

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 738/2014

Reserved on 25th February, 2015
Date of pronouncement: 17th March, 2015

In the matter of

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

And

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

Scheme of Amalgamation of:

M/s. Madhusudan Corporate Advisors Private Limited
Petitioner/Transferor Company No. 1

M/s. Keshav Techinfo Private Limited
Petitioner/Transferor Company No. 2

WITH

M/s. Girdhari Fin-Lease Private Limited
Petitioner/Transferee Company

**Through Mr. P. K. Mittal, Advocate for
the petitioners**

**Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director**

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 M/s. Madhusudan Corporate Advisors Private Limited (hereinafter referred to as the transferor company no. 1) and M/s. Keshav Techinfo Private Limited (hereinafter referred to as the

transferor company no. 2) with M/s. Girdhari Fin-Lease 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 7th December, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Vee Kay Canpack Private Limited. The company changed its name to Madhusudan Corporate Advisors Private Limited and obtained the fresh certificate of incorporation on 12th January, 2011.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 18th September, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Osmium Construction Private Limited. The company changed its name to Keshav Techinfo Private Limited and obtained the fresh certificate of incorporation on 12th January, 2011.

5. The transferee company was incorporated under the Companies Act, 1956 on 26th April, 1996 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.3,00,000/- divided into 30,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,00,000/- divided into 30,000 equity shares of Rs.10/- each fully paid-up.

7. The present authorized share capital of the transferor company no.2 is Rs.3,00,000/- divided into 30,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,00,000/- divided into 30,000 equity shares of Rs.10/- each fully paid-up.

8. The present authorized share capital of the transferee company is Rs.60,00,000/- divided into 6,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.55,02,000/- divided into 5,50,200 equity shares of Rs.10/- each fully paid-up.

9. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 149/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, had 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 that the proposed amalgamation will result in pooling of financial, commercial and other resources, economies of scale and reduction of overheads of the petitioner companies. It is further claimed that with enhanced capabilities and resources at its disposal, the transferee company will have greater flexibility and strength to meet requirements for further growth of business activities.

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 company nos. 1 & 2 in the following ratio:

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 04 equity shares of Rs.10/- each held by the shareholders in the transferor company no. 1.”

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 04 equity shares of Rs.10/- each held by the shareholders 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 transferor and transferee companies.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 10th October, 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 had been placed on record in CA(M) 149/2014.

14. The petitioner companies had earlier filed CA (M) No. 149/2014 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 14th November, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor and transferee companies, there being no secured and unsecured 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 26th November, 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. The petitioners have filed the affidavit showing publication of citations in the aforesaid newspapers on 25th December, 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 Official Liquidator has filed a report dated 2nd February, 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 no. 1 & 2 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. However, in Para 17 of his report, the Official Liquidator has submitted that in consequence of amalgamation, the share capital of the transferee company will be reduced to the extent of shareholding of transferor companies which is 99.96% shareholding in the transferee company. Accordingly, after the allotment of shares to the shareholders of the transferor companies, the post merger paid up share capital of the transferee company will be Rs.55,000/- which is less than the minimum statutory requirement of Rs.1,00,000/-. He, however, submitted that the transferee company has given an undertaking that the transferee

company shall increase its paid up share capital so that the post merger share capital of the company be more than the minimum paid up share capital as per the provisions of the Companies Act, 2013. In view of the above, the observation raised by the Official Liquidator does not subsist.

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 18th February, 2015. Relying on Clause 9 of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies no. 1 & 2 shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 6.9 of Part-III the Scheme, it has been stated that reserves of the transferor companies will be amalgamated with those of the transferee company in the same form as they appeared in the financial statements of the transferor companies in terms of the Accounting Standards issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 21.2 of Part-III of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies no. 1 & 2 shall stand dissolved without the process of winding up.

18. The Regional Director in Para 10 of his report has, however, submitted that as per the Memorandum of Association of the transferee

company, the main objects of the transferee company are to carry on and undertake the business of financing, leasing, and hire purchase etc., whereas there is no mention whether the said company is registered with Reserve Bank of India as NBFC, if so, whether it has obtained no objection from the RBI with regard to proposed scheme of amalgamation. He further submitted that in the reply dated 16.02.2015, the petitioner companies have submitted that the transferee company, being non banking finance company, is registered with the Reserve Bank of India and it has served a copy of petition to the RBI on 24.12.2014 mentioning that the applicant companies have moved a petition before the High Court of Delhi for the purpose of approval of the Scheme of Amalgamation and also categorically mentioned that in case the RBI has any observations/comments, the same may be communicated to the Regional Director within 15 days of the submission of the said letter. The Regional Director, however, confirmed that he has not received any observations/comments from the RBI till the date of filing of his report. In view of the above, the observation raised by the Regional Director does not subsist.

19. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 29th January, 2015 of Ms. Richa Agrawal, Director of the petitioner companies, have submitted that the petitioner companies have not

received any objection pursuant to the citations published in the newspapers on 25th December, 2014.

20. Considering the approval accorded by the equity shareholders 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, 2014, the transferor companies no. 1 & 2 shall stand dissolved without undergoing the process of winding up.

21. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

March 17, 2015