

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 71/2016

Reserved on 4th May, 2016
Date of pronouncement: 19th July, 2016

In the matter of

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

And

**Application under Sections 391(1) and 394 of
the Companies Act, 1956 read with Rule 9 of
the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Modtech Projects (India) Private Limited

Applicant/Transferor Company

WITH

Modtech Material Handling Projects Private Limited

Applicant/Transferee Company

**Through Mr. Manoj Kumar Garg,
Advocate for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391(1) and 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the applicant companies 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 Modtech Projects (India) Private Limited (hereinafter referred to as the transferor company) with Modtech Material Handling

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 was incorporated under the Companies Act, 1956 on 14th August, 2000 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 17th January, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.8,81,000/- divided into 88,100 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.40,00,000/- divided into 4,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.35,30,000/- divided into 3,53,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the report of the auditors, have 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 application and the accompanying affidavit. It is submitted by the applicants that the transferor company is a wholly owned subsidiary of the transferee company. It is claimed that the proposed amalgamation will give the consolidated company better finances, facilitate adequate resource mobilization to sustain growth, enable better leverages of facilities, infrastructure and human resources for better administration. It is further claimed that the proposed amalgamation will result in reduction in overheads, administrative, managerial and other expenditure and bring about operational rationalization, organizational efficiency, and optimal utilization of various resources.

9. 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 in the following ratio:

“96 equity shares of Rs.10/- each of the transferee company for every 100 equity shares of Rs.10/- each held in the transferor company.”

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 227 of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 20th November, 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.

12. The transferor company has 04 equity shareholders. All the equity shareholders 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 meeting of the equity shareholders of the 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 or unsecured creditor of the transferor company, as on 30th November, 2015.

13. The transferee company has 03 equity shareholders, 01 secured creditor and 65 unsecured creditors. All the equity shareholders, the sole secured creditor and 26 out of 65 unsecured creditors, being 40% in number and 85% in value, 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, secured and unsecured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

14. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

July 19, 2016