

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 749/2015

Reserved on 21st 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(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

BGK Commodities Private Limited

Petitioner/Transferor Company No. 1

BGNS Infratech Private Limited

Petitioner/Transferor Company No. 2

Kay Ess Aar Infratech Private Limited

Petitioner/Transferor Company No. 3

Panjwani Properties Private Limited

Petitioner/Transferor Company No. 4

WITH

BGK Infratech Private Limited

Petitioner/Transferee Company

Through Mr. Mukesh Sukhija,
Advocate for the petitioners
Mr. Sanjay Bose, Dy. Registrar of
Companies for the Regional Director

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 BGK Commodities Private Limited

(hereinafter referred to as the transferor company No. 1), BGNS Infratech Private Limited (hereinafter referred to as the transferor company No. 2); Kay Ess Aar Infratech Private Limited (hereinafter referred to as the transferor company No. 3) and Panjwani Properties Private Limited (hereinafter referred to as the transferor company No. 4) with BGK 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 24th October, 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 31st January, 2007 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 17th November, 2006 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 5th November, 1986 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferee company was originally incorporated under the Companies Act, 1956 on 17th December, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of S. S. Horticultures Private Limited. The company changed its name to BGK Infratech Private Limited and obtained the fresh certificate of incorporation on 15th April, 2015.

8. 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.1,50,000/- divided into 15,000 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.2 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.1,50,00,000/- divided into 15,00,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferor company no.3 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.22,00,000/- divided into 2,20,000 equity shares of Rs.10/- each.

11. The present authorized share capital of the transferor company no.4 is Rs.1,25,00,000/- divided into 12,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,24,90,000/- divided into 12,49,000 equity shares of Rs.10/- each.

12. The present authorized share capital of the transferee company is Rs.7,68,00,000/- divided into 62,30,000 equity shares of Rs.10/- each aggregating to Rs.6,23,00,000/-; 10,50,000 18% non-cumulative redeemable optionally convertible preference shares of Rs.10/- each aggregating to Rs.1,05,00,000/-; and 4,00,000 9% non-cumulative redeemable optionally convertible preference shares of Rs.10/- aggregating to Rs.40,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.3,23,00,200/- divided into 32,30,020 equity shares of Rs.10/- each.

13. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 147/2015, 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.

14. 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 transferor companies no. 1, 2 & 4 are earning income out of sale of plants; transferor company no. 3 is not engaged in any business activity and the transferee company is engaged in the agricultural activities. It is claimed that the proposed amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base. It is further claimed that the proposed amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

15. 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:-

“2538 equity shares of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held in the transferor company no. 1.”

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

“25 equity shares of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held in the transferor company no. 3.”

“10 equity shares of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held in the transferor company no. 4.”

16. 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.

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

18. The petitioner companies had earlier filed CA (M) No. 147/2015 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 September, 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 companies and equity shareholders, secured and unsecured creditors of the transferee company, 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.

19. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 30th November, 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 22nd December, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

20. 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 13th April, 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.

21. 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 19th April, 2016 stating that he had no objection to the proposed Scheme of Amalgamation.

22. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 18th April, 2016 of Mr. Gaurav Sekhri, director of transferor companies no. 1 & 2 and the transferee company and Mr. Gautam Sekhri, director of the transferor companies no. 3 & 4 have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 22nd December, 2015.

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 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, 2015, the transferor companies no 1 to 4 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 21.04.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

25. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 16, 2016