

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 4/2016

Reserved on 6th January, 2016
Date of pronouncement: 18th February, 2016

In the matter of

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

And

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

Scheme of Amalgamation of:

Duke Holdings Limited

Applicant/Transferor Company No. 1

Khem Holdings Private Limited

Applicant/Transferor Company No. 2

WITH

Map Auto Limited

Applicant/Transferee company

**Through Ms. Anju Jain, Advocate for
the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 & 394 of the Companies Act, 1956 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the transferor companies and equity shareholders and secured creditors of the transferee company and for convening a meeting of the unsecured creditors of the transferee company, to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Duke Holdings Limited (hereinafter referred to as the transferor company no. 1)

and Khem Holdings Private Limited (hereinafter referred to as the transferor company no. 2) with Map Auto 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 11th August, 1989 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, 1986 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 9th February, 1994 with the Registrar of Companies, Madhya Pradesh under the name and style of Malanpur Auto Private Limited. The word 'Private' was deleted from the name of the company w.e.f. 21st May, 1997. The company changed its name to Map Auto Limited and obtained the fresh certificate of incorporation on 24th June, 1997. Thereafter the company shifted its registered office from the State of Madhya Pradesh to Delhi and obtained a certificate in this

regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 2nd July, 2012.

6. The present authorized share capital of the transferor company no.1 is Rs.62,00,000/- divided into 6,20,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.51,16,770/- divided into 5,11,677 equity shares of Rs.10/- each.

7. The present authorized share capital of the transferor company no.2 is Rs.1,25,00,000/- divided into 1,25,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.94,01,600/- divided into 94,016 equity shares of Rs.100/- each.

8. The present authorized share capital of the transferee company is Rs.5,80,00,000/- divided into 57,50,000 equity shares of Rs.10/- each aggregating to Rs.5,75,00,000/- and 50,000 preference shares of Rs.10/- each aggregating to Rs.5,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.7,66,550/- divided into 76,655 equity shares of Rs.10/- each.

9. 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.

10. 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 claimed by the applicants that the proposed Scheme will result in economies of scale, reduction in overhead and other expenses, reduction in administrative and procedural work, better and more productive utilization of various resources and will enable the companies concerned to effect internal economies and optimize productivity. It is further claimed that the Scheme will enable the companies concerned to rationalize and streamline their businesses and finances and to eliminate duplication of work to their common advantage.

11. 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 614 full paid-up equity shares of Rs.10/- each held in transferor company no. 1.”

“01 equity share of Rs.10/- each fully paid-up of the transferee company for every 33 full paid-up equity shares of Rs.100/- each held in transferor company no. 2.”

12. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the transferor and transferee companies.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 27th 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.

14. The transferor company no. 1 has 10 equity shareholders and 04 unsecured creditors. All the equity shareholders and all the unsecured creditors 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 and unsecured creditors of the transferor company no. 1, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company no. 1, as on 30th June, 2015.

15. The transferor company no. 2 has 7 equity shareholders and 01 unsecured creditor. All the equity shareholders and the sole unsecured

creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. There 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 and unsecured creditor of the transferor company no. 2, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company no. 2, as on 30th June, 2015.

16. The transferee company has 08 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. There 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 transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferee company, as on 30th June, 2015.

17. The transferee company has 22 unsecured creditors and a direction is sought to convene and hold their meetings to seek their approval to the proposed Scheme of Amalgamation. Considering the facts and circumstances aforesaid, the meeting of the unsecured

creditors of the transferee company shall be held on 8th April, 2016 at 11:00 a.m. at 2, Park Lane, Behind D-3, Vasant Kunj, Kishan Garh, New Delhi-110071. Mr. Akhil Mittal, Advocate, (Mobile No. 9212504011) is appointed as the Chairperson and Mr. Manik Ahluwalia, Advocate, (Mobile No. 9891517513) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the unsecured creditors of the transferee company shall be 5 in number and more than 25% in value of the total unsecured debt.

18. In case the quorum as noted above for the above meeting is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the registered office of the applicant company at least 48 hours before the meeting. The Chairperson and Alternate Chairperson shall ensure that the proxy register is properly maintained.

19. The Chairperson and Alternate Chairperson shall ensure that notices for convening the aforesaid meeting of the unsecured creditors of the transferee company, along with copies of the Scheme of Amalgamation and the statement under Section 393 of the Companies

Act, 1956, shall be sent to the unsecured creditors of the transferee company by ordinary post at their registered or last known addresses at least 21 days before the date appointed for the meeting, in their presence or in the presence of their authorized representatives. Notice of the meeting shall also be published in the Delhi editions of the newspapers "Financial Express" (English) and "Jansatta" (Hindi) in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meeting.

20. The Chairperson and Alternate Chairperson will be at liberty to issue suitable directions to the management of the applicant companies so that the aforesaid meeting of the unsecured creditors of the transferee company is conducted in a just, free and fair manner.

21. The fee of the Chairperson and the Alternate Chairperson for the aforesaid meeting shall be Rs.50,000/- each in addition to meeting their incidental expenses. The Chairperson will file his report within two weeks from the date of holding of the aforesaid meeting.

22. The application stands allowed in the aforesaid terms.

Dasti

SUDERSHAN KUMAR MISRA, J.

February 18, 2016