IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 149/2015

Reserved on 11th September, 2015
Date of pronouncement: 21st September, 2015

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

And

Application under Sections 391 to 394 of the Companies Act, 1956

Scheme of Amalgamation of:

Sundeep Import Export Private Limited
Applicant/Transferor Company

WITH

Newgen Software Technologies Limited
Non-Applicant/Transferee Company

Through Mr. Saurabh Kalia, Advocate for the applicants

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Sections 391 to 394 of the Companies Act, 1956 by the applicant/transferor company seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Sundeep Import Export Private Limited (hereinafter referred to as the applicant/transferor company) with Newgen Software Technologies Limited (hereinafter referred to as the transferee company) and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of Scheme of Amalgamation.

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

3. The applicant/transferor company was originally incorporated under the Companies Act, 1956 on 26th March, 1972 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Sundeep Import Export Private Limited. The word 'Private' was deleted from the name of the company w.e.f. 31.03.2000. The company changed its name to Sundeep Import Export Private Limited and obtained the fresh certificate of incorporation on 24th March, 2015.

4. The present authorized share capital of the applicant/transferor company is Rs.5,00,000/- divided into 5,000 equity shares of Rs.100/- each aggregating. The present issued, subscribed and paid-up share capital of the company is Rs.5,00,000/- divided into 5,000 equity shares of Rs.100/- each aggregating.

5. A copy of the Memorandum and Articles of Association of the applicant/transferor company has been filed on record. The audited balance sheet, as on 31st March, 2015, of applicant/transferor company, along with the report of the auditors, has also been filed.

6. 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 application and the accompanying affidavit. It is claimed by the applicant that the proposed amalgamation will reduce managerial overlap, reduce administrative cost and strengthened leadership in the industry, in terms of asset base and revenue. It is further claimed that the proposed amalgamation will improve organizational capabilities and leadership, arising from pooling of assets, human capital and technical resources to compete successfully in an increasingly competitive industry.

7. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor company is a wholly owned subsidiary of the transferee company, no consideration shall be payable by the transferee company pursuant to the amalgamation of the transferor company with the transferee company, and accordingly the entire investment in the transferor company held by the transferee company would stand cancelled.

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

9. The Board of Directors of the transferor and transferee companies in their separate meetings held on 17th July, 2015 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.

10. The applicant/transferor company has 07 equity shareholders and 01 unsecured creditor. All the equity shareholders and the sole unsecured creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditor of the applicant/transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the applicant/transferor company, as on 24th July, 2015.

11. The applicant also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement

between the transferee company and its shareholders since the transferor company is a wholly owned subsidiary of the transferee company no new shares will be issued by the transferee company in lieu of the shares of the transferor company; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. It is further submitted that the present Scheme does not envisage any compromise or arrangement by the transferee company with their creditors and that the assets of both the companies are more than sufficient to meet their respective and combined aggregate liabilities towards their respective creditors, therefore, the rights of the creditors of the transferee company will not be adversely affected. Learned counsel has also placed on record the certificate issued by Singal & Company, Chartered Accountants, showing the pre and post amalgamation net worth of the transferee company showing that the net worth of the transferee company, post amalgamation, will be increased from Rs.20,107.10 lacs to Rs.20,167.66 lacs.

12. In support of his submissions, learned counsel placed reliance on the judgment of this Court in CA(M) 29/2015 titled as Satyam Cineplexes Limited with Inox Leisure Limited wherein this court under similar circumstances, and relying on the judgments of several High Courts

including this Court in many cases such as **eMeter India Pvt. Ltd.;** (CA(M) 179/2012) **Auto Tools India Pvt. Ltd.** [CA(M) 41/2010], **Sharat Hardware Industries Pvt. Ltd.** (1978), 48 Com.Cas 23 (Delhi), **Mahaamba Investments Ltd. V. IDI Limited** (2001) 105 Com Cas. 16 (Bom.), **Andhra Bank Housing Finance Ltd.** (2004) 118 Com.Cas. 295(AP) and **Prosell Field Marketing Pvt. Ltd.** [CA(M) 63/2012], had dispensed with the requirement of the transferee company to approach the High Court of Gujarat under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation.

13. I have considered the aforesaid case law cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of the settled legal position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

14. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

September 21, 2015