

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

COMPANY PETITION NO.144/2008

Date of decision: 22nd October, 2008.

In the matter of
The Companies Act, 1956:

And

Petition under Sections 391 and
394 of the Companies Act, 1956

Scheme of Amalgamation of:

M/s.Hillstone Finance Pvt.Ltd. ...Petitioner
First Transferor Company

AND

M/s.Viveksheel Portfolio Pvt.Ltd ... Petitioner
Second Transferor Company

WITH

M/s.Bakhtawar House Pvt.Ltd. ... Petitioner
/Transferee Company

Through Mr. Rajiv Behl, Adv.
for the petitioners
Ms. Manisha Tyagi, Advocate for
the Official Liquidator
Mr. Raisuddin, Asstt. Registrar of
Companies

GITA MITTAL, J (Oral)

1. This joint petition has been filed under section 391 and 394 of the Companies Act, 1956 by the Transferor and Transferee Companies seeking sanction of the Scheme of Amalgamation of M/s.Hillstone Finance Pvt.Ltd.- the 'First Transferor company' and M/s.Viveksheel Portfolio Pvt.Ltd- the 'second transferor company' with M/s.Bakhtawar House Pvt.Ltd-the 'transferee company'.
2. The registered offices of the transferor companies and the transferee company are situated at New Delhi within the jurisdiction of this court.
3. The first transferor company-M/s.Hillstone Finance Pvt.Ltd. was incorporated under the provisions of Companies Act, 1956 as a private limited company vide certificate of Incorporation No.55-72122 dated 4th September, 1995 issued by the Registrar of Companies, Delhi and Haryana at New Delhi.
4. The second transferor company-M/s.Viveksheel Portfolio Pvt.Ltd. was incorporated under the provisions of Companies Act, 1956 as a private limited company vide certificate of Incorporation No.55-76699 dated 27th February, 1996 issued by the Registrar of Companies, Delhi and Haryana at New Delhi.
5. The transferee company was incorporated under the provisions of Companies Act, 1956 vide Certificate of Incorporation No.55-13078 dated 1st February, 1982 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi.
6. The authorized share capital of the first transferor company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the transferor company is Rs.10,59,000/- divided into 1,05,900 equity shares of Rs.10/- each.
7. The authorized share capital of the second transferor company is 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 is Rs.4,10,200/- divided into 41,020 equity shares of Rs.10/- each.

8. The authorized share capital of the transferee company is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the transferee company is Rs.12,09,600/- divided into 1,20,960 equity shares of Rs.10/- each.

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

10. The Board of Directors of both the Transferor Companies in their separate meetings held on 15th October, 2007 had approved the proposed Scheme of Amalgamation, while the Board of Directors of the transferee company in their separate meeting held on 16th October, 2007 had also approved the Scheme of Amalgamation. A copy each of the said Board Resolutions has been placed on record.

11. The Scheme of Amalgamation has been filed alongwith the petition. The salient features of the scheme are also detailed in the petition and in the accompanying affidavit. It is submitted that the transferee company and the transferor companies are engaged in similar business activities. The proposed Scheme of Amalgamation will result in leveraging the human and physical resources of all the companies which will enhance their profitability and long term viability. It will also result in usual economies of a centralized and a larger company including reduction in overheads, better and more productive utilization of various resources and reduction in procedural and administrative works costs. It is further submitted that the Scheme will contribute in furthering and fulfilling the objects of the companies concerned and in facilitating further expansion, growth and development of their business. It would also enable pooling of managerial, financial and human resources of the concerned companies for the most beneficial utilization of these factors in the amalgamated company and lead to the emergence of a single large company with a strong financial base which will be able to withstand competitive and achieve economies of scale.

12. It has been submitted by the petitioners that the Scheme of Amalgamation is beneficial to the companies, its shareholders and creditors and no person is prejudicially affected by the proposed scheme. It is further claimed that no proceedings have been instituted and/or pending in relation

to the transferor companies under Sections 235 and 250A of the Companies Act, 1956.

13. So far as the share exchange ratio is concerned, the same is not applicable in the present case for the reasons that both the transferor companies are the fully owned subsidiaries of the transferee company and as such no shares are to be allotted by the transferee company after the amalgamation.

14. The petitioner companies had earlier filed CA (M) 68/2008 seeking directions from the court to dispense with the requirement of convening the meetings of equity shareholders, secured and unsecured creditors, which are statutorily required for sanctioning the Scheme of Amalgamation. The consent/no objection to the proposed Scheme of Amalgamation received from the equity shareholders and the unsecured creditors had been placed on record. In view thereof, vide order dated 11th April, 2008 the court allowed the application and dispensed with the requirement of convening and holding the meetings of equity shareholders and unsecured creditors of the transferor and the transferee companies to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. The petitioners have no secured creditors.

15. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Notices in the petition were directed to be issued to the Official Liquidator and Regional Director, Northern Region vide order dated 21st May, 2008. Citations were also directed to be published in 'Statesman (English)' and 'Jansatta (Hindi)' in terms of the Companies (Court) Rules, 1959. Affidavit of service has 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 i.e. in the Statesman (English) dated 8th June, 2008 and in the Jansatta (Hindi) on 6th June, 2008. Copies of the newspaper clippings containing the publications have been filed alongwith the affidavit of service in the petition.

16. Pursuant to the notices issued, the Official Liquidator has filed a report dated 29th August, 2008 stating 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

companies do not appear to have been conducted in a manner prejudicial to the interest of its members or creditors.

17. In response to the notices issued in the petition, Shri Dhan Raj, Regional Director, Northern Region, Ministry of Corporate Affairs has filed a report dated 3rd September, 2008. Relying on Clause 3.1.1 (viii) of the proposed Scheme of Amalgamation, it is submitted that all the employees of the Transferor Companies 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 para 4.3 of the Scheme provides for the Accounting Treatment, but there is no mention whether the petitioner companies have complied with the Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He has prayed that petitioner companies may be asked to furnish an undertaking that they shall comply with the accounting treatment as prescribed under the Accounting Standard-14 i.e. 'Accounting for Amalgamation' issued by the Institute of Chartered Accountants of India.

18. In response thereto the petitioners have filed an affidavit dated 5th September, 2008 of Shri Ashok Kaushik, Director of the transferee company giving an undertaking that transferee company would follow Accounting Standard-14 and also other Accounting Standards issued by the Institute of Chartered Accountants of India. The objection of the Regional Director, therefore, does not survive.

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

20. In view of the approval accorded by the equity shareholders and the unsecured creditors of the petitioner companies, there being no secured creditor of the petitioner; and also the Official Liquidator to the proposed Scheme of Amalgamation and there remaining no surviving objection to the same by 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 companies 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 the sanction becoming effective from the appointed date of amalgamation, that is 1st May, 2007, the transferor companies shall stand dissolved without undergoing the process of winding up.

21. Learned counsel appearing on behalf of the petitioners submits that petitioner companies would pay an amount of Rs.5,000/- each in the Common Pool Fund maintained by the Official Liquidator. It is directed accordingly. Petitioners to deposit the costs, as aforesaid, within four weeks. Copy of the directions with respect to the costs be communicated to the office of the official liquidator. Proof of deposit to be filed in the Registry. In case of non-deposit of costs, the petition be placed before court for appropriate directions.

22. The petition is allowed in the above terms. Dasti.

Sd/-
GITA MITTAL, J