

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY PETITION NO. 24/2016

Judgment Delivered On: 24.10.2016

In the matter of

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

Boom Investments Private Limited

Petitioner/Transferor Company

WITH

Mohair Investment and Trading Company Private Limited

Petitioner/Transferee Company

Through: Mr. N. Ganpathy, Sr. Advocate with Ms.
Vatsala Rai, Advocate for the Petitioners

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. This joint petition has been filed under Sections 391 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Boom Investments Private Limited (hereinafter referred to as the transferor company) with Mohair Investment and Trading Company 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 30th January, 1984 with the Registrar of Companies, Punjab, H. P. & Chandigarh at Jalandhar. The company shifted its registered office from the State of Punjab to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 28th August, 2003.
4. The transferee company was incorporated under the Companies Act, 1956 on 26th May, 1982 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.
5. The present authorized share capital of the transferor company is Rs.48,89,50,000/- divided into 2,15,00,000 equity shares of Rs.10/- each aggregating to Rs.21,50,00,000/-; 3,00,000 12.5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.30,000,000/-; and 24,39,500 5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.24,39,50,000/-. The issued, subscribed and paid-up share capital of the company is Rs.48,68,68,200/- divided into 2,12,91,820 equity shares of Rs.10/- each aggregating to Rs.21,29,18,200/-; 3,00,000 12.5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to

Rs.30,000,000/- and 24,39,500 5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.24,39,50,000/-.

6. The present authorized share capital of the transferee company is Rs.51,55,50,000/- divided into 1,95,00,000 equity shares of Rs.10/- each aggregating to Rs.19,50,00,000/-; 10,000 11% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.10,00,000/-; 3,40,000 12.5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.3,40,00,000/-; and 28,55,500 5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.28,55,50,000/-. The issued, subscribed and paid-up share capital of the company is Rs.50,55,76,000/- divided into 1,90,00,500 equity shares of Rs.10/- each aggregating to Rs.19,00,05,000/-; 210 11% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.21,000/-; 3,00,000 12.5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.3,00,00,000/-; and 28,55,500 5% non-cumulative redeemable preference shares of Rs.100/- each aggregating to Rs.28,55,50,000/-.

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, along with the reports of the auditors, and unaudited provisional accounts, as on 31st July, 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 application and the accompanying affidavit. It is submitted by the petitioners that both the transferor and transferee companies are holding shares in Max India Limited and also have cross holding between themselves. It is claimed that the proposed amalgamation will simplify the promoters holding in Max India Limited and the inter se cross-holding between them. It is further claimed that the proposed amalgamation will lead to reduction in administrative cost and overhead expenses which would further lead to greater and effective executive control, synergy of operation and optimum utilization of available resources.

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 shares to the shareholders of the transferor company in the following ratio:

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

“01 non-cumulative redeemable preference share of the transferee company, credited as fully paid up, for every 01 fully paid up 12.5% non-cumulative redeemable preference shares of Rs.100/- each held by them in the transferor company.”

“01 non-cumulative redeemable preference share of the transferee company, credited as fully paid up, for every 01 fully paid up 5% non-cumulative redeemable preference shares of Rs.100/- each held by them in the transferor company.”

10. It has been submitted that no proceedings under 210, 214, 215, 216(1), 216(3), 216(4), 217, 219, 220, 223, 224(1), 224 (3), 224(4) and 225 of the Companies Act, 2013 (Section 237, 243, 250, 250(A), 251 of the Companies Act, 1956) is pending against either of the Petitioner Companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 10th August, 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. 162/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 6th November, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, preference shareholders and unsecured creditors of the transferor company and equity shareholders, preference shareholders and unsecured creditors of the transferee company, there being no secured creditor of the transferor company as well as transferee 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 15th January, 2016, notice in the petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Vide order dated 8th April, 2016, citations were directed to be published in 'Business Standard' (English) and 'Jansatta' (Hindi) Delhi editions. An affidavit has been filed by the petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 20th April, 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 3rd 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 and Mr. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs have filed their reports dated 6th May, 2016 and 21st

September, 2016 respectively 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 affidavits dated 16th September, 2016 of Mr. Arvind Aggarwal, authorized signatory of the transferor company and Mr. Alok Goel, 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 20th April, 2016.

17. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Official Liquidator and the Regional Director, Northern Region, 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 petitioner 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. The petitioners shall deposit a sum of Rs.50,000/- by way of costs with the Official Liquidator, Delhi in the common pool fund maintained by the office.

19. The petition is allowed in the above terms.

SIDDHARTH MRIDUL, J

OCTOBER 24, 2016

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