

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 588/2014

Reserved on 21st July, 2015

Date of pronouncement: 28th 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 read with Rule 9 of the
Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Kohinoor Club Private Limited

Petitioner/Transferor Company

WITH

T.S. Kisan and Company Private Limited

Non-Petitioner/Transferee Company

**Through Mr. Tariq Muneer, Advocate
for the petitioner**

**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 petition has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the petitioner/transferor company seeking sanction of the Scheme of Amalgamation of Kohinoor Club Private Limited (hereinafter referred to as the petitioner/transferor company) with T.S. Kisan and

Company Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the petitioner/transferor company and the transferee company are situated at New Delhi, within the jurisdiction of this court.

3. The petitioner/transferor company was incorporated under the Companies Act, 1956 on 26th August, 2002 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 18th February, 1982 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the petitioner/transferor company was Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company was Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company was Rs.75,00,000/- divided into 75,000 equity shares of Rs.100/- each.

The issued, subscribed and paid-up share capital of the company was Rs.36,15,600/- divided into 36,156 equity shares of Rs.100/- each.

7. Copies of the Memorandum and Articles of Association of the petitioner/transferor company and the transferee company have been filed on record with the application, being CA(M) 127/2014, earlier filed by the petitioner. The audited balance sheets, as on 31st March, 2013, of the petitioner/transferor company and the transferee company, along with the report of the auditors, had also been filed.

8. 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 petitioner that the transferor company is a wholly owned subsidiary of the transferee company and the proposed Scheme will result in pooling of resources and infrastructure of the entities to their common advantage, resulting in a more productive utilization of the resources, costs and operational efficiencies, faster and effective decision, making and its implementation, which would be beneficial for all stakeholders. It is claimed that proposed amalgamation will result in greater efficiency in cash management of the transferee company and unfettered access to cash flow generated by the combined business which can be deployed

more efficiently to fund organic and inorganic growth opportunities, and to maximize shareholder value.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall not be required to issue any shares, since the transferor company is a wholly owned subsidiary of the transferee company. Accordingly, all the equity shares held by the transferee company in the transferor company shall be cancelled.

10. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/transferor company and the transferee company.

11. The Board of Directors of the petitioner/transferor company in their meeting held on 18th August, 2014 have unanimously approved the proposed Scheme of Amalgamation. A copy of the Resolution passed at the meeting of the Board of Directors of the petitioner/transferor company has been placed on record.

12. The petitioner/transferor company had earlier filed CA (M) No. 127/2014 seeking directions of this court to dispense with the requirement of convening the meetings of its shareholders, secured and

unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 12th September, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meeting of the equity shareholders of the petitioner/transferor company, there being no secured or unsecured creditor of the petitioner company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. Vide the said order, this Court also dispensed with the requirement of filing a separate petition by the transferee company.

13. The petitioner/transferor company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 24th September, 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 'Statesman' (English) and 'Veer Arjun' (Hindi) editions. An affidavit has been filed by the petitioner showing compliance regarding publication of citations in the aforesaid newspapers on 10th November, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner/transferor company. Based on the

information received, the Dy. Official Liquidator has filed his report dated 26th November, 2014 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 petitioner/transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. 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 1st December, 2014. Relying on Clause 8.1 of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 13.1 of the Scheme, it has been stated that the transferee company shall account for the amalgamation in its books by "Pooling of Interest" method under the provisions of Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He further submitted that in terms of Clause 15.1 of the Scheme, it has been stated that upon the Scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. The Regional Director, in para (v) of his report, has further submitted that both the companies have not filed their balance sheets for the financial year ending 31.03.2014. He, therefore, prays that the petitioner companies may be directed to file their due balance sheets. In response to the aforesaid observation of the Regional Director, the petitioner/transferor company has filed the affidavit dated 29th May, 2015 of Mr. Jitendra Kumar Thapar, Director of the petitioner/transferor company stating that the petitioner company is in the process of amalgamation and merger with its parent company, because of which balance sheet for the year ending 31.03.2014 has not been filed, to avoid duplication of effort and retain consistency with the present amalgamation proceedings. The company, however, undertakes to submit consolidated balance sheet for the year ending on 31.03.2014 immediately after obtaining formal order of amalgamation and merger. In view of the above, the observation raised by the Regional Director, Northern Region does not survive.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner company, in the affidavit dated 3rd December, 2014 of Mr. Jitendra Kumar Thapar, Director of the petitioner/transferor company, has submitted that neither the petitioner

company nor their counsel have received any objection pursuant to citations published in the newspapers on 10th November, 2014.

18. Considering the approval accorded by the equity shareholders of the petitioner/transferor company to the proposed Scheme of Amalgamation and the affidavits filed by the Official Liquidator and the Regional Director (Northern Region) 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 company 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, that is 1st April, 2013, the transferor company shall stand dissolved without undergoing the process of winding up.

19. Learned counsel for the Official Liquidator prays that costs may be imposed on the petitioner company in view the fact that the matter has involved examination of extensive records and prioritized hearings.

Learned counsel for the petitioner states that the petitioner company is ready and willing to pay cost of Rs.50,000/-. Looking to the circumstances, the petitioner company shall deposit cost of Rs.50,000/- in the Common Pool Fund of the Official Liquidator within four weeks from today.

20. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

August 28, 2015