

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 12.12.2012

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Company Petition No.143/2012

IN THE MATTER OF

SECTION 391 AND 394 OF THE COMPANIES ACT, 1956

AND IN THE MATTER OF

THE SCHEME OF AMALGAMATION OF

K.S.KRISHANAN ASSOCIATES PVT. LTD., a Company incorporated under the Companies Act, 1956 having its registered office at 3F/307, Mamram East Plaza, Plot C-1 & 2, LSC, Block G, Kondli, Gharoli, Delhi 110096 (hereinafter referred to as “KSKAPL)

.....PETITONER NO.1/TRANSFEROR
COMPANY NO.1.

AND

M/S KRISOAPS PVT LTD, a company incorporated under the Companies Act, 1956 having its Registered Office at 3F/307, Mamram East Plaza, Plot C-1 &2, LSC, Block G, Kondli, Gharoli, Delhi (hereinafter referred to as “KRISOAPS”)

..... PETITONER NO.2/TRANSFEROR
COMPANY NO.2

WITH

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MIL INDIA LTD, a Company incorporated under the Companies Act, 1956 having its registered office at 3F/307, Mamram East Plaza, Plot C-1 & 2, LSC, Block G, Kondli, Gharoli, Delhi-110096 (hereinafter referred to as “MIL India” or the Transferee Company”)

..... PETITOINER NO.3/TRANSFEREE COMPANY

Through: Mr.Aaditya Vijay Kumar, Advocate for the petitioner.
Mr.K.S.Pradhan, Dy. Registrar for R.D. (North)
Mr.Rajiv Bahl, Advocate for the Official Liquidator.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This Second Motion petition has been filed under Section 391 and 394 of the Companies Act 1956 by M/s K.S. Krishnan Associates Pvt Ltd and M/S Kriisoaps Pvt. Ltd. and M/S MIL India ltd, seeking sanctioning of the Scheme of Amalgamation (for short ‘Scheme’).
2. The Petitioner Companies had earlier moved Co Applications No 2153/2011 seeking dispensation of the meetings of the shareholders of the Companies, in view of the consent of the shareholders having been

filed along with the First Motion petition. Vide order dated 31.10.2011 this Court allowed the application and dispensed with the meetings of shareholders to be convened. Since the Transferor No 2 Company did not have any creditors and Transferor No 1 Company had only Unsecured Creditors and no Secured Creditors and Transferee Company had both Unsecured and Secured Creditors, this Court directed the following three separate meetings to be convened on 3.12.2011. A meeting of the Unsecured Creditor of the Transferor No 1 Company, a meeting of the Unsecured Creditors of the Transferee Company and a meeting of the Secured Creditors of the Transferee Company. Mr Syed Naqvi, Advocate was appointed as the Chairman of and Mr Yogendra Pal Singh, Advocate was appointed as the Alternate Chairman of the meeting of the Unsecured Creditor of the Transferor No 1 Company. Mr Mohit Chaudhary, Advocate was appointed as the Chairman and Mr D.K.Batra, OSD of this Court was appointed as the Alternate Chairman of the meeting of Unsecured Creditor of the Transferee Company. Mr H.S. Dhir was appointed as the Chairman and Mr Dhiraj Singh Bhandari, Registrar of this Court was appointed as the Alternate

Chairman of the meeting of the Secured Creditors of the Transferee Company.

3. In terms of the said order dated 31.10.2011 of this Court, the notice of the said meetings was published in 'Indian Express' and 'Jansattaa' Newspapers. Despite public notice, no creditors attended the meetings. Neither the Company nor the Chairmen of the meetings, appointed by the court, received any objection from any of the creditors to the proposed Scheme. All the three meetings went unattended by the creditors. The Petitioner then moved an Co Appls 356 of 2011 and Co Appls 357 of 2011 seeking recall of the order dated 31.10.2011 and dispensation of convening meetings of the creditors respectively. In the said application the Petitioners pleaded that the total liabilities of the Transferee Company was more than the total liabilities towards the creditors. Consequently, this court vide order dated 5.3.2012, dispensed with the meetings of the creditors.

4. With no objection having been received from any creditors and shareholders' consent having been filed, the Petitioner Companies filed the present petition seeking sanction of the Scheme. Vide order dated 30.3.2012 notice in the Petition was directed to be issued to the

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Regional Director, Northern Region and Official Liquidator (OL). Citations were also published in Indian Express (English) and Jansatta (Hindi) newspapers on 14.6.2012. Affidavit of service and publication have been filed by the Petitioners showing compliance regarding service of the Petition and also regarding publications of citations in the aforesaid newspapers. Copies of the newspapers containing the notice have been filed on record.

5. Pursuant to the notices issued, the OL sought information from the Petitioner Companies. Based on the information received, the OL filed his report dated 10.9.2012, wherein the OL has stated that he had not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and the affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

6. Sh. Rakesh Chandra, Regional Director, Northern Region, Ministry of Corporate Affairs, has filed his affidavit in response to the notice issued by this court. In his affidavit, the RD has commented on continuity of service of the employees of the two Transferor Companies

post merger, with the Transferee Company. It is seen that in paragraph 9 of the Scheme, there is a provision for continuity of service of employees with the Transferee Company without any break. RD has also observed that in none of the three meetings of the creditors, directed to be the convened on 5.12.2011, any creditor attended the meetings. In this regard, vide order dated 5.3.2012, this Court had already dispensed with the meetings of the creditors to be reconvened, in view of the assets of the Transferee Company being more than its total liabilities towards the creditors.

7. R.D. has also observed that the Scheme does not mention about the Accounting Standard -14, issued by the Institute of Chartered Accountants of India to be followed by the Transferee Company. The Petitioners, in their affidavit filed in response to the above report by RD, have undertaken to comply with the applicable accounting standard.

8. It is further observed by the R.D. in his affidavit that there is a prima facie contravention of Section 297 of the Companies Act, 1956, in view of a related party transaction in Transferee Company. The Petitioners, in their affidavit filed in response to the above report by R.D., have stated that Transferee Company shall rectify, if any violation

is found. It is further stated in the hearing that no notice has been received by the Company of any violation and the RD's observation is only an apprehension.

9. No objection has been received to the Scheme from any other party. Mr Sridhar Krishnan, the authorised representative of the Petitioner Companies, has filed his affidavit on 5.9.2012, confirming that none of the Petitioner Companies have received any objection to the Scheme pursuant to the citations published in the newspapers.

10. As far as share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme coming into effect, the Transferee Company shall issue shares in the following manner:

Transferor No 1 Company

Transferee Company shall issue and allot to the equity shareholders of Transferor No 1 Company, 217.66 equity shares of the face value of Rs 10/- each of Transferee Company, for every 1 (one) equity share of the face value of Rs 100/- each in Transferor No 1 Company.

Transferor No 2 Company

Transferee Company shall issue and allot to the equity shareholders of Transferor No 1 Company, 2.89 equity shares of the face value of Rs

10/- each of Transferee Company, for every 1 (one) equity share of the face value of Rs 100/- each in Transferor No 1 Company.

11. In view of the approval accorded by the shareholders of the Petitioner Companies and reports filed by the OL and RD, there appears to be no impediment to grant of sanction of Scheme. Consequently, the sanction is hereby granted to the Scheme of Amalgamation 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 the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of Section 391 and 394 of the Companies Act, 1956, and in terms of the Scheme, the whole or part of the undertakings, the properties, rights and powers of Petitioner No 1 and 2 be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of Petitioner No 1 and 2 be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, Petitioner No 1 and 2 shall stand dissolved without winding up. It is however, clarified that this order will not be construed as an order granting

exemption from payment of stamp duty or taxes, or any other charges, if payable in accordance with law, or permission/compliance with any other requirement which may be specifically required under any law.

12. Learned Counsel for the Petitioner Companies states that the Petitioner Companies would voluntarily deposit a sum of Rs 1,00,000/- with the Common Pool of the Official Liquidator within four weeks from today.

13. The Petition is allowed in the above terms.

INDERMEET KAUR, J

DECEMBER, 12, 2012

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