

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 950/2015

Reserved on 11th August, 2016
Date of pronouncement: 2nd September, 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:

Puriflair India Private Limited

Petitioner/Transferor Company

WITH

Delair India Private Limited

Petitioner/Transferee Company

**Through Mr. Ashim Sood and
Ms. Nayantara Vohra, Advocates for the
petitioners**

**Ms. Aparna Mudiam, Asstt. 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 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Puriflair India Private Limited (hereinafter referred to as the transferor company) with Delair India 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 23rd May, 1997 with the Registrar of Companies, Gujarat. Thereafter, the company shifted its registered office from the State of Gujarat to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 11th July, 2014.

4. The transferee company was incorporated under the Companies Act, 1956 on 14th December, 1988 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.7,00,00,000/- divided into 70,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.6,59,06,650/- divided into 65,90,665 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.50,00,000/- divided into 5,000 equity shares of Rs.1,000/- each. The issued, subscribed and paid-up share capital of the company is Rs.27,00,000/- divided into 2,700 equity shares of Rs.1,000/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2015, of transferor and transferee companies, along with the report 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 would create greater synergies between the businesses of both the companies and would enable them to have large asset base, access to better financial resources as well as enable them to manage their business more efficiently by effectively pooling the infrastructure and other resources of each other. It is further claimed that the proposed amalgamation shall result in enhancement of net worth of the combined business to capitalize on future growth potential.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, no consideration shall be payable by the transferee company since the transferee company (itself and through its nominee) is the only shareholder of the

transferor company, and no shares shall be allotted by the transferee company either to itself or to any of its nominee shareholders holding shares in the transferor company.

10. It has been submitted by the petitioners that no proceedings under Sections 235 and 251 of the Companies Act, 1956 are pending against the transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 24th July, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 117/2015 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 28th September, 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 and transferee companies, 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 11th December, 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 'Indian Express' (English) and 'Dainik Bhaskar' (Hindi) editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 2nd February, 2016. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

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 29th March, 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 30th March, 2016 stating 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 28th March, 2016 of Sh. Ashim Sood, counsel for the petitioner companies, have submitted that they have not received any objection pursuant to the citations published in the newspapers on 2nd February, 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, 2014, 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.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 companies states that the same is acceptable to him. As already directed vide order dated 11.08.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

19. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

September 02, 2016