**IN THE HIGH COURT OF DELHI**
COMPANY PETITION NO. 314/2015

**Reserved on 9th December, 2015**
**Date of pronouncement: 23rd December, 2015**

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

And

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

Scheme of Amalgamation of:

N.H.M. Marketing Private Limited
Petitioner/Transferor Company No. 1

Global World Power Projects Private Limited
Petitioner/Transferor Company No. 2

WITH

Lambodar Projects Private Limited
Petitioner/Transferee Company

**Through Mr. Akhil Sibal with Ms.Shraddha Deshmukh, Advocates for the petitioners**
**Mr. Sanjay Bose, Dy. 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 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of N.H.M. Marketing Private Limited (hereinafter referred to as the transferor company No. 1) and Global World Power Projects Private Limited (hereinafter referred to as the

transferor company No. 2) with Lambodar Projects 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 incorporated under the Companies Act, 1956 on 9th October, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 20th October, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 13th May, 2003 with the Registrar of Companies, Maharashtra at Mumbai under the name and style of Lambodar Sugars Private Limited. 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 8th July, 2013. Thereafter, the company changed its name to Lambodar Projects Private Limited and obtained the fresh certificate of incorporation on 16th September, 2013.

6. The present authorized share capital of the transferor company no.1 is Rs.23,00,000/- divided into 2,30,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.21,00,000/- divided into 2,10,000 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.4,58,80,000/- divided into 45,88,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.15,07,00,000/- divided into 1,50,70,000 equity shares of Rs.10/- each. The issued share capital of the company is Rs.6,41,10,000/- divided into 64,11,000 equity shares of Rs.10/- each. The subscribed and paid-up share capital of the company is Rs.6,15,82,560/- divided into 61,58,256 equity shares of Rs.10/- each.

9. Copies of Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, 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 submitted by the petitioners that it is proposed to downward integrate the business activities of the companies in one company to create a large unified entity thereby creating various areas of work facilities for the transferee company and enabling optimal utilization of resources and synergy of operations, thus, resulting in better profitability, increased fund mobilization capacity and downwards business integration. It is claimed that the proposed amalgamation will economize administrative costs of running three companies and will also achieve better administration, operations and management by consolidation, synchronization, synergisation, and restructuring and to have optimum and efficient utilization of capital, resources, assets and facilities.

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 of the transferee company for every 3.6 equity shares of Rs.10/- each fully paid up held in the transferor company no. 1."

> "06 equity shares of Rs.10/- each of the transferee company for every 01 equity share 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 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 16th August, 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. 167/2014 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 23rd December, 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 2nd July, 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 'Financial Express' (English) and ‘Veer Arjun’ (Hindi) 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 18th July, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

16. 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 17th November, 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.

17. 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 2nd December, 2015. Relying on Clause 4.2 (K) 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 further submitted that in Clause 4.12 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.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 3rd December, 2015 of Sh. Surendra Kumar Sharma, authorized signatory of the transferee company, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 18th July, 2015.

19. Considering the approval accorded by the 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, 2015, the transferor companies no. 1 & 2 shall stand dissolved without undergoing the process of winding up.

20. 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 him. As already directed vide order dated 09.12.2015, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

21. The petition is allowed in the above terms.

**Dasti.**

**SUDERSHAN KUMAR MISRA, J.**

**December 23, 2015**