Arrangement 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. 128/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors and to convene a meeting of the unsecured creditors

of the transferee company, which are statutorily required for sanction of the Scheme of Amalgamation and Arrangement. Vide order dated 27th July, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor and transferee companies, there being no secured or unsecured creditors of the transferor company and no secured creditor of the transferee company, and directed convening of a meeting of the unsecured creditor of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation and Arrangement.

13. The Chairperson of the ordered meeting of the unsecured creditors of the transferee company has filed his report stating that the meeting was duly held on 3rd September, 2015, as directed, and that the Scheme of Amalgamation and Arrangement has been approved unanimously by the unsecured creditors of the transferee company, present and voting, in the meeting.

14. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation and Arrangement. Vide order dated 16th 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. 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 7th October, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

15. 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 January, 2016 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.

16. 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 2nd February, 2016. Although the Regional Director has not raised any objection to the proposed Scheme but in para 10 of his report he has stated that, as per Clause 13 of the

Scheme, the petitioner companies are required to comply with the provisions of Accounting Standard-14 related to pooling of interest method as prescribed under Section 211(3C) of the Companies Act, 1956 and under Section 133 of the Companies Act, 2013. Further, in para 11 of the his report he has prayed that the transferee company may be directed to continue all the employees of the transferor company on existing or similar terms and conditions as to remuneration and other benefits, without any breach or interruption of service, as provided in Clause 16 of the Scheme. So far as the aforesaid observations of the Regional Director are concerned, no specific directions are required to be passed by this Court, since as per Clause 3.8 read with Clause 16 of the Scheme, the petitioner companies have already undertaken to continue the services of all the employees of the transferor company in the transferee company on the terms and conditions, which will not be less favourable to them, then those applicable to them, as on the effective date. Further, in Clause 13 of the Scheme, the transferee company has undertaken to follow the Purchase Method for accounting as provided in Accounting Standard-14. In view of the aforesaid, the observations raised by the Regional Director do not subsist.

17. No objection has been received to the Scheme of Amalgamation and Arrangement from any other party. The petitioner companies, in the affidavit dated 2nd February, 2016 of Ms. Monica Uppal Arora, authorized

signatory 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 7th October, 2015.

18. Considering the approval accorded by the equity 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, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

19. 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 11.07.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

20. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

August 12, 2016