

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 242/2015

Reserved on 13th 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

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

Scheme of Amalgamation of:

Allied Trademart Private Limited	Petitioner/Transferor Company No. 1
Anmol Advertising Private Limited	Petitioner/Transferor Company No. 2
City Green Tour & Travels Private Limited	Petitioner/Transferor Company No. 3
Classic Corporate Consultancy Private Limited	Petitioner/Transferor Company No. 4
Kuber Parivahan Private Limited	Petitioner/Transferor Company No. 5
Niti Marketing and Services Private Limited	Petitioner/Transferor Company No. 6
Olivian Advertising Private Limited	Petitioner/Transferor Company No. 7
Perfect Infotech Private Limited	Petitioner/Transferor Company No. 8
Realvalue Land Infra Private Limited	Petitioner/Transferor Company No. 9
Treya Technologies Private Limited	Petitioner/Transferor Company No. 10

Talent eServices Private Limited

Petitioner/Transferor Company No. 11

Vishay Electric Private Limited

Petitioner/Transferor Company No. 12

YGR Enterprises Private Limited

Petitioner/Transferor Company No. 13

WITH

JMR Buildwell Private Limited

Petitioner/Transferee Company

**Through Mr. Praveen 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 Allied Trademart Private Limited (hereinafter referred to as the transferor company no. 1); Anmol Advertising Private Limited (hereinafter referred to as the transferor company no. 2); City Green Tour & Travels Private Limited (hereinafter referred to as the transferor company no. 3); Classic Corporate Consultancy Private Limited (hereinafter referred to as the transferor company no. 4); Kuber Parivahan Private Limited (hereinafter referred to as the transferor company no. 5); Niti Marketing and Services Private Limited (hereinafter referred to as the transferor company no. 6); Olivian Advertising Private Limited (hereinafter referred to as the transferor company no. 7); Perfect Infotech Private Limited (hereinafter referred to

as the transferor company no. 8); Realvalue Land Infra Private Limited (hereinafter referred to as the transferor company no. 9); Treya Technologies Private Limited (hereinafter referred to as the transferor company no. 10); Talent eServices Private Limited (hereinafter referred to as the transferor company no. 11); Vishay Electric Private Limited (hereinafter referred to as the transferor company no. 12); and YGR Enterprises Private Limited (hereinafter referred to as the transferor company no. 13) with JMR Buildwell Private Limited (hereinafter referred to as 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 24th April, 2002 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Allied Quartzite Private Limited. The company changed its name to Allied Trademart Private Limited and obtained the fresh certificate of incorporation on 13th April, 2011.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 16th June, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 16th March, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferor company no. 4 was incorporated under the Companies Act, 1956 on 23rd December, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferor company no. 5 was incorporated under the Companies Act, 1956 on 2nd April, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The transferor company no. 6 was originally incorporated under the Companies Act, 1956 on 24th March, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Nirvana Educareers India Private Limited. The company changed its name to Niti Marketing and Services Private Limited and obtained the fresh certificate of incorporation on 13th May, 2010.

9. The transferor company no. 7 was incorporated under the Companies Act, 1956 on 17th February, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferor company no. 8 was incorporated under the Companies Act, 1956 on 24th April, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The transferor company no. 9 was incorporated under the Companies Act, 1956 on 9th June, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

12. The transferor company no. 10 was incorporated under the Companies Act, 1956 on 20th November, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

13. The transferor company no. 11 was incorporated under the Companies Act, 1956 on 6th February, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

14. The transferor company no. 12 was originally incorporated under the Companies Act, 1956 on 9th November, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Vishay Electric Limited. The company changed its name to Vishay Electric Private Limited and obtained the fresh certificate of incorporation on 29th October, 2010.

15. The transferor company no. 13 was incorporated under the Companies Act, 1956 on 27th May, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

16. The transferee company was incorporated under the Companies Act, 1956 on 19th June, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

17. The present authorized share capital of the transferor company no.1 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 companies is Rs.1,50,000/- divided into 15,000 equity shares of Rs.10/- each.

18. The present authorized share capital of the transferor company no.2 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies is Rs.3,50,000/- divided into 35,000 equity shares of Rs.10/- each.

19. The present authorized share capital of the transferor company no.3 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies is Rs.3,50,000/- divided into 35,000 equity shares of Rs.10/- each.

20. The present authorized share capital of the transferor company no.4 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies is Rs.2,25,000/- divided into 22,500 equity shares of Rs.10/- each.

21. The present authorized share capital of the transferor company no.5 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 companies is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each.

22. The present authorized share capital of the transferor company no.6 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies is Rs.4,99,000/- divided into 49,900 equity shares of Rs.10/- each.

23. The present authorized share capital of the transferor company no.7 is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies is Rs.1,30,000/- divided into 13,000 equity shares of Rs.10/- each.

24. The present authorized share capital of the transferor company no.8 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each.

The issued, subscribed and paid-up share capital of the companies is Rs.4,98,000/- divided into 49,800 equity shares of Rs.10/- each.

25. The present authorized share capital of the transferor company no.9 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies is Rs.3,12,500/- divided into 31,250 equity shares of Rs.10/- each.

26. The present authorized share capital of the transferor company no.10 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 companies is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each.

27. The present authorized share capital of the transferor company no.11 is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies is Rs.3,78,500/- divided into 37,850 equity shares of Rs.10/- each.

28. The present authorized share capital of the transferor company no.12 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 companies is Rs.7,25,000/- divided into 72,500 equity shares of Rs.10/- each.

29. The present authorized share capital of the transferor company no.13 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 companies is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

30. The present authorized share capital of the transferee company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.4,99,000/- divided into 49,900 equity shares of Rs.10/- each.

31. 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) 40/2015, 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.

32. 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 by the petitioners that the Scheme will result in pooling of their financial, commercial, and other resources, economies of scale and reduction of overheads. 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.

33. 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:

“82 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 1.”

“118 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 2.”

“116 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 3.”

“93 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 4.”

“09 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 5.”

“68 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 6.”

“98 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 7.”

“72 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 8.”

“113 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 9.”

“09 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 10.”

“106 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no.11.”

“56 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 12.”

“06 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 13.”

34. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

35. The Board of Directors of the transferor and transferee companies in their separate meetings held on 9th February, 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.

36. The petitioner companies had earlier filed CA (M) No. 40/2015 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 23rd April, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and creditors of the transferor and transferee companies, there being no secured creditor of the petitioner companies and no unsecured creditor of transferor companies no. 1, 2, 5, 7, 9, 10, 11, 12 & 13, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

37. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 6th May, 2015, 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 compliance regarding publication of citations in the aforesaid newspapers on 12th August, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

38. 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 17th September, 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 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.

39. 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 September, 2015. Relying on Clause 9 of Part-III 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 6 of Part-III of the Scheme, it has been stated that the transferee company shall follow the method of accounting as prescribed for the pooling of interest method under Accounting Standard-14 as notified under the Companies (Accounting Standards) Rules, 2006. 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 shall stand dissolved without the process of winding up.

40. Although no objection has been raised by the Regional Director to the proposed Scheme of Amalgamation, but in para 8.1 of his report, he has stated that the transferor company no. 7 has not yet filed its due balance sheet for the financial year ended 31.03.2011 thereby prima facie violated the provisions of Section 137 of the Companies Act, 2013. He has further submitted that the Board of Directors of the transferor and transferee companies in their meetings held on 9th February, 2015 have approved the proposed Scheme of Amalgamation but they have not filed the requisite e-form (MGT-14) with the office of the ROC within 30 days of passing the resolution in terms of Sections 117(3) r/w 179(3) of the Companies Act, 2013. In response to the aforesaid observations, the petitioner companies in the affidavit dated 10th February, 2016 of Mr. Vikash Kumar Singh, authorized representative of the petitioner companies have submitted that the transferor company has filed the balance sheet for the financial year ended 31.03.2011 on 07.08.2015 and the petitioner companies have filed the requisite form MGT-14 on 19.08.2015 with the prescribed late fee. Copies of the receipts of filing the balance sheet as well as the e-form MGT-14 have been placed on record. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

41. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 15th September, 2015 of Mr. Vikash Kumar Singh, authorized representative of the petitioner companies, have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 12th August, 2015.

42. 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, 2014, the transferor

companies no. 1 to 13 shall stand dissolved without undergoing the process of winding up.

43. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,50,000/- 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 petitioner companies states that the same is acceptable to him. As already directed vide order dated 13.05.2016, the petitioners shall deposit a sum of Rs.1,50,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

44. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

July 19, 2016