

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 881/2015

Reserved on 24th 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:

Narain Vegetable Products Private Limited

Petitioner/Transferor Company

WITH

HFM Logiware Private Limited

Petitioner/Transferee Company

**Through Mr. Manoj Arora,
Mr. Siddharth Shankar, Ms. Shaista
Arora and Mr. Sumeet Raj, Advocates
for the petitioners**

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

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Section 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Narain Vegetable Products Private Limited (hereinafter referred to as the transferor company) with HFM Logiware 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 incorporated under the Companies Act, 1956 on 29th May, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 1st January, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of HFM Tech Park Private Limited. The company changed its name to HFM Logiware Private Limited and obtained the fresh certificate of incorporation on 10th November, 2010.

5. The present authorized share capital of the transferor company 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.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.50,00,000/- divided into 5,00,000 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) 156/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the reports of the auditors, have also been filed.

8. 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 proposed amalgamation will enable the transferee company to carry on business more efficiently and profitably and it would help the company to face the competition in the market and also reduce avoidable administrative expenses.

9. 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 company in the following ratio:

“187 equity shares 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.”

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210, 211, 212 (1) to (7) & (11) to (17), 214, 215, 216 (1) & (3), 217, 219, 220, 223, 224 (1), (3) and (4) and 225 of the Companies Act, 2013 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 9th July, 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.

12. The petitioner companies had earlier filed CA (M) No. 156/2015 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 2nd November, 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 company and equity shareholders, secured and unsecured creditors of the transferee company, there being no secured creditor of the transferor company, to consider and, if thought

fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. 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 'Jansatta' (Hindi) Delhi 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 9th January, 2016 and 14th January, 2016 respectively. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. 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 May, 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 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.

15. 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 5th May, 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.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 10th May, 2016 of Mr. Manoj Arora, counsel for 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 9th January, 2016 and 14th January, 2016.

17. 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, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

18. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- 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 24.05.2016, the petitioners shall deposit a sum of Rs.50,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

19. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

July 27, 2016