

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 946/2015

Reserved on 10th 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, 392 & 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

T J Commodities Private Limited

Petitioner/Transferor Company No. 1

TJS Agro Private Limited

Petitioner/Transferor Company No. 2

Jai Ganga Dal & Roller Flour Mills Private Limited

Petitioner/Transferor Company No. 3

Satish Foods Private Limited

Petitioner/Transferor Company No. 4

WITH

Indo European Agro Private Limited

Petitioner/Transferee Company

**Through Mr. Rishi Sood, 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, 392 & 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of T J Commodities Private Limited

(hereinafter referred to as the transferor company no. 1); TJS Agro Private Limited (hereinafter referred to as the transferor company no. 2); Jai Ganga Dal & Roller Flour Mills Private Limited (hereinafter referred to as the transferor company no. 3) and Satish Foods Private Limited (hereinafter referred to as the transferor company no. 4) with Indo European Agro 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 no. 1 was incorporated under the Companies Act, 1956 on 12th October, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 27th May, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was originally incorporated under the Companies Act, 1956 on 1st March, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Disney Realtors Private Limited. The company changed its name

to Jai Ganga Dal & Roller Flour Mills Private Limited and obtained the fresh certificate of incorporation on 31st May, 2011.

6. The transferor company no. 4 was originally incorporated under the Companies Act, 1956 on 20th March, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Disney Projects Private Limited. The company changed its name to Satish Foods Private Limited and obtained the fresh certificate of incorporation on 27th May, 2011.

7. The transferee company was originally incorporated under the Companies Act, 1956 on 18th May, 1992 with the Registrar of Companies, Punjab, H. P. & Chandigarh at Jalandhar under the name and style of Indo-European Agro Limited. The company shifted its registered office from the Union Territory of Chandigarh to NCT of Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 22nd July, 2003. Thereafter, the company changed its name to Indo-European Agro Private Limited and obtained the fresh certificate of incorporation on 7th October, 2004.

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

each. The issued, subscribed and paid-up share capital of the company is Rs.60,00,000/- divided into 6,00,000 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.2 is Rs.1,40,00,000/- divided into 14,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.74,30,000/- divided into 7,43,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferor company no.3 is Rs.2,70,00,000/- divided into 27,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,09,50,000/- divided into 20,95,000 equity shares of Rs.10/- each.

11. The present authorized share capital of the transferor company no.4 is Rs.1,60,00,000/- divided into 16,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,06,00,000/- divided into 10,60,000 equity shares of Rs.10/- each.

12. 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.1,10,00,000/- divided into 11,00,000 equity shares of Rs.10/- each.

13. 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) 168/2015, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2015, along with the reports of the auditors, of the transferor and transferee companies had also been filed.

14. 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 of Amalgamation will result in establishment of a larger company with large resources, larger capital base, greater capacity to raise funds for expansion, modernization and development of the businesses of the companies concerned. It is further claimed that the proposed amalgamation will enable the undertakings and businesses of the said companies to obtain greater facilities possessed and enjoyed by one large company for securing and conducting its business on favourable terms and other benefits.

15. 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:

“01 equity share of Rs.10/- each fully paid up of the transferee company for every 1.34 equity shares of Rs.10/- each fully paid up held by the shareholders in the transferor company no. 1. Fraction of shares, if any, will be paid in cash.”

“01 equity share of Rs.10/- each fully paid up of the transferee company for every 0.87 equity share of Rs.10/- each fully paid up held by the shareholders in the transferor company no. 3. Fraction of shares, if any, will be paid in cash.”

“01 equity share of Rs.10/- each fully paid up of the transferee company for every 0.65 equity share of Rs.10/- each fully paid up held by the shareholders in the transferor company no. 4. Fraction of shares, if any, will be paid in cash.”

It has been further submitted that since 100% shareholding of transferor company no. 2 is held by the transferee company, transferor company no. 1, transferor company no. 3 and transferor company no. 4, therefore, the transferee company shall not issue any share to the shareholders of the transferor company no. 2.

16. 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.

17. The Board of Directors of the transferor and transferee companies in their separate meetings held on 30th June, 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.

18. The petitioner companies had earlier filed CA (M) No. 168/2015 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 16th November, 2015 this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and secured creditors of the transferor companies no. 1 & 2, equity shareholders of the transferor companies no. 3 & 4 and equity shareholders, secured and unsecured creditors of the transferee company, there being no unsecured creditors of the transferor companies no. 1 & 2 and no secured or unsecured creditors of the transferor companies no. 3 & 4, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

19. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 11th December, 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 3rd March, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

20. 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 1st April, 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 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.

21. 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 6th April, 2016 stating that the ROC in his report has not made any adverse comments against the Scheme of Amalgamation and that the Regional Director has no objection to the proposed Scheme.

22. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 29th March, 2016 of Mr. Satish Kumar, director of the petitioner companies have submitted that the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 3rd March, 2016.

23. 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, 2015, the transferor

companies no. 1 to 4 shall stand dissolved without undergoing the process of winding up.

24. 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 10.05.2016, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator.

25. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

July 19, 2016