

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 91/2016

Reserved on 12th July, 2016
Date of pronouncement: 3rd August, 2016

In the matter of

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

And

**Application under Sections 391(1) to 394 of
the Companies Act, 1956 read with Rule 9 of
the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Ambience India Private Limited

Applicant/Transferor Company No. 1

Allied Intertrade Company Limited

Applicant/Transferor Company No. 2

Krishnaav Engineering Limited

Applicant/Transferor Company No. 3

Silverline India Private Limited

Non-Applicant/Transferor Company No. 4

WITH

Allied Nippon Limited

Applicant/Transferee Company

**Through Mr. Santosh Kumar, Advocate
for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of

Amalgamation of Ambience India Private Limited (hereinafter referred to as the transferor company no. 1); Allied Intertrade Company Limited (hereinafter referred to as the transferor company no. 2); Krishnaav Engineering Limited (hereinafter referred to as the transferor company no. 3) and Silverline India Private Limited (hereinafter referred to as the transferor company no. 4) with Allied Nippon Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor companies no. 1 to 3 and the transferee company are situated at New Delhi, within the jurisdiction of this Court. However, the registered office of the transferor company no. 4 is situated at Gurgaon, Haryana, outside the jurisdiction of this Court. Learned counsel for the applicants has submitted that a separate application has been filed by the transferor company no. 4 in the Court of competent jurisdiction seeking sanction to the Scheme of Amalgamation in respect of the transferor company no. 4.

3. The transferor company no. 1 was incorporated under the Companies Act, 1956 on 20th July, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 12th May, 1989 with the Registrar of

Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Allied Intertrade Company Private Limited. Thereafter, the word 'Private' was deleted from the name of the company.

5. The transferor company no. 3 was originally incorporated under the Companies Act, 1956 on 2nd February, 1989 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Acurad Diecastings Private Limited. The company changed its name to Acurad Diecastings Limited and obtained the fresh certificate of incorporation on 24th September, 2001. The company again changed its name to Krishnav Engineering Limited and obtained the fresh certificate of incorporation on 3rd November, 2003. The company finally changed its name to Krishnaav Engineering Limited and obtained the fresh certificate of incorporation on 10th August, 2004.

6. The transferee company was originally incorporated under the Companies Act, 1956 on 10th March, 1988 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Allied Nippon Private Limited. Thereafter, the word 'Private' was deleted from the name of the company w.e.f. 15.06.1988.

7. The present authorized share capital of the transferor company no.1 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/-

each. The issued, subscribed and paid up capital of the company is Rs.1,70,60,000/- divided into 17,06,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferor company no.2 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.1,39,03,800/- divided into 13,90,380 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.3 is Rs.1,40,00,000/- divided into 14,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.48,18,000/- divided into 4,81,800 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.5,58,67,840/- divided into 55,86,784 equity shares of Rs.10/- each.

11. Copies of the Memorandum and Articles of Association of the transferor companies no. 1 to 3 and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2015, of the transferor companies no. 1 to 3 and the transferee company, along with the report of the auditors, have also been filed.

12. 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 affidavits. It is claimed by the applicants that the proposed scheme will result in greater integration and greater financial strength and flexibility, which would result in maximizing overall shareholders' value, and will improve the competitive position of the combined entity. It is further claimed that the proposed scheme will also result in greater efficiency in cash management of the transferee company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders' value.

13. 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:-

“30 equity shares of Rs.10/- each, credited as fully paid up, of the transferee company for every 277 equity shares of Rs.10/- each held in the transferor company no. 1.”

“448 equity shares of Rs.10/- each, credited as fully paid up, of the transferee company for every 277 equity shares of Rs.10/- each held in the transferor company no. 2.”

“1181 equity shares of Rs.10/- each, credited as fully paid up, of the transferee company for every 277 equity shares of Rs.10/- each held in the transferor company no. 3. It is further provided that since the transferor company no. 3 is a wholly owned subsidiary of the transferee company, therefore, mutual shareholding shall be cancelled and no new equity shares shall be issued.”

“42 equity shares of Rs.10/- each, credited as fully paid up, of the transferee company for every 277 equity shares of Rs.10/- each held in the transferor company no. 4.”

14. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the applicant companies.

15. The Board of Directors of the transferor companies no. 1 to 3 and the transferee company in their separate meetings held on 4th November, 2015 and 2nd November, 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 companies no. 1 to 3 and the transferee company have been placed on record.

16. The transferor company no. 1 has 03 equity shareholders and 02 unsecured creditors. All the equity shareholders and both the unsecured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In

view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company no. 1, as on 31st October, 2015.

17. The transferor company no. 2 has 10 equity shareholders and 03 unsecured creditors. All the equity shareholders and all the unsecured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company no. 2, as on 31st October, 2015.

18. The transferor company no. 3 has 07 equity shareholders and 62 unsecured creditors. All the equity shareholders and 48 out of 62 unsecured creditors, being 77% in number and 99.45% in value, have given their consents/no objections in writing to the proposed Scheme of

Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferor company no. 3 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company no. 3, as on 31st October, 2015.

19. The transferee company has 113 equity shareholders, 03 secured creditors and 359 unsecured creditors. 82 out of 113 equity shareholders, being 72.56% in number and 97.95% in value, all the secured creditors and 206 out of 359 unsecured creditors, being 57.38% in number and 96.22% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

20. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

August 03, 2016