

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 3/2016

Reserved on 2nd August, 2016
Date of pronouncement: 29th August, 2016

In the matter of

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

And

**Petition under Sections 391(2) and 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Quadrant EPP Surlon Uttaranchal Private Limited
Petitioner/Transferor Company

WITH

Quadrant EPP Surlon India Limited
Petitioner/Transferee Company

**Through Mr. Manoj Kumar Garg and
Mr. Pranut Sharma, Advocates for the
petitioners**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Quadrant EPP Surlon Uttaranchal Private Limited (hereinafter referred to as the transferor company) with Quadrant EPP Surlon India 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 14th February, 2003 with the Registrar of Companies, NCT of Delhi & Haryana.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 21st September, 1994 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Surlon India Limited. The company changed its name to DSM EPP Surlon India Limited and obtained the fresh certificate of incorporation on 23rd April, 1997. The company again changed its name to Quadrant EPP Surlon India Limited and obtained the fresh certificate of incorporation on 2nd November, 2001.

5. The present authorized share capital of the transferor company is Rs.60,00,000/- divided into 6,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.60,00,000/- divided into 6,00,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.1,75,00,000/- divided into 17,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,70,31,000/- divided into 17,03,100 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. The audited balance sheets, as on 31st March, 2014, 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 give the consolidated company better finances and facilitate adequate resource mobilization to sustain growth. It is further claimed that the proposed amalgamation will result in reduction of overheads, administrative, managerial, and other expenditure, and bring about operational rationalization, organizational efficiency, and optimal utilization of various resources.

9. So far as the share exchange ratio is concerned, the Scheme provides that the entire share capital of the transferor company is held by the transferee company and upon the Scheme becoming effective, no shares of the transferee company shall be allotted in lieu of exchange of its holding 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 company and the transferee company in their separate meetings held on 18th May, 2015 & 19th May, 2015 respectively 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. 172/2015 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 10th December, 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 4th January, 2016, 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) Delhi 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 4th 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 17th 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 20th May, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation subject to necessary compliance of observations/violations mentioned in para 9 of his report and subject to safeguarding the interest of the tax authorities as stated in para 8 of his report. The Regional Director in para 9 of his report has stated that the statutory auditors of the petitioner companies, Walker Chandiok & Co. LLP, in para 5 of their certificate have stated that except for the following, the accounting treatment proposed to be followed by the management in attached Part-2 of the Scheme is not in violation of the relevant applicable Accounting Standards specified under section 133 of the Companies Act, 2013 r/w Rule 7 of the Companies (Accounts) Rules, 2014 as amended:

- (i) All assets and liabilities of the transferor company should be recorded in the books of the transferee company at their respective book values, as were carried in the books of the transferor company;
- (ii) Excess arising on transfer of assets and liabilities as per clause 2.3.1 of the proposed Scheme and after giving effect to clause 2.3.2 of such Scheme should form part of the reserves of the transferee company.

Further, the Regional Director in para 8 of his report has stated that amounts of Rs.12,49,670/- and Rs.16,83,624/- are due on account of dispute in respect of Central Sales Tax by the transferor company and the transferee company respectively.

16. In response to the aforesaid observations of the Regional Director, the petitioner companies in their affidavit dated 25th May, 2016 of Mr.Satendra Kumar, Director and authorized signatory of the petitioner companies, have submitted that in accordance with para 2.1.8 of the Scheme, the disputed liabilities of the transferor company shall be taken over by the transferee company. Further, with reference to the observation made by the Regional Director in para 9 of his report, it has been submitted that both the petitioner companies shall follow applicable Accounting Standards as specified in Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules (as amended). In view of the reply given by the petitioners, the observations made by the Regional Director do not survive.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 5th August, 2016 of Sh. Satendra Kumar, Director of the petitioner companies, and Mr. Manoj Kumar Garg, counsel of 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 4th February, 2016.

18. 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 arrangement, i.e. 1st April, 2014, 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 companies states that the same is acceptable to him. As already directed vide order dated 02.08.2016, 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.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 29, 2016