

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

+

CP No. 283 of 2007

%

DATED 27.02.2008

In the matter of the Companies Act, 1956:

Scheme of Amalgamation of:

Nikhil Overseas Pvt. Ltd. ... Petitioner/Transferor Company no.1

and

Nikhil Marketing Pvt. Ltd. ... Petitioner/Transferor Company no.2

and

DN Marketing Pvt. Ltd. ... Petitioner/Transferor Company no.3

and

Crown Textiles Pvt. Ltd. ... Petitioner/Transferor Company no.4

and

Chanana Consultants Pvt. Ltd. ... Petitioner/Transferor Company no.5

with

TPS Infrastructure Ltd. ... Petitioner/Transferee Company

Through : Mr. Rajeev K. Goel, Advocate and
Mr. R.D. Kashyap, Dy. ROC
Ms. Manisha Tyagi, Adv. for the O.L.

VIPIN SANGHI, J. (ORAL)

1. This is a petition under Sections 391 and 394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of Nikhil

Overseas Pvt. Ltd. (Transferor company no.1), Nikhil Marketing Pvt. Ltd. (Transferor company no.2), DN Marketing Pvt. Ltd. (Transferor company no.3), Crown Textiles Pvt. Ltd. (Transferor company no.4) and Chanana Consultants Pvt. Ltd. (Transferor company no.5) with TPS Infrastructure Ltd. (Transferee company).

2. The registered offices of the Transferor company no.1 and the Transferee company are situated at M-84, Commercial Complex, Greater Kailash II, New Delhi - 110048, that is, within the jurisdiction of this Court. The registered offices of Transferor companies no.2,3 & 5 are situated at 102, Maitri Apartments, Patparganj, IP Extension, Delhi 110092, that is, within the jurisdiction of this Court. The registered office of Transferor company no.4 is situated at 1362, Sector-D, Pocket-I, Vasant Kunj, New Delhi 110070, that is, within the jurisdiction of this Court.

3. The Transferor company no.1 was incorporated on 26.07.1994. The authorized share capital of the Transferor company no.1 is Rs.55,00,000/- divided into 5,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.1 is Rs.33,07,700/- divided into 3,30,770 equity shares of Rs.10/- each.

4. The Transferor company no.2 was incorporated on 25.07.1994. The authorized share capital of the Transferor company no.2 is

Rs.40,00,000/- divided into 4,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.2 is Rs.1,00,200/- divided into 10,020 equity shares of Rs.10/- each.

5. The Transferor company no.3 was incorporated on 25.07.1994. The authorized share capital of the Transferor company no.3 is Rs.30,00,000/- divided into 3,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.3 is Rs.29,13,700/- divided into 2,91,370 equity shares of Rs.10/- each.

6. The Transferor company no.4 was incorporated on 12.07.1999. The authorized share capital of the Transferor company no.4 is Rs.7,00,000/- divided into 70,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.4 is Rs.5,10,200/- divided into 51,020 equity shares of Rs.10/- each.

7. The Transferor company no.5 was incorporated on 23.08.1999. The authorized share capital of the Transferor company no.5 is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company no.5 is Rs.18,32,700/- divided into 1,83,270 equity shares of Rs.10/- each.

8. The Transferee company was incorporated on 05.02.1985. The authorized share capital of the Transferee company is Rs.11,65,00,000/- divided into 1,16,00,000 equity shares of Rs.10/- each and 5,000 preference shares of Rs.100/- each. The issued, subscribed and paid-up equity share capital of the Transferee company is Rs.7,25,93,700/- divided into 72,21,870 equity shares of Rs.10/- each and 3,750 preference shares of Rs. 100/- each.

9. The Transferor companies no.1 to 5 and the Transferee company had filed the joint 1st motion Company Application (M) No. 147/2007, which was allowed by order dated 10th October, 2007. By the aforesaid order, the requirement of conducting statutory meetings of equity shareholders and Secured and Unsecured creditors of Transferor companies no.1 to 5 and meetings of preference and equity shareholders of the Transferee company were dispensed with. However, the Transferee company was directed to convene separate meetings of their secured and Unsecured creditors.

10. Mr S.K Luthra, Advocate and Mr Nitin Mangla, Advocate were appointed as the Chairperson and the Alternate Chairperson respectively of the meeting of secured creditors of the Transferee company. The required quorum was fixed at 2 Secured creditors in number constituting 15% of the total secured debt in value. The Chairperson of the said meeting, in his report dated 27.11.2007, has reported that out of the 8 secured creditors, 4 Secured creditors

attended the meeting representing 82.18% in value of the total secured debt. The said Scheme was approved unanimously by the participants present and voting. The copy of the Chairperson's report has been filed on record.

11. Ms. Purnima Sethi, Advocate and Ms. Nidhi Gupta, Advocate were appointed as the Chairperson and the Alternate Chairperson respectively of the meeting of unsecured creditors of the Transferee company. The required quorum was fixed at 30 Unsecured creditors in number constituting 25% of the total Unsecured debt in value. The Chairperson of the said meeting, in her report dated 28.11.2007, has reported that out of the 427 unsecured creditors, 55 unsecured creditors attended the meeting either personally or through authorized representative/proxy, representing 47.72% in value of the total unsecured debt. The said Scheme was approved unanimously by the participants present and voting. The copy of the Chairperson's report has been filed on record.

12. Vide order dated 3.12.2007, citations were directed to be published in "The Financial Express" (English edition) and "Jansatta" (Hindi edition), in terms of Companies (Court) Rules, 1959. An affidavit dated 01st February, 2008 has been filed by one Mr. Naresh Kumar, the authorized signatory of the petitioner companies about the publication of the citations in "The Financial Express" (English) and "Jansatta" (Hindi) on 29th January, 2008. The said publication containing the said

citations were also produced along with the affidavit.

13. Notices were issued to the OL and the Regional Director (Northern Region) vide order dated 3.12.2007. Pursuant to the notice issued to the OL, a report dated 15.02.2008 has been filed by the Official Liquidator. The Official Liquidator states that he sought information from the petitioner company vide its letter no. OL/TECH/AMAL/92/177 dated 16.01.2008, upon which the requisite information was furnished by the Petitioner companies.

14. The OL states that he has considered the report of the Chairpersons of the meetings of secured and unsecured creditors of the Transferee company, as well as the accounts of Petitioner companies as on 31st March 2007. The OL in its report has stated that he has not received any complaint against the Scheme of Amalgamation from any person/parties interested in the scheme in any manner whatsoever, and on the basis of information submitted by the petitioner companies. Thus it is inferred by him that the affairs of the petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors, or public, and have been conducted in accordance with the provisions of Section 394(1) of the Companies Act, 1956.

15. The report has also been filed by Shri Dhan Raj, Regional Director (Northern Region) by an affidavit, dated 20.02.2008. The

Regional Director submits that the Central Government does not have any objection to the Scheme of Amalgamation/Arrangement.

16. There is no other legal impediment to sanction of the Scheme of Amalgamation which is annexed to the petition. Consequently, sanction is hereby granted to the Scheme of Amalgamation of Transferor companies no. 1 to 5 with the Transferee company, under Sections 391 and 394 of the Companies Act, 1956. The Applicant companies will comply with the statutory requirements in accordance with law. Certified copies of this order be filed with the Registrar of Companies within six weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty that is payable in accordance to law. Upon sanction becoming effective from the appointed date of amalgamation, that is 1st April 2006, the Transferor companies no. 1 to 5 stand dissolved without being wound up. The O.L. shall be paid expenses amounting to Rs.10,000/- within two weeks, to be deposited in the Common Pool Fund.

17. The petition is disposed of in terms of the above order.

February 27, 2008
aj

VIPIN SANGHI
JUDGE