IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 783/2015

Reserved on 26th April, 2016
Date of pronouncement: 30th May, 2016

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

And

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

Scheme of Amalgamation of:

Sundeep Import Export Private Limited
Petitioner/Transferor Company
WITH

Newgen Software Technologies Limited
Non-Petitioner/Transferee Company

Through Mr. Saurabh Kalia, Advocate for the petitioner
Ms. Aparna Mudiam, Asstt. Registrar of Companies for the Regional Director
Mr. Ashish Makhija, Advocate for the Official Liquidator

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner/transferor company seeking sanction of the Scheme of Amalgamation of Sundeep Import Export Private Limited (hereinafter referred to as the petitioner/transferor company) with Newgen Software Technologies Limited (hereinafter referred to as the transferee company).

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

3. The petitioner/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 petitioner/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 petitioner/transferor company has been filed on record with the application being CA(M) 149/2015 earlier filed by the petitioner. The

audited balance sheet, as on 31st March, 2015, of petitioner/transferor company, along with the report of the auditors, had 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 petition and the accompanying affidavit. It is claimed by the petitioner 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 petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/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 petitioner/transferor company had earlier filed CA (M) No. 149/2015 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 21st September, 2015 this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the petitioner/transferor company, 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. Vide the said order, this Court also dispensed with the requirement of filing a separate petition by the transferee company.

11. The petitioner/transferor company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 15th October, 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 19th November, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. 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 22nd January, 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.

13. 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 5th February, 2016 stating that the ROC in his report has not made any adverse comments to the Scheme of Amalgamation and that the Regional Director has no objection to the proposed Scheme.

14. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner company, in the affidavit dated 7th April, 2016 of Mr. Aman, authorized signatory of the transferee company has submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 19th November, 2015.

15. Considering the approval accorded by the equity shareholders and creditors of the petitioner company to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region and the Official Liquidator not having raised 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, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

16. Learned counsel for the Official Liquidator prays that costs of at least Rs.50,000/- should be paid by the petitioner 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 26.04.2016, the petitioners shall deposit a sum of Rs.50,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

17. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 30, 2016