

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

COMPANY PETITION NO.79/2008

Date of decision: 26th September, 2008.

In the matter of
The Companies Act, 1956:

And

Petitions under Sections 391/394
of the Companies Act, 1956

Scheme of Amalgamation of:

EDM Mall Management Private Limited ..Petitioner
Transferor Company

WITH

CCPL Developers Private Limited .. Petitioner
Transferee Company
Through Mr. Manoj K.Garg and
Mr.Santosh Kumar,
Advocate.
Mr.Raisuddin, Asstt.
Registrar of Companies.

GITA MITTAL, J (Oral)

1. This petition has been filed by the transferor and transferee companies under section 391/394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of M/s.EDM Mall Management Private Limited (hereinafter referred to as the 'Transferor Company') with M/s CCPL

Developers Private Limited (hereinafter referred to as the 'Transferee Company'). The registered offices of the transferor and the transferee companies are situated at New Delhi, within the jurisdiction of this court.

2. The Transferor Company was incorporated on 18th December, 2003, under the Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi as a Private Limited Company under the name and style of `EDM Mall Management Private Limited.

3. The Transferee Company was originally incorporated on 8th September, 1998, under the Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi as a Private Limited Company under the name and style of `Competent Club Private Limited which was subsequently changed to CCPL Developers Private Limited vide fresh certificate of incorporation dated 15th February, 2002.

4. Copies of the Memorandum of Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets as on 31st March, 2007 of the transferor company as well as the transferee company alongwith the report of the auditors have also been placed on record.

5. The authorized share capital of the Transferor Company as on 31st March, 2007, as certified by their Chartered Accountants, was Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the Transferor Company as on March 31, 2007 was Rs.1,50,000/- divided into 15,000 equity shares of Rs.10/- each. The audited Financial Accounts of the Transferor Company as on 31st March, 2007 have been placed on record.

6. The authorized share capital of the Transferee Company, as certified by their Chartered Accountants, is Rs.25,25,00,000 divided into 25,25,000 equity shares of Rs.100/- each. The issued/subscribed and paid up capital of the transferee company is Rs.24,89,00,000/- divided into 15,000 equity shares of Rs.10/- each. The audited Financial Accounts of the Transferee Company as on 30th April, 2007 have been placed on record.

7. Learned counsel for the petitioners submits that the transferee company had increased its authorised share capital from Rs.2,00,00,000/- to Rs.2,25,00,000/- on 13th December, 2007, after necessary approval by the

shareholders of the transferee company. This increase in share capital was duly registered with the Registrar of Companies, NCT of Delhi and Haryana after the company filed the information in the prescribed Form No.5. There has been no change in the paid up capital of the Transferee Company. It is further submitted that recording of the increase in the share capital of the transferee company in the Scheme of Amalgamation does not materially impact the scheme. However, due to inadvertence, this fact could not be pleaded in the First Motion Petition, namely CA(M) 11/2008. Applications bearing Co.Appl.No.108/2008 was filed in these proceedings with the prayer to bring on record the correct the authorised share capital of the Transferee Company. No was made to the grant of this application which was consequently allowed vide order dated 16th September, 2008. Accordingly, the share capital of the Transferee Company stands at Rs.2,25,00,000/- w.e.f. 13th December, 2007. The corrected scheme has been placed on record which has been taken up for consideration.

8. The salient features of the scheme of amalgamation are detailed in the petition and in the accompanying affidavit. It is submitted that the implementation of the Scheme would maximize the synergies, reduce costs and enable focussed management and create an investment holding company for the group. It will also consolidate the holding of the promoters for better and more efficient and economical control and business and financial conduct of the companies. It is submitted that the Amalgamation is expected to better the financial strength of the companies by creating a healthy, combined balance sheet.

9. So far as the share exchange ratio is concerned, which has been determined by a reputed firm of Chartered Accountants, the Scheme provides that upon amalgamation of the 'Transferor Company' into 'Transferee Company' pursuant to the Scheme of Amalgamation, every member of the transferor company holding fully paid up equity shares of the transferor company, shall on such date as the Board of the Transferee Company may determine, receive 2.28 number of equity shares in transferee company.

10. It has been submitted that the Scheme of Amalgamation is in the best interest of the applicant companies, its shareholders and creditors and does not in any way prejudice the interest of its constituents. It is further claimed that no investigation proceedings have been instituted or are pending in

relation to the petitioner companies under Sections 235 and 251 of the Companies Act, 1956.

11. The Board of Directors of the petitioner companies in their separate meetings held on 6th October, 2007 have approved the proposed Scheme of Amalgamation. A copy each of the said Board Resolutions has been placed on record.

12. The Transferor Company had earlier filed CA (M) 11/2008 seeking dispensation of the meeting of equity shareholders, secured and unsecured creditors. The said company has no secured and unsecured creditors. The written consents received from the two equity shareholders according their approval to the Scheme of Amalgamation had been placed on record. In view thereof, vide order dated 25th January, 2008 the Court allowed the application and dispensed with the requirement of convening and holding the meeting of equity shareholders of the Transferor Company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The Transferee Company had earlier filed CA (M) 11/2008 seeking dispensation of the requirement to convene a meeting of its equity shareholders, secured and unsecured creditors to approve the Scheme of Amalgamation. The said company has four equity shareholders, two secured and two unsecured creditors. The written consents received from the equity shareholders, secured and unsecured creditors according their approval to the Scheme of Amalgamation had been placed on record. In view thereof, vide order dated 25th January, 2008 the Court allowed the application and dispensed with the requirement of convening and holding the meeting of 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.

14. Thereafter, the petitioner companies have filed the present petitions seeking sanction of the Scheme of Amalgamation. Notices in the petitions were directed to be issued to the Official Liquidator and Regional Director, Northern Region. Citations were also directed to be published in 'Statesman (English)' and 'Jansatta (Hindi)' in terms of the Company (Court) Rules, 1959. Affidavits of service have been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also publication of citations in the above said

newspapers on 30th May, 2008. Copies of the newspaper clippings containing publication have been filed alongwith the affidavit of service in all the petitions.

15. Pursuant to the notices issued, the Official Liquidator has filed his report dated 6th August, 2008 stating that he has not received any compliant 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 or to public interest as per the second proviso of Section 394(1) of the Companies Act, 1956.

16. Shri Dhan Raj, Regional Director, Northern Region, Ministry of Corporate Affairs has filed an affidavit dated 1st/4th August, 2008, in response to the notices issued in the petition. Relying on clause 7 of the Scheme of Amalgamation, it is submitted that all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their service upon sanctioning of the Scheme of Amalgamation. He has further submitted that the petitioners have not mentioned whether they have complied with the Accounting Standard-14 issued by Institute of Chartered Accountants of India. He has prayed that the petitioner companies may be asked to furnish an undertaking that they shall comply with the accounting treatment as prescribed under Accounting Standard-14 i.e. 'Accounting for amalgamation' issued by the Institute of Chartered Accountants of India.

17. In response thereto the petitioners have filed an additional affidavit of Sh.Suresh Chand Khanna, Senior Manager (Finance) of the Transferee Company stating that the complete accounts and books of accounts of both the companies are maintained as per the prescribed accounting standard and that they shall comply with the Accounting Standard-14 as issued by the Institute of Chartered Accountant of India.

18. No objection has been received to the Scheme of Amalgamation from any other party.

19. In view of the approval accorded by the equity shareholders, secured and unsecured creditors of the petitioner companies to the proposed Scheme of Amalgamation and there being no objection to the same either by the Official Liquidator or the Regional Director, Northern Region, 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 of Transferor Company with the Transferee Company, under section 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 five weeks. 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 to law. Upon sanction becoming effective from the appointed date of amalgamation, that is 1st April, 2007, the Transferor Company shall stand dissolved without undergoing the process of winding up. 20. Learned counsel appearing for the petitioners submits that each of the companies would pay an amount of Rs.1,00,000/- towards costs, which would be deposited in the following manner: EDM Mall Management Private (I) Rs.50,000/- to be deposited with SOS Children's Villages of India, A-7, Nizammuddin West, New Delhi within two weeks. (II) Rs.50,000/- to be deposited by a bank draft payable at Patna in the name of the 'Chief Minister Relief Fund' to be deposited with Chief Minister Secretariat, 4, Deshratna Marg, Patna-800001 or send the same amount electronically to the account of 'Chief Minister Relief Fund', SBI A/c. No. 10839124928, Patna Secretariat Branch. CCPL Developers Pvt.Ltd. - (I) Rs.25,000/- to be deposited with the Advocates Welfare Fund, Delhi Bar Council (II) Rs.25,000/- to be deposited in the Common Pool Fund maintained by the Official Liquidator; (III) Rs.50,000/- to be deposited with the Delhi Bar Association Employees Welfare Fund It is directed accordingly. Petitioners to deposit the costs, as aforesaid, within 2 weeks with the organizations mentioned against their respective names. Copy of the directions with respect to the costs be communicated to the organizations concerned. Proof of deposit to be filed in the Registry. In case of non-deposit of costs, petitions be placed before court for directions.

20. Petitions are disposed of in terms of the above order. Dasti.

Sd/-
GITA MITTAL, J