

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 36/2015

Reserved on 10th April, 2015
Date of pronouncement: 5th May, 2015

In the matter of

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

And

**Application under Section 391 to 394 of the
Companies Act, 1956 read with Rules 6 & 9 of
the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Century Seeds Private Limited

Applicant/Transferor Company

WITH

HM.Clause India Private Limited

Non-Applicant/Transferee Company

**Through Mr Niraj Kumar and Mr. A.S.
Gyani, Advocates for the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Section 391 to 394 of the Companies Act, 1956 read with Rules 6 and 9 of the Companies (Court) Rules, 1959 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 Century Seeds Private Limited (hereinafter referred to as the applicant/transferor company) with HM.Clause India Private Limited (hereinafter referred to as the transferee company) and to dispense with the requirement of the transferee company to approach the

High Court of Andhra Pradesh, its jurisdictional High Court, for seeking sanction of Scheme of Amalgamation.

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 Telangana, outside the jurisdiction of this Court.

3. The applicant/transferor company was incorporated under the Companies Act, 1956 on 16th April, 1982 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the applicant/transferor company is Rs.50,00,000/- divided into 50,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.21,10,000/- divided into 21,100 equity shares of Rs.100/- 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 and 30th June, 2014, of applicant/transferor company and the transferee company respectively, 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. It is claimed that the proposed amalgamation will result in reduction in overheads, administrative, managerial and other expenditure, and bring about operational rationalization, and organizational efficiency and synergy. It is further claimed that the proposed amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the transferee company and the transferor company and eliminate multiple book record-keeping.

7. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company is a wholly owned subsidiary of the transferee company, and the entire equity share capital of the transferor company is held by the transferee company. Therefore, neither any consideration shall be paid or shares shall be issued/allotted by the transferee company to the shareholders of the transferor company and the shares so held by the transferee company shall stand cancelled and extinguished pursuant to implementation of the Scheme.

8. It has been submitted by the applicant that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and under any applicable provisions of the Companies Act, 2013 are pending against the applicant/transferor company.

9. The Board of Directors of the transferor and transferee companies in their separate meetings held on 20th January, 2015 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.

10. The applicant/transferor company has 02 equity shareholders and 44 unsecured creditors. Both the equity shareholders and all the unsecured creditors 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 meetings of the equity shareholders and unsecured creditors 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 30th January, 2015.

11. The applicant also seeks dispensation of requirement of the transferee company to approach the High Court of Andhra Pradesh for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders since applicant/transferor company is a wholly owned subsidiary of the transferee company; no new shares will be issued by the transferee company in lieu of the shares of the transferor company; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. It is further submitted that both the companies are profit making companies and have sufficient reserves and surplus and high positive net worth and the aggregate of assets of both the companies are more than sufficient to meet their respective and combined aggregate liabilities towards their respective creditors. Therefore, the rights of the creditors of the transferee company will not be adversely affected. The applicant has also placed on record the certificate from GVR & Co., Chartered Accountants, showing the positive net worth of the transferor and transferee companies.

12. In support of his submissions, learned counsel placed reliance on the judgments of various High Courts in the matters of **Auto Tools India**

Pvt. Ltd. [CA(M) 41/2012], **Sharat Hardware Industries Pvt. Ltd.** (1978), 48 Com.Cas 23 (Delhi), **Mahaamba Investments Ltd. V. IDI Limited** (2001) 105 Com Cas. 16 (Bom.), and **Andhra Bank Housing Finance Ltd.** (2004) 118 Com.Cas. 295(AP), wherein the courts, under similar circumstances, had dispensed with the requirement of the transferee company to approach the court of competent jurisdiction for sanction of the Scheme.

13. I have carefully considered the aforesaid case laws cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of this settled legal position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach the High Court of Andhra Pradesh under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

14. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

May 05, 2015