

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 51/2015

Reserved on 14th 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

**Application under Sections 391 & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

N V Resorts Private Limited

Applicant/Transferor Company

WITH

T & D Trading Private Limited

Non-Applciant/Transferee Company

**Through Mr. Kunal Vajani & Mr. Aman
Gandhi, Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Sections 391 & 394 of the Companies Act, 1956 by the applicant/transferor company seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, to consider and approve, with or without modification, the proposed Scheme of Amalgamation of N V Resorts Private Limited (hereinafter referred to as the applicant/transferor company) with T & D Trading Private Limited (hereinafter referred to as the transferee company).

2. The registered office of the applicant/transferor company is situated at New Delhi, within the jurisdiction of this Court. However, the registered office of the transferee company is situated at Mumbai, outside the jurisdiction of this Court. Learned counsel for the applicant submitted that separate application filed by the transferee company in the court of competent jurisdiction for sanction of the Scheme of Amalgamation in respect of the transferee company has been allowed.

3. The applicant/transferor company was incorporated under the Companies Act, 1956 on 26th August, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The authorized share capital of the applicant/transferor company is Rs.35,00,00,000/- divided into 3,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.32,38,51,000/- divided into 3,23,85,100 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the applicant/transferor company and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2014, of applicant/transferor company and the transferee company, along with the report of the auditors, have also been filed.

6. 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 application and the accompanying affidavit. It is submitted by the applicant that the transferor company is a wholly owned subsidiary of the transferee company and in order to reduce administrative, financial and operational costs due to multiple entities and for synergies of operations, it is proposed to merge the transferor company into the transferee company. It is claimed that the Scheme will result in rationalization and standardization of the business processes, economies of scale and consolidation of opportunities offered by the Scheme which will contribute to make the transferee company more profitable, thereby further enhancing overall shareholders value.

7. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the entire share capital of the transferor company shall stand cancelled, and no new shares shall be issued or payment made in cash or whatsoever by the transferee company in lieu of such shares of the transferor company.

8. It has been submitted by the applicant that no proceedings under Sections 235 and 250A of the Companies Act, 1956 are pending against the applicant/transferor company.

9. The Board of Directors of the applicant/transferor company and the transferee company in their separate meetings held on 15th January, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of applicant/transferor company and the transferee company have been placed on record.

10. The applicant/transferor company has 02 equity shareholders. Both the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the applicant/transferor company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the applicant/transferor company, as on 2nd December, 2014.

11. The applicant/transferor company has 96 unsecured creditors, as on 2nd December, 2014. The consents of these unsecured creditors have not been placed on record. Learned counsel for the applicant has submitted that these unsecured creditors are revolving creditors and the sums payable to them shall be paid in ordinary course of business of the

applicant/transferor company. He further submitted that post amalgamation, the rights of the unsecured creditors of the applicant/transferor company are not affected since there will be no reduction in their claims and the assets of the transferee company will be more than sufficient to discharge their claims. In support of his submission, learned counsel has placed on record two certificates both dated 4th July, 2015 issued by Mahesh Kumar Jain & Co., Chartered Accountants, showing status of the unsecured creditors of the applicant/transferor company as on 2nd December, 2014 & 30th June, 2015 respectively. He has submitted that a comparison from the status, as it prevails on 2nd December, 2014 to 30th June, 2015, shows considerable reduction in the amounts payable to the unsecured creditors, and, in fact, complete payment also in certain cases. Learned counsel also placed on record an affidavit-cum-undertaking of Mr. H. Subramanian, Director of the applicant/transferor company whereby the applicant company has undertaken to give individual notice of the date of final hearing of the Second Motion to all its unsecured creditors as on the date on which the order for final hearing of the Second Motion is passed, by Registered Post A.D. and, has further undertaken to publish the notice of the date of final hearing of the Second Motion in two local newspapers i.e. "The Statesman" (English) and "Jansatta" (Hindi), both having circulation in New Delhi. Learned counsel has submitted that corresponding First Motion Petition of the transferee company filed before the Bombay High

Court has also been allowed, and meeting in that behalf have also been dispensed with, *inter alia*, on the similar undertaking of the applicant, which was duly accepted by the Bombay High Court. Learned counsel, therefore, prays to dispense with the requirement of convening the meeting of the unsecured creditors of the applicant/transferor company.

12. A perusal of the two certificates both dated 4th July, 2015 issued by Mahesh Kumar Jain & Co., Chartered Accountants shows that the amounts are being paid to the unsecured creditors in the ordinary course of business as and when they are due and that the rights of the unsecured creditors of the applicant/transferor company are not affected and that there is no likelihood that any creditor of the applicant company would be prejudiced as a result of the Scheme of Amalgamation being sanctioned. The undertaking given by the applicant is accepted. The applicant/transferor company shall issue individual notice of the date of final hearing of the Second Motion to all its unsecured creditors by Registered Post A.D. and shall also publish the notice of the date of final hearing of the Second Motion in the Delhi editions of newspapers "Statesman" (English) and "Jansatta" (Hindi). In view of the submissions made at the Bar; the undertaking filed by the applicant/transferor company and the orders passed the Bombay High Court in respect of the transferee company, the requirement of convening the meeting of the unsecured creditors of the applicant/transferor company, to consider,

and, if though fit, approve, with or without modification, the proposed Scheme of Amalgamation, is dispensed with.

13. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

August 18, 2015