

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 747/2014

Reserved on 17th March, 2015
Date of pronouncement: 14th May, 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**

Scheme of Amalgamation of:

ANM Enginnering & Works Private Limited

Petitioner/Transferor Company No. 1

Digivision Holdings Private Limited

Petitioner/Transferor Company No. 2

WITH

MN Ventures Private Limited

Petitioner/Transferee Company

**Through Mr. Bishwajit Bhattacharya,
Sr. Advocate with Ms. Shilpi Jain and
Mr. Sharad Vaid, Advocates for the
petitioners**

**Mr. Atma Sah, Assistant 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 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of ANM Enginnering & Works Private Limited (hereinafter referred to as the transferor company no. 1) and Digivision Holdings Private Limited (hereinafter referred to as the

transferor company no. 2) with MN Ventures 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 11th August, 2008 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 11th February, 2011 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 1st April, 2010 with the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh under the name and style of Infotel WiMax Enterprises Private Limited. The company changed its name to MN Ventures Private Limited and obtained the fresh certificate of incorporation on 23rd September, 2011. Thereafter, the company shifted its registered office from the State of Punjab to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 16th May, 2013.

6. The present authorized share capital of the transferor company no.1 is Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.5,01,00,000/- divided into 50,10,000 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.20,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each aggregating to Rs.5,00,00,000/- and 1,50,00,000 preference shares of Rs.10/- each aggregating to Rs.15,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.16,00,00,000/- divided into 39,00,000 equity shares of Rs.10/- each aggregating to Rs.3,90,00,000/- and 1,21,00,000 zero percent, non-cumulative optionally convertible redeemable preference shares of Rs.10/- each fully paid-up aggregating to Rs.12,10,00,000/-.

8. The present authorized share capital of the transferee company is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.20,00,000/- divided into 2,00,000 equity shares of Rs.10/- each.

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) 157/2014, earlier filed by the petitioners.

The audited balance sheets, as on 31st March, 2014 and as on 31st October, 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 increase the net worth of the transferee company which would enable it to capitalize upon such improved net worth to enhance the stakeholders' value. It is further claimed that the proposed amalgamation will increase financial strength, enhance flexibility and ability to raise larger resources, attract and retain better talent and undertake larger support services related projects for telecom infrastructure, thereby enabling proper and better realization of its future business potential and prospects. It is also claimed that the amalgamation will result in economies of scale, reduction in overheads, administrative and other expenses, efficiency and optimal utilization of various resources.

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 fully paid-up for every 61 fully paid-up equity shares of Rs.10/- each held in transferor company no. 1.”

“01 equity share of Rs.10/- each of the transferee company fully paid-up for every 112 fully paid-up equity shares of Rs.10/- each held in 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 3rd November, 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. 157/2014 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 18th November, 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 December, 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 'Jansatta' (Hindi) editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 18th 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 22nd December, 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 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 March, 2015, which was taken on record vide order dated 29th April, 2015 passed in CA 1058/2015. Relying on Clause 3.3.6(a) of Part-III 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 has further submitted that in Clause 3.7.4 of Part-III of the Scheme, it has been stated that for the purpose of reflecting the fair value of respective assets and liabilities of the transferor companies in the books of the transferee company on the appointed date, the transferee company shall record the transactions under the "Purchase Method" defined in the Accounting Standard-14 for "Accounting for Amalgamation" issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 4.9 of Part-IV 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 10th February, 2015 of Mr. Anil Kumar Jain, Authorized Signatory of the petitioner companies, have submitted that neither the petitioner

companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 18th December, 2014.

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 November, 2014, the transferor company nos. 1 and 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.1.5 lakhs 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 petitioners states that

the same is acceptable to him. Considering the facts and circumstances of the case, petitioner shall deposit a sum of Rs.1.5 lakhs, by way of costs, with the Common Pool Fund of the Official Liquidator within two weeks from today.

21. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 14, 2015