

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 520/2015

Reserved on 13th July, 2016
Date of pronouncement: 12th August, 2016

In the matter of

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

And

**Petition under Sections 391(2) & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Matina Enterprises Private Limited

Petitioner/Transferor Company

WITH

Proec Energy Limited

Petitioner/Transferee Company

**Through Mr. Rajeev K. Goel, Advocate
for the petitioners**

**Ms. Aparna Mudiam, Asstt. 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(2) & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Matina Enterprises Private Limited (hereinafter referred to as the transferor company) with Proec Energy 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 10th September, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 5th January, 1993 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Nippon Vink Chemical Industries India Limited. The company changed its name to Proec Energy Limited and obtained the fresh certificate of incorporation on 23rd March, 2006.

5. The present authorized share capital of the transferor company is Rs.24,00,000/- divided into 2,40,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.23,50,000/- divided into 2,35,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.19,00,800/- divided into 1,90,080 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 with the

joint application, being CA(M) 104/2015, 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.

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 affidavits. It is submitted by the petitioners that the transferor and transferee companies are closely held group companies and the proposed amalgamation would result in business synergy, consolidation and pooling of their resources. It is claimed that the proposed amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resources and enhancement of overall business efficiency. It will enable these companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

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:-

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 44 equity shares of Rs.10/- held in the transferor company.”

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 petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 20th December, 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. 104/2015 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 21st July, 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 transferor company, 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 17th August, 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 'Business Standard' (English) and (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 10th September, 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 8th February, 2016 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 15th February, 2016 stating that the Regional Director has no objection to the proposed Scheme of Amalgamation subject to compliance of provisions of section 117(3) and 179(3) of the Companies Act, 2013 by the petitioner companies. The Regional Director in para 7 of this report has submitted that the Board of Directors of the transferee company have approved the proposed Scheme in their Board meeting held on 20.12.2014. Accordingly, in terms of provisions of Section 117(3) read with 179(3) of the Companies Act, 2013, the company is required to file such resolution (e-form MGT-14) with the ROC within 30 days of passing the resolution whereas the company has not yet filed the said resolution thereby prima facie violating the provisions of Section 117(3) of the Companies Act, 2013.

16. In response to the aforesaid observation, the petitioner companies in the affidavit dated 9th July, 2016 of Mr. Manav Modi, Director of the transferee company, have submitted that the transferee company has moved an application to the Central Government, Ministry of Corporate Affairs, New Delhi seeking condonation of delay in filing e-form MGT-14 and undertakes to file the same immediately on receipt of the requisite approval from the Central Government. It has been further submitted that the transferee company is not the subject matter of dissolution and will

remain in existence even after the sanction of the Scheme. Therefore, if the company fails to file the e-Form MGT-14, the ROC may initiate appropriate proceedings against the transferee company for non filing of e-Form MGT-14. The undertaking given by the transferee company to file e-Form MGT-14 on receipt of approval from the Central Government is accepted. In case of any default by the company, the ROC would be at liberty to take appropriate action, as permissible in law, against the transferee company.

17. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 8th February, 2016 of Mr. Manav Modi, 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 10th September, 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, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

19. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- 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 company states that the same is acceptable to him. As already directed vide order dated 13.07.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

20. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

August 12, 2016