

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 25/2015

Reserved on 7th August, 2015
Date of pronouncement: 9th September, 2015

In the matter of

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

And

**Petition under Section 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Magic Tradelink Private Limited

Petitioner/Transferor Company No. 1

Vikas Polymerland Private Limited

Petitioner/Transferor Company No. 2

WITH

Moonlite Technochem Private Limited

Petitioner/Transferee Company

**Through Ms. Maneesha Dhir, Mr.
Hemant Sharma & Mr. Milan Singh
Negi, Advocates for the petitioners
Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director
Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Magic Tradelink Private Limited (hereinafter referred to as the transferor company no. 1) and Vikas

Polymerland Private Limited (hereinafter referred to as the transferor company no. 1) with Moonlite Technochem Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company no. 1 was originally incorporated under the Companies Act, 1956 on 31st July, 1987 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Jai Ganesh Chit Fund Private Limited. The company changed its name to Magic Tradelink Private Limited and obtained the fresh certificate of incorporation on 6th August, 2010.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 17th August, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Moonlite Petro Products Private Limited. The company changed its name to Vikas Polymerland Private Limited and obtained the fresh certificate of incorporation on 21st October, 2009.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 9th November, 1995 with the Registrar of

Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Akshatha Management Consultants Private Limited. The company changed its name to Akshatha Services Private Limited and obtained the fresh certificate of incorporation on 29th May, 2001. The company again changed its name to Moonlite Technochem Private Limited and obtained the fresh certificate of incorporation on 29th December, 2008.

6. The present authorized share capital of the transferor company no.1 is Rs.15,00,000/- divided into 15,000 equity shares of Rs.100/- each. The present issued, subscribed and paid-up share capital of the company is Rs.13,80,000/- divided into 13,800 equity shares of Rs.100/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.10,50,000/- divided into 1,05,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.4,50,00,000/- divided into 45,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the

company is Rs.3,14,91,400/- divided into 31,49,140 equity shares of Rs.10/-.

9. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 155/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2012, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

10. 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 petition and the accompanying affidavit. It is submitted by the petitioners that the petitioner companies are directly or indirectly connected to the business of dealing in petrochemical products and their amalgamation will increase the valuation of their business and also result in optimum utilization of capital, assets and facilities. It is claimed that the proposed merger will lead to focused leadership and management attention and shall increase their financial strength.

11. 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:-

“645 equity share of Rs.10/- each at a premium of Rs.7/- each in the transferee company for every 01 (one) equity share of Rs.100/- each held in the transferor company no. 1.”

“148 equity share of Rs.10/- each at a premium of Rs.7/- each in the transferee company for every 01 (one) equity share of Rs.10/- each held in the transferor company no. 2.”

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

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 19th September, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

14. The petitioner companies had earlier filed CA (M) No. 155/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 10th November, 2014, this court allowed the application and dispensed with the requirement of

convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor companies, there being no secured creditors of the transferor companies, and equity shareholders of the transferee company, there being no unsecured creditors of the transferee company, and directed convening of a meeting of the secured creditors of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

15. The Chairperson of the ordered meeting of the secured creditors of the transferee company have filed her report stating that the meeting was duly held on 20th December, 2014, as directed, and that the Scheme of Amalgamation has been approved unanimously by the secured creditors of the transferee company, present and voting, in the meeting.

16. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 21st January, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Statesman' (English) and 'Jansatta' (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 4th February, 2015. Copies of

the newspaper clippings containing the publications have been filed along with the affidavit of service.

17. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 5th May, 2015 wherein he has stated 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 their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

18. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 6th May, 2015. Relying on Clause 2.18 of Part-II of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 1.1 of Part-IV of the Scheme, it has been stated that the amalgamation would be accounted for by applying the 'Purchase method' of accounting as contained in Accounting Standard-14 issued by the Institute of Chartered

Accountants of India. He further submitted that in Clause 3 of Part-IV of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies shall stand dissolved without the process of winding up.

19. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 7th May, 2015 of Sh. Vikas Garg, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 4th February, 2015.

20. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, 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 under Sections 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 30 days. 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 with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2014, the transferor companies no. 1 & 2 shall stand dissolved without undergoing the process of winding up.

21. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner companies states that the same is acceptable to her. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator within two weeks.

22. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 09, 2015