

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 798/2014

Reserved on 26th March, 2015
Date of pronouncement: 5th May, 2015

In the matter of

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

And

**Petition under Sections 391(1) to 394 read
with Section 100 of the Companies Act, 1956**

Scheme of Amalgamation of:

Kernel Systems Private Limited

Petitioner/Transferor Company

WITH

Arcop Associates Private Limited

Petitioner/Transferee Company

**Through Mr. Ashish Middha, Advocate
for the petitioners**

**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 joint petition has been filed under Sections 391(1) to 394 read with Section 100 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Kernel Systems Private Limited (hereinafter referred to as the transferor company) with Arcop Associates 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 was incorporated under the Companies Act, 1956 on 17th February, 1993 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi

4. The transferee company was incorporated under the Companies Act, 1956 on 26th June, 1985 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.19,25,000/- divided into 1,92,500 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.1,00,00,000/- divided into 1,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.75,00,000/- divided into 75,000 equity shares of Rs.100/- each.

7. 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) 148/2014, earlier filed by the petitioners.

The audited balance sheets, as on 31st March, 2013, of the transferor and transferee companies, 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 claimed that by the proposed Scheme will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to affect internal economies and optimize productivity. It is further claimed that the proposed Scheme will enable the undertakings and business of the said companies to obtain greater facilities possessed and enjoyed by one large company compared to a small company for raising capital, securing and conducting trade and business on favourable terms and other related benefits.

9. 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. Hence, no shares are to be allotted to the shareholders of the transferor company, upon coming into effect of this Scheme.

10. 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.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 28th February, 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.

12. The petitioner companies had earlier filed CA (M) No. 148/2014 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 27th November, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferor and transferee companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 22nd 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 'Business Standard' (English) and (Hindi) editions. The petitioners have filed an affidavit showing compliance regarding publication of citations in the aforesaid newspapers on 12th January, 2015. 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 companies. Based on the information received, the Official Liquidator has filed a report dated 3rd March, 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 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 3rd March, 2015. Relying on Clause 10 of Part-III 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 14.4

of Part-III of the Scheme, it has been stated that the amalgamation shall be 'amalgamation in the nature of merger' as defined in Accounting Standard-14 as prescribed under the Companies (Accounting Standards) Rules, 2006 and shall be accounted for under the 'pooling of interests' method in accordance with the said accounting standard.

16. Although no objection has been raised by the Regional Director, Northern Region, but in para 12 of his report, he has submitted that the Scheme has provided the appointed date as 01.04.2013, whereas the petitioners have filed the balance sheet for the year 2014 and as such in order to avoid the revision of balance sheet, the petitioner companies may be asked to shift the appointed date as at 01.04.2014. In response to the aforesaid, learned counsel for the petitioners submitted that they are not inclined to change the appointed date and that the appropriate revised balance sheets with effect from the appointed date of 01.04.2013 shall be appropriately drawn up and filed. So far as the question with regard to fixing of appointed date of the Scheme is concerned, it has been held in numerous judgments passed by this Court and other High Courts that it is in the prerogative of the petitioners to fix any date as the appointed date of the Scheme and the Courts need not require alteration of the said date unless it is deemed necessary to do so, *inter alia*, for the reasons that either the petitioners have used the appointed date as a colourable device to evade taxes or it is in the interest of all stakeholders of the companies concerned to change the appointed date. In the present

case, the only reason given by the Regional Director for change in the appointed date is that the petitioners have filed their balance sheets as at 31st March, 2014 and thus the appointed date may also be fixed as at 01.04.2014. However, no malafide is alleged in fixing the appointed date as at 01.04.2013. Learned counsel for the petitioners have submitted that the balance sheets of the petitioner companies shall be drawn up and filed with effect from the appointed date i.e. 01.04.2013. In view of the aforesaid, the observation raised by the Regional Director is suitably addressed.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 2nd March, 2015 of Mr. Raja Raja Menon, Director 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 12th January, 2015.

18. Considering the approval accorded by the equity 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, 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 also be imposed keeping in view the fact that the matter has involved examination of a number of records and prioritized hearings. He submits that at least costs of Rs.1,00,000/- each should be paid by the petitioners. Learned counsel for the petitioners states that the same is acceptable to him. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1.0 lakh each by way of costs in the Common Pool Fund of the Official Liquidator, within two weeks from today.

20. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 05, 2015