IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 236/2014

Reserved on 10th July, 2015
Date of pronouncement: 18th August, 2015

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

And

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

Scheme of Amalgamation of:

INC Research CDS Services Private Limited
Petitioner/Transferor Company No. 1

Trident Clinical Research India Private Limited
Petitioner/Transferor Company No. 2

WITH

Kendle India Private Limited
Petitioner/Transferee Company

Through Mr. Mohit Chadha and Mr.Ishwar, Advocate for the petitioners
Ms. Aparna Mudiam, AROC for the Regional Director
Mr. Kanwal Choudhary, Advocate for the Official Liquidator

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of INC Research CDS Services Private Limited (hereinafter referred to as the transferor company no. 1) and Trident Clinical Research India Private Limited (hereinafter referred to as the transferor company no. 2) with Kendle India 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 21st May, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of INC GVK Bio Private Limited. The company changed its name to INC Research CDS Services Private Limited and obtained the fresh certificate of incorporation on 13th March, 2012.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 12th September, 2006 with the Registrar of Companies, Maharashtra at Mumbai. Thereafter, the company shifted its registered office from the State of Maharashtra to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 9th January, 2013.

5. The transferee company was incorporated under the Companies Act, 1956 on 16th December, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The present authorized share capital of the transferor company no.1 is Rs.2,00,00,000/- each divided into 20,00,000 equity shares of

Rs.10/- each. The issued, subscribed and paid-up share capital of the companies are Rs.1,49,60,000/- each divided into 14,96,000 equity shares of Rs.10/- each fully paid-up.

7. The present authorized share capital of the transferor company no.2 is Rs.10,00,000/- each divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies are Rs.7,21,800/- each divided into 72,180 equity shares of Rs.10/- each fully paid-up.

8. The present authorized share capital of the transferee company is Rs.10,00,000/- each divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies are Rs.10,00,000/- each divided into 1,00,000 equity shares of Rs.10/- each.

9. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2013, of the transferor and transferee companies, along with the report of the auditors, have 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 claimed by the petitioners that the amalgamation would result in elimination of the overhead outstanding and other expenses and it will ensure optimum utilization of available services and resources. It is further claimed that the amalgamation will enable pooling of resources of both the companies to their common advantage, resulting in more productive utilization of the said resources, cost & operational efficiencies which would be beneficial for all stakeholders.

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:

> "01 equity share of Rs.10/- each fully paid up of the transferee company for every 65 equity shares of Rs.10/- each fully paid up held in the transferor company no. 1."
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> "01 equity share of Rs.10/- each fully paid up of the transferee company for every 10 equity shares of Rs.10/- each fully paid up held in the transferor company no. 2."

12. It has been submitted by the petitioners that no proceedings under Sections 235 to 250A of the Companies Act, 1956 are pending against the transferor and transferee companies.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 3rd January, 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. 55/2014 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 26th March, 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 and transferee companies, there being no secured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

15. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 21st April, 2014, 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 'Financial Express' (English) and ‘Dainik Jagran’ (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator

and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 1st May, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

16. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Dy. Official Liquidator has filed a report 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.

17. The Dy. Official Liquidator in Para 17 of his report has submitted that the appointed date, as mentioned in the Scheme, is 01.04.2013 whereas in Para 17.A of the petition, it has been mentioned as 01.04.2012. He, therefore, prays that a clarification may be sought from the petitioners in this regard. In response to the aforesaid observation, learned counsel for the petitioners has submitted that due to typographical error, the appointed date has wrongly been mentioned in the petition as 01.04.2012 and the same may be read as 01.04.2013. In

view of the aforesaid, the observation raised by the Official Liquidator stands satisfied.

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 5th September, 2014. Relying on Clause 7.1 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.

19. Although the Regional Director in his report has not raised any objection to the proposed Scheme, but he has raised certain observations in paras 4, 5, 6 & 8 of his report. In para 4 of his report he has stated that the as per the Scheme of Amalgamation, there is no mention regarding compliance procedure under Accounting Standard-14 as prescribed under the Companies (Accounting Standards) Rules, 2006. In para 5 & 6 of his report he has stated that the authorized share capital of the transferee company is not sufficient to allot shares to the transferor companies, therefore, the transferee company may be advised to comply with the provisions of the Companies Act, 2013 with regard to increase in the authorized share capital and change in its Memorandum of Association. In para 8 of his report he has stated that the petitioner

company may be advised to furnish the undertaking for necessary compliances from the Reserve Bank of India as required under FEMA with regard to the shares held by the foreigner/NRI. In reply to aforesaid, the petitioner companies have filed an affidavit dated 7th April, 2015 of Mr. Shabbir Rangwala, Director of the petitioner companies whereby the transferee company has undertaken to comply with the procedures under Accounting Standard-14 as prescribed under the Companies (Accounting Standards) Rules, 2006 and has also undertaken to comply with all the applicable compliances as required by the RBI under FEMA, if and when they arise in respect of the foreign shareholding. Further, it is submitted that as per the Scheme, the authorized share capital of the transferor companies shall stand merged in the authorized share capital of the transferee company and furthermore, if required, the transferee company shall take necessary steps to further increase and alter its authorized share capital suitably. In view of the above, the observations raised by the Regional Director stand satisfied.

20. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 7th April, 2015 of Mr. Shabbir Rangwala, Director 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 1st May, 2014.

21. 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, 2013, the transferor companies nos. 1 & 2 shall stand dissolved without undergoing the process of winding up.

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

SUDERSHAN KUMAR MISRA, J.

August 18, 2015