

In Re: Ktc Private Limited,

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SooperKanoon Citation : sooperkanoon.com/469342

Court : Allahabad

Decided On : Mar-11-2005

Reported in : [2006]66SCL241(All)

Judge : S.P. Mehrotra, J.

Acts : [Companies Act, 1956](#) - Sections 235 to 251, 391 to 394, 394(1), 394(2), 394(3), 394A, 397 and 398; Companies (Court) Rules, 1959 - Rules 76 and 80

Appeal No. : Company Petition No. 21 of 2004 and Company Application No. 3 of 2004

Appellant : In Re: Ktc Private Limited, ;In Re: Leayan Overseas Private Limited and in Re: Scheme of Amalgamatio

Advocate for Def. : S.K. Saxena, Adv.

Advocate for Pet/Ap. : Piyush Agarwal and ;Satwinder Singh, Adv.

Judgement :

S.P. Mehrotra, J.

1. The present Company Petition under Sections 391 and 394 of the [Companies Act, 1956](#) has been filed by KTC Private Limited having its Registered Office at 117/H-2/202, Pandu Nagar, Kanpur-208005, Uttar Pradesh (hereinafter also referred to as 'the Transferor Company or 'the Petitioner-Transferor Company')

and Leayan Overseas Private Limited having its Registered Office at 117/H-2/202, Pandu Nagar, Kanpur-208005, Uttar Pradesh (hereinafter also referred to as 'the Transferee Company' or 'the Petitioner-Transferee Company'). The said two Companies collectively have hereinafter been also referred to 'as 'the Petitioner-Companies'.

2. It appears that a Scheme of Amalgamation is proposed for the amalgamation of the Petitioner-Transferor Company with the Petitioner-Transferee Company. Copy of the proposed Scheme of Amalgamation has been filed as Annexure-A to the Company Petition, and appears at page 12 of the Paper Book of the Company Petition.

3. It is, interalia, prayed in the Company Petition that the proposed Scheme of Amalgamation be sanctioned by this Court so as to be binding with effect from 1st day of April, 2003 or from such other date as this Court may fix, on all the Members and Creditors (if any) of the Petitioner-Transferor Company and the Petitioner-Transferee Company and all concerned with such directions as the Court may deem fit.

4. It is, interalia, stated in the Company Petition that the object of the Company Petition is to obtain sanction of this court to the proposed Scheme of Amalgamation of KTC Private Limited (i.e., Petitioner-Transferor Company) with Leayan Overseas Private Limited i.e., Petitioner-Transferee Company) whereby and whereunder the entire undertaking of the Petitioner -Transferor Company together with all its properties, rights, claims and liabilities relating thereto are proposed to be transferred to and vested in the Petitioner-Transferee Company on the terms and conditions fully stated in the proposed Scheme of Amalgamation. Copy of the proposed Scheme of Amalgamation, as mentioned above, has been filed as Annexure-A to the Company Petition.

5. As regards the Petitioner-Transferor Company, it is, interalia, stated in the Company Petition that the Petitioner-Transferor Company was incorporated on 7.12.1990 under the name Kanpur Trading Company Private Limited, which was changed to KTC Private Limited with effect from 27.9.2002; and that the Registered Office: of the Petitioner-Transferor Company is situated at 117/H-

2/202, Pandu Nagar, Kanpur-208005, Uttar Pradesh, within the jurisdiction of this court,

6. The main objects of the Petitioner-Transferor Company as set out 'in the Memorandum and Articles of Association of the Petitioner-Transferor Company are reproduced in paragraph 4 of the Company Petition. '

7. Copy of the Memorandum and Articles of Association of the Petitioner-Transferor Company has been filed as Annexure-B to the Company Petition, and appears at page 25 of the Paper Book of the Company Petition.

8. It is, interalia, further stated in the Company Petition that the Authorised Share Capital of the Petitioner-Transferor Company is Rs. 10,00,000/- (Rupees Ten lakhs only) consisting of 10,000 Equity shares of Rs. 100/- each; and that the issued, Subscribed and Paid-up Capital of the Petitioner-Transferor Company is 4044 Equity Shares of Rs. 100/- each Fully paid Up aggregating to Rs. 4,04,400 (Rupees Four lakhs Four thousand and Four Hundred only).

9. It is, interalia, further stated in the Company Petition that the Petitioner-Transferor Company prepares its accounts on financial year basis under the [Companies Act, 1956](#); .and that the Petitioner-Transferor Company has got its accounts for the financial year ended 31.3.2003 prepared and audited in the normal course.

10. Copy of the Latest Audited Annual Accounts of the Petitioner-Transferor Company for the year ended 31.3.2003. has been filed as Annexure-C to the Company Petition, and appears at page 53 of the; Paper Book of the Company Petition.

11. It is, interalia, stated in paragraph 7 of the Company Petition that the, Petitioner-Transferor Company has maintained proper books of accounts, as required by law.

12. Summary of the financial position of the Petitioner-Transferor Company as on 31.3.2003 has also been given in paragraph .7 of the Company Petition.

13. It is, interalia, further stated in paragraph 7 of the Company Petition that the Petitioner-Transferor Company has neither issued nor agreed to issue any debentures.

14. It is, interalia, stated in paragraph 8 of the Company Petition that subsequent to the date of the aforementioned accounts, there has been no substantial change in the financial position of the Petitioner-Transferor Company excepting those arising or resulting from the usual course of business for which the accounts and under preparation.

15. As regards the Petitioner-Transferee Company, it is, interalia, stated in the Company Petition that the Petitioner-Transferee Company was incorporated on 7.1.1993; and that the Registered Office of the Petitioner-Transferee Company is situated at 117/H-2/202, Pandu Nagar, Kanpur-208005, Uttar Pradesh, within the jurisdiction of this court.

16. An extract of the objects of the Petitioner-Transferee-company as set out in the Object Clause of its Memorandum of Association has been given in paragraph 11 of the Company Petition.

17. Copy of the Memorandum and Articles of Association of the Petitioner-Transferee Company has been filed as Annexure-D to the Company Petition, and appears at page, 79 of the Paper Book of the Company petition.

18. It is, interalia, stated in paragraph 12 of the Company Petition that the Authorised Share Capital of the Petitioner-Transferee Company is Rs. 400,00,000/- (Rupees Four Crores Only) consisting of 1,25,000 Equity Shares of Rs. 100/- each aggregating to Rs. 1,25,00,000/- and 2,75,000 Preference Shares of Rs. 100/- each aggregating to Rs. 2,75,00,000/-; and that the Issued, Subscribed and Paid-up Capital of the Petitioner-Transferee Company is Rs. 3,51,66,300/- (Rupees three crores fifty one lakh sixty six thousand three hundred only) consisting of 89,273 Equity Shares of Rs. 100/- each Fully Paid Up aggregating to Rs. 89,27,300 (Rupees Eighty Nine lakh Twenty Seven Thousand and Three Hundred only) and 2,62,390 non-cumulative 10% Preference shares of Rs. 100/- each fully Paid-up aggregating to Rs. 2,62,39,000/-.

19. It is, interalia, stated in paragraph 13 of the Company Petition that the Petitioner-Transferee Company prepares its accounts on financial year basis under the [Companies Act, 1956](#); and that the Petitioner-Transferee Company has got its accounts for the financial 'year ended 31.3.2003 prepared and audited in the normal course.

20. Copy of the Latest Audited Annual Accounts of the Petitioner-Transferee Company for the year ended 31.3.2003 has been filed as Annexure-E to the Company Petition, and appears at page 105 of the | Paper Book of the Company Petition.

21. It is, interalia, stated in paragraph 14 of the Company Petition that the Petitioner-Transferee Company has maintained proper books of accounts, as required by law.

22. Summary of the financial position of the Petitioner-Transferee Company as on 31.3.2003 has also been given in paragraph 14 of the Company Petition.

23. It is, interalia, further stated in paragraph 14 of the Company Petition that the Petitioner-Transferee Company has neither issued nor agreed to issue any debentures.

24. It is, interalia, stated in paragraph 15 of the Company Petition that subsequent to the date of the aforementioned accounts, there has been no substantial change in the financial position of the Petitioner- Transferee Company excepting those arising or resulting from the usual course of business for which the accounts are under preparation.

25. It is, interalia, stated in paragraph 16 of the Company Petition that there are two Directors in the Petitioner-Transferor Company.

26. List of the Directors of the Petitioner-Transferor Company has been filed as Annexure-F to the Company Petition, and appears at page 135j of the Paper Book of the Company Petition.

27. It is, interalia, stated in paragraph 17 of the Company Petition that there are two Directors in the Petitioner-Transferee Company

28. List of the Directors of the Petitioner-Transferee Company has been filed as Annexure-G to the Company Petition, and appears at page 136 of the Paper Book of the Company Petition.

29. Reasons for the proposed Scheme of Amalgamation of the Petitioner-Transferor Company with the Petitioner-Transferee Company have been mentioned in paragraph 18 of the Company Petition.

30. The major benefits that will accrue from the proposed Scheme of Amalgamation, according to the Petitioners-Companies, are mentioned in paragraph 19 of the Company Petition.

31. It is, interalia, stated in paragraph 21 of the Company Petition that the Board of Directors of the Petitioner-Transferor Company as well as the Board of Directors of the Petitioner-Transferee Company have at their respective meetings, by the resolutions passed unanimously, approved the proposed Scheme of Amalgamation.

32. Copies of the said Resolutions passed by the Board of Directors of the Petitioner-Transferor Company and the Board of Directors of the Petitioner-Transferee Company are collectively annexed as Annexure-H to the Company Petition, and appear at page 137 and 140 of the Paper Book of the Company Petition.

33. It is, interalia, stated in paragraph 22 of the Company Petition that the Directors of both the Petitioner-Transferor Company and the Petitioner-Transferee Company have no material interest in the proposed Scheme of Amalgamation, except as shareholder of the Petitioner-Transferee Company.

34. It is, interalia, stated in paragraph 23 of the Company Petition that the Petitioner-Transferor Company is a wholly owned subsidiary of the Petitioner-Transferee Company.

35. It is pertinent to mention that making the averments narrated herein-before, the Transferor Company (KTC Private Limited) and the Transferee Company (Leayan Overseas Private limited) Jointly filed a Company Application being Company Application No. 3 of 2004 before this Court under Sections 391(1) and 393 of the [Companies Act, 1956](#).

36. On the said Company Application No. 3 of 2004, the Court passed its order dated 30.1.2004, interalia, dispensing with the requirement of calling the meeting of the Equity Shareholders and the meeting of the Secured Creditors of the Transferor Company as well as the meeting of the Equity Shareholders, the meeting of the Preference Shareholders and the meeting of the Secured Creditors of the Transferee Company. The Court further directed for holding the meeting of the Unsecured Creditors of the Transferor Company and the meeting of the Unsecured Creditors of the Transferee Company on 13.3.2004 at the time and place mentioned in the said order dated 30.1.2004.

37. Relevant portion of the said order dated 30.1.2004 is quoted below:

'That whereas according to Paragraphs 30 and 31 of the application and annexures 15 and 16 to that application and annexure SAI to the Supplementary Affidavit, all the equity Shareholders and Secured Creditors of the transferor company and all the equity shareholders, preference shareholders and secured Creditors of the Transferee Company have given consent and no-objection to the proposed Scheme of Amalgamation, hence there is no need to call for the meetings of equity Shareholders, Preference Shareholders or secured creditors of either of the Companies for considering and if thought fit approving with or without modifications, the proposed Scheme of Amalgamation which annexure 7 to the application.

That as per paragraphs 28 and 29 there are 252 unsecured Creditors of the Transferor Company and 128 Unsecured Creditors of Transferee Company and for the purpose of consideration and if thought fit for approving with or without modification the proposed Scheme of amalgamation, it is necessary to have meetings of these unsecured Creditors of both Transferor and Transferee Companies. The said meetings will be held as orally requested by learned, :

counsel for the applicants at 12 noon and 2 PM respectively on Saturday 13.3.2004 at the registered office of the Companies.'

38. Before proceeding further, it is necessary to note one aspect of the matter, which came up before this Court during the course of hearing of the Company Petition,

39. As mentioned in the said order dated 30.1.2004, the Secured Creditor of the Transferor Company gave its consent and no-objection to the proposed Scheme of Amalgamation. The said consent and no-objection was given by an affidavit of Shyam Sundar Sabharwal, Branch Manager, Industrial Estate Branch, State Bank of India, Kanpur, sworn on 28.1.2004. The said affidavit appears at page 193 of the Paper Book of the Company Application.

40. A perusal of the said affidavit appearing at page 193 of the Paper Book of the Company Application shows that the said consent and no-objection was given subject to the approval by the Bank's Local Head Office at Lucknow'.

41. During the course of hearing of the present Company Petition, a Supplementary Affidavit, sworn on 27.8.2004, was filed on behalf of the Petitioners-Companies alongwith Misc. Application No. 164346 of 2004 (Paper No. A-8 on the record of the Company Petition). Alongwith the said Supplementary Affidavit, a photostat copy of the affidavit (designated as 'Revised Affidavit') of Narendra Pratap Singh, Branch Manager, Industrial Estate Branch, State Bank of India, Kanpur, sworn on 13.8.2004, was filed as part of Annexure-I to the said Supplementary Affidavit. The said affidavit (designated as 'Revised Affidavit') of the said Narendra Pratap Singh, sworn on 13.8.2004, has also been filed in original, and the same is Paper No. A-9/2 on file record of the present Company Petition.

42. It is, interalia, stated in the said affidavit (designated as 'Revised Affidavit') of the said Narendra Pratap Singh that the approval from the Bank's 'Local Head Office at Lucknow', as mentioned in the aforesaid affidavit of Shyam Sundar Sabharwal (appearing at page 193 of the Paper Book of Company Application No. 3 of 2004) has been received from the said Local Head Office at Lucknow, and

that the Local Head Office, Lucknow does not have any objections to the proposed Scheme of Amalgamation of KTC Pvt. Ltd. (Transferor Company) with Leayan Overseas Pvt. Ltd.(Transferee Company), and that the said Local Head Office has given its unconditional positive consent to the proposed Scheme of Amalgamation.

43. Again, as mentioned in the said order dated 30.1.2004, the Secured Creditor of the Transferee Company gave its consent and no-objection to the proposed Scheme of Amalgamation. The said consent and no-objection was given by an affidavit of Shyam Sundar Sabharwal, Branch Manager, Industrial Estate Branch, State Bank of India, Kanpur, sworn on 28.1.2004, appearing at page 194 of the Paper Book of Company Application No. 3 of 2004.

44. Alongwith the aforementioned Supplementary Affidavit, sworn on 27.8.2004 (filed alongwith the aforementioned application -Paper No. A-8), a Photostat copy of the affidavit (designated as Revised Affidavit') of Narendra Pratap Singh, Branch Manager, Industrial Estate Branch, State Bank of India, Kanpur, sworn on 13.8.2004, was filed as, part of Annexure-I to the said Supplementary Affidavit. The said affidavit (designated as 'Revised Affidavit') of the said Narendra Pratap Singh, sworn on 13.8.2004, has also been filed in original, and the same is Paper No. A-9/1 on the record of She present Company Petition.

45. It is, interalia, stated in the said affidavit (designated as Revised Affidavit') of the said Narendra Pratap Singh, that the approval from the Bank's 'Local Bead Office at Lucknow', as mentioned in the aforesaid affidavit of Shyam Sundar Sabharwal (appearing at page 194 of the Paper Book of Company Application No. 3 of 2004) has been received from the said Local Head Office at Lucknow, and that the Local Head Office, Lucknow does not have any objections to the proposed Scheme of Amalgamation of KTC Pvt. Ltd. (Transferor Company) with Leayan Overseas Pvt. Ltd. (Transferee Company), and that the said Local 'Head Office has given its ?unconditional positive consent to the proposed Scheme of Amalgamation.

46. Coming back to the narration of the facts, it is pertinent to mention that by the said order dated 30.1.2004 passed on the said Company Application No. 3 of 2004, following direction was given as regards quorum of the said meetings of the

Unsecured Creditors of the Transferor Company and the Unsecured Creditors of the Transferee Company:

'That the quorum of the said meeting shall be five unsecured creditors of each of the companies either personally or by proxy. However, the companies shall ensure that at least 40% of the unsecured debt is represented in each of the meetings either personally or by proxy. The vote by proxy shall be permitted provided that a proxy in the prescribed form duly signed by the person entitled to attend is filed with the company at its registered Office not later than 48 hours before the meetings.

That the value of each Unsecured Creditors' vote shall be equivalent to the Quantum of his debt calculated in accordance with the books of the Company and where the entries in the books are disputed, the Chairman of the meetings shall determine the value for the purposes of the meeting.'

47. It further appears that pursuant to the said order dated 30.1.2004, Shri J. Nagar, Who had been appointed as Chairman for the said meetings by the said order dated 30.1.2004, filed an Affidavit-Of-Service sworn on 27.2.2004 under Rule 76 of the Companies (Court) Rules, 1959, inter alia, mentioning compliance of the directions regarding giving of notices and taking out advertisements in the newspapers, as directed by the order dated 30.1.2004. The said Affidavit-Of-Service of Shri J. Nagar is Paper No. A-4 on the record of the said Company Application No. 3 of 2004.

48. Alongwith the said Affidavit-Of-Service of Shri J. Nagar, an affidavit of Murli Dhar, stated to be the Managing Director and constituted Attorney of KTC Private limited (Transferor Company), sworn on 24.2.2004, as well as copies of the Newspapers, namely, 'The Pioneer' (English), Lucknow and 'Amar Ujala' (Hindi), Kanpur, each dated 19.2.2004, copy of the notice issued to each Unsecured Creditor of KTC Private Limited(Transferor Company), and Photostat copies of Certificates of Posting regarding sending of the notices to the Unsecured Creditors of the Transferor Company were filed and collectively numbered; as Annexure-I to the said Affidavit-Of-Service of Shri J. Nagar.

49. Further, alongwith the said Affidavit-Of-Service of Shri J. Nagar, an affidavit of Bimal Kumar, stated to be the Director and constituted Attorney of Leayan Overseas Private Limited (Transferee Company), sworn on 23.2.2004, as well as copies of the Newspapers, namely, 'The Pioneer' (English), Lucknow and 'Amar Ujala' (Hindi), Kanpur, each dated 19.2.2004, copy of the notice issued to each Unsecured Creditor of Leayan Overseas Private. Limited (Transferee Company), and Photostat copies of Certificates of Posting regarding sending of the notices to the Unsecured Creditors of the Transferee Company were filed and collectively numbered as Annexure-II to the said Affidavit-Of-Service of Shri J. Nagar.

50. It further appears that pursuant to the said order dated 30.1.2004, meeting of the Unsecured Creditors of the Transferor Company and the meeting of the Unsecured Creditors of the Transferee Company were held on 13.3.2004 at the time and place mentioned in the said order dated 30.1,2004.

51. Pursuant thereto, Shri J. Nagar, as Chairman of the said meeting of the Unsecured Creditors of KTC Private Limited (transferor Company), submitted his report, on his affidavit sworn on 8.4.2004, alongwith an application being Civil Misc. Application No. 72682 of 2004 (Paper No. A-8 on the record of the said Company Application No. 3 of 2004).

52. By the order dated 21.4.2004 passed on the aforementioned Civil Misc. Application No. 72682 of 2004 (Paper No. A-8 on the record of the said Company Application No. 3 of 2004), the Court passed an order dated 21.4.2004 condoning the delay in filing the said report and directing for placing the said report on the record.

53. Alongwith the said report, attendance sheet of the Unsecured Creditors of the Transferor Company, Ballot Papers, and Minutes, of the meeting of the Unsecured Creditors of the Transferor Company were also filed.

54. Further, Shri J. Nagar, as Chairman of the meeting of the Unsecured Creditors of Leayan Overseas Private limited (Transferee Company), submitted his report on his affidavit, sworn on 8.4.2004, alongwith an application being Civil Misc. Application No. 72684 of 2004 (Paper No. A-7 on the record of the said Company

Application No. 3 of 2004).

55. By the order, dated 21.4.2004 passed on the aforementioned Civil Misc. Application No. 72684 of 2004 (Paper No. A-7 on the record of the said Company Application No. 3. of 2004), the Court passed an order dated 21.4.2004 condoning the delay in filing the said report and directing for placing the said report on the record.

56. Alongwith the said report, attendance sheet of the Unsecured Creditors of the Transferee Company, Ballot Papers, and Minutes of the meeting of the Unsecured Creditors of the Transferee Company were also filed.

57. From a perusal of the report of Shri J. Nagar, as Chairman of the meeting of the Unsecured Creditors of KTC Private Limited (Transferor Company) (Paper No. A-8 on the record of the said Company Application No. 3 of 2004) shows that following resolution was placed before the meeting of the Unsecured Creditors of the Transferor Company:

'RESOLVED THAT pursuant to the provisions of Section 391 to 394 and other applicable provisions of the [Companies Act, 1956](#), the Scheme of Amalgamation of K.T.C Private Limited, as circulated along with the notice of the meeting. A copy of which has also been placed before the meeting and for the purpose of identification signed by the Chairman thereof, be and is hereby approved and agreed to.'

58. It is, interalia, stated in the said report of Shri J. Nagar (Paper No. A-8 on the record of the said Company Application No. 3 of 2004) that the meeting of the Unsecured Creditors of KTC Private Limited (Transferor Company) was held on 13.3.2004 at 12.00 noon at 117/H-2/202, Pandu Nagar, Kanpur-208005 ; and that the meeting was attended either personally or by proxy by all the 28 Unsecured Creditors of the Transferor Company; and that the meeting unanimously resolved that the proposed Scheme of Amalgamation is approved subject to confirmation by this Court; and that the resolution quoted above, was passed in the said meeting; and that the total amount payable to Unsecured Creditors of the Transferor Company as on 31.12.2003 was Rs. 22,05,27,004.95 paise, out of which i.e

Unsecured Creditors present in the said meeting represented; an amount of Rs. 19,71,45,401.65 paise, which is 89.40% of the total debt of the Transferor Company as on 31.12.2003; and that the vote cast by the Unsecured Creditors in favour of the proposed Scheme of Amalgamation represents 100% of the value of the Unsecured Creditors of the Transferor Company present and voting.

59. From a perusal of the report of Shri J. Nagar, as Chairman of the meeting of the Unsecured Creditors of Leayan Overseas Private Limited (Transferee Company) (Paper No. A-7 on the record of the said Company Application No. 3 of 2004) shows that following resolution was placed before the meeting of the Unsecured Creditors of the Transferee Company:

"RESOLVED THAT pursuant to the provisions of Section 391 to 394 and other applicable provisions of the [Companies Act, 1956](#), the Scheme of Amalgamation of K.T.C. Private Limited, with Leayan Overseas Private Limited as circulated along with the notice of the meeting, a copy of which has also been placed before the meeting and for the purpose of identification signed by the Chairman thereof, be and is hereby approved and agreed to.'

60. It is, interalia, stated in the said report of Shri J. Nagar (Paper No. A-7 on the record of the said Company Application No. 3 of 2004) that the meeting of the Unsecured Creditors of Leayan Overseas Private Limited (Transferee Company) was held on 13.3.2004 at 2.00 p.m. at 117/H-2/202, Pandu Nagar, Kanpur-208005; and that the meeting was attended either personally or by proxy by all the 15 Unsecured Creditors of the Transferee Company; and that the meeting unanimously resolved that the proposed Scheme of Amalgamation is approved subject to confirmation by this Court; and that the resolution quoted above, was passed in the said meeting; and that the total amount payable to Unsecured Creditors of the Transferee Company 3s ! on 31.12.2003 was Rs. 11,63,62,543.37 paise, out of which the Unsecured Creditors present in the said meeting represented an amount of Rs. 11,11,62,262/-, which is 95.53% of the total debt of the Transferee Company as on 31.12.2003; and that the vote cast by the Unsecured Creditors In favour of the proposed Scheme of Amalgamation represents 100% of the value of the Unsecured Creditors of the Transferee

Company present and voting.

61. In the meantime, it appears that the present Company Petition, namely, Company Petition No. 21 of 2004 was filed by the Petitioners-Companies on 8.4.2004.

62. By the order dated 9.4.2004, the Company Petition was directed to be listed in the next cause list alongwith the said Company Application No. 3 of 2004.

63. It further appears that by the order dated 28.4.2004, notice of the hearing of the Company Petition was directed to be advertised under Rule 80 of the Companies (Court) Rules, 1959 in the two Newspapers, namely, 'The Pioneer' (English) published from Lucknow and 'Amar Ujala' (Hindi) published from Kanpur, i.e., the same newspapers in which the advertisements regarding the aforementioned meetings were published pursuant to the order dated 30.1.2004. It was, interalia, further directed by the said order dated 28.4.2004 that the. notices of the Company Petition alongwith the copies of the said Company Application No. 3 of 2004 and the reports of the Chairman be also served upon the Official liquidator as well as the Regional Director, Department of Company Affairs, Northern Region, Kanpur.

64. By the said order dated 28.4.2004, the date for hearing was fixed as 19.7.2004.

65. The said order dated 28.4.2004 is quoted below:

'Let the hearing of the petition be advertised in the two newspapers i.e. Pioneer in English published from Lucknow and Amar Ujala in Hindi published from Kanpur indicating that the petition would be listed for hearing on 19.7.2004. Necessary steps may be taken within three weeks from today. Notices of this petition alongwith copies of the Company Application No. 3 of 2004 as well as the reports of the Chairman shall also be served upon the Official Liquidator as well as to the Regional Director, Dept. of Company Affairs, Northern Region, Kanpur. The notice, will indicate that the authorities will file their reply by 12.7.2004 after serving a copy of the same to the petitioner.

List for hearing on 19.7.2004.'

66. It further appears that thereafter an Affidavit-Of-Service of Abhai Kant Chaturvedi, stated to be the Constituted Attorney and the Authorized Signatory of the Transferor Company and the Transferee Company, sworn on 2.7.2004 (Paper No. A-7 on the record of the present Company Petition) was filed on behalf of the Petitioners-Companies.

67. It is, interalia, stated in the said Affidavit-Of-Service that in compliance of the order dated 28.4.2004 passed by this Court, the Petitioners-Companies had served the copy of the present Company Petition (Company Petition No. 21 of 2004), copy of the said Company Application No. 3 of 2004, and copies of the Reports of the Chairman on the Official liquidator and the Regional Director, Department of Company Affairs, Kanpur. Copies of the receipts given by the office of the Official Liquidator as well as the Regional Director, Department of Company Affairs, Kanpur have been filed and collectively numbered as Annexure-I to the said Affidavit-Of-Service.

68. It is, interalia, further stated in the said Affidavit-Of-Service that in compliance of the said order dated 28.4.2004 passed by this Court, the Petitioners-Companies got the notices published on 15.5.2004 in 'Pioneer' (English) published from Lucknow and on 14.5.2004 in 'Amar Ujala' (Hindi) published from Kanpur; Copies of the said newspapers have been filed and collectively Numbered as Annexure-11 to the said Affidavit-Of-Service.

69. Pursuant to the service of notice of the hearing of the Company Petition on the Official Liquidator, the Official liquidator submitted his report being- Report No. 122 of 2004 (Paper No. A-4 on the record of the present Company Petition). Further, pursuant to the service of notice of the hearing of the Company Petition on the Regional Director, Northern Region, Ministry of Company Affairs, Kanpur, the said Regional Director submitted his representation/affidavit sworn on 2.7.2004. (Paper Mo. A-5 on the record of the present Company Petition) under Section 394A of the [Companies Act, 1956](#).

70. However, despite the notices of the hearing of the Company Petition having been advertised in the aforementioned newspapers, no one filed any objections in the matter.

71. I have heard Shri Satvendar Singh and Shri Piyush Agrawal, learned counsel for the Petitioners-Companies and Shri S.K. Saxena, Official Liquidator at length,

72. Let us first take up the Report of the Official Liquidator, namely, Report No. 122 of 2004.

73. It is, interalia, stated in the said Report that under; the Second Proviso to Section 394 of the [Companies Act, 1956](#), the Official Liquidator is required to scrutinize the Books of Accounts and documents of the Transferor Company and that accordingly the Official Liquidator issued letter dated 11.5.2004 to the Transferor Company Copy of the said letter dated 11.5.2004 has been filed as Annexure-1 to the said Report,

74. It is, interalia, further stated in the said Report of the Official Liquidator (Paper No. A-4) that as required under the Second Proviso to Section 394(1) of the [Companies Act, 1956](#), the Books of Accounts and papers of the Transferor Company were produced by Miss. Shraddha Tiwari, Company Secretary of the Transferee Company and Authorized Signatory of the Transferor Company on, 13.5.2004; and that the Books of Accounts and papers of the Transferor Company were scrutinized by the Official liquidator, and the same were found in order.

75. It is further stated in the said Report of the Official Liquidator (Paper No. A-4) that the Official Liquidator made query from! the' Transferor Company in regard to the date of transfer of shares of the Transferor Company to she Transferee Company; and that as seen from the records of the Transferor Company produce before the Official liquidator, the Transferor Company was having lease-hold land, and, therefore, it was enquired by the Official Liquidator as to whether No-Objection Certificate had been obtained from the lessor for transfer of the lease-hold land after amalgamation to the Transferee Company.

76. It is, interalia, further stated in the said Report of the Official Liquidator (Paper No. A-4) that the Transferor Company by its letter dated 15.6.2004 replied to the query of the Official Liquidator Copy of the said letter dated 15.6.2004 has been filed as Annexure-2 to the said Report of the Official liquidator (Paper No. A-4).

77. As regards the query made by the Official Liquidator regarding the date of transfer of shares of the Transferor Company to the Transferee Company, it is elaborated in the said Report that in para 5.10(d) of the proposed Scheme of Amalgamation, it has been mentioned that in respect of the shares issued by the Transferor Company and held by the Transferee Company or vice-versa, the same shall stand cancelled as of the Effective Date, and shall be of no effect and the Transferor/Transferee Companies, shall have no further obligation outstanding in that behalf. It is further pointed out by the Official Liquidator that as per the proposed Scheme of Amalgamation, the Effective Date is 1.4.2003.

78. In response to the said query made by the Official Liquidator, it is, interalia, stated in the said letter dated 15.6.2004 sent by the Transferor Company to the Official Liquidator that the shares of the Transferor Company were transferred in the name of Leayan Overseas Private Limited, the Transferee Company with its nominee on 20.3.2003 and thus, the Transferor Company became a wholly owned subsidiary of the Transferee Company on and from 20.3.2003 and continues to be the same till date.

79. It is, thus, evident from the said reply sent by the Transferor Company to the Official Liquidator that the transfer of shares of the Transferor Company to the Transferee Company and its nominee was made on 20.3.2003, and the Transferor Company thus became a wholly owned subsidiary of the Transferee Company on and from 20.3.2003, i.e., prior to the appointed date (namely, 1.4.2003) as per the proposed Scheme of Amalgamation. Hence, the query made by the Official Liquidator in this regard was satisfactorily explained by the Transferor Company.

80. Before taking up the other query made by the Official Liquidator, it is pertinent to refer to one submission made by the Official Liquidator during the course of hearing of the Company Petition. Referring to the Annual Report for the year 2002-03 in respect of the Transferor Company (Annexure-C to the Company Petition),

the Official Liquidator points out that as regards Issued, Subscribed and Paid-up Share Capital of the Transferor Company mentioned in Schedule-A occurring at page 66, it is stated that 'all shares are held by Leayan Overseas Private Limited, the holding Company'. It is pointed out by the Official Liquidator that there is no mention of any nominee of the Transferee Company (holding company) as the shareholder of the Transferor Company.

81. Shri Satyendar Singh, learned counsel for the Petitioners-Companies submits that even though nominee has not been mentioned In the said Schedule-A forming part of the Annual Report for the year 2002-03 in respect of the Transferor Company but in the Register of Members of the Transferor Company, the nominee has been mentioned as a shareholder.

82. In view of the said submission made by the learned counsel for the Petitioners-Companies, the Official liquidator has fairly stated that he would not press his said Objection any further.

83 As regards the query made by the Official Liquidator in his said Report (Paper No. A-4) regarding No-Objection Certificate from the lessor for transfer of the lease-hold land after amalgamation to the Transferee Company, it is stated in the said letter of the Transferor Company dated 15.6.2004 that the lease-hold land acquired by the Transferee Company belonged to The Kanpur Industrial Development Cooperative Estate Limited' (lessor); and that in terms of the lease deed, there was no prohibition on the Transferor Company to transfer its leasehold rights; and that the Transferor Company had duly informed the lessor vide its letter dated 10.6.2004 about the proposed Scheme of Amalgamation whereby the Transferor Company (KTC Private Limited) would be merged with the Transferees Company; (Leayan Overseas Private Limited); and that the Transferor Company had been given to understand that the lessor would charge a nominal charge of Rs. 10/- per sqr. Mtr.; and that the total conversion charges would be Rs. 20,000/-; and that the Transferor Company had also asked for a format No-Objection Certificate, which would be provided to the Transferor Company in doe course of time.

84. It is submitted by the Official Liquidator that in Schedule-D forming part of the Annual Report for the year 2002-03 in respect of the Transferor Company (Annexure-C to the Company Petition) and occurring at page 68 of the Paper Book of the Company Petition, Fixed Assets of the Transferor Company are mentioned. Item No. 1 of the said Schedule-D mentions the aforesaid lease-hold land. It is submitted that as per the proposed Scheme of Amalgamation, the lease-hold rights in respect of the said land would be transferred to the Transferee Company, and as such, it was necessary that No-Objection Certificate from the lessor be filed by the Petitioners-Companies before this Court.

85. In order to meet the said objection raised by this Official Liquidator, an affidavit of Miss. Shraddha Tiwari, sworn on 2.7.2004 (Paper No. A-6 on record of the present Company Petition) was filed on behalf of the Petitioners-Companies,

86. In paragraph 4 of the said affidavit (Paper No. A-6), it is interalia, stated that the Transferor Company has obtained a No- Objection Letter from the lessor of the lease-hold land in the name of the Transferor Company ; and that the lessor has no-objection to the proposed Scheme of Amalgamation. Copy of the said No-Objection Letter issued by the lessor (Kanpur Industrial Development Cooperative Estate limited) has been filed as Annexure-2 to the said affidavit (Paper No. A-6).

87. In response to the said affidavit (Paper No. A-6) filed on behalf of the Petitioners-Companies, the Official Liquidator submitted his report, namely Report No. 170 of 2004 (Paper No. A-10 on the record of the present Company Petition),

88. It is, interalia, stated in the said Report (Paper No. A-11) that in view of the said No-Objection Certificate contained in the letter: dated 25.6.2004 (Annexure-2 of the said affidavit-Paper No. A-6), the Court may decide the Company Petition on merit of the case.

89. During the course of hearing of the Company Petition, it transpired that the said letter of the lessor dated 25.6.2004 (Annexure-2 of the said affidavit-Paper No. A-6) mentioned no-objection only to the proposed Scheme of Amalgamation. In the circumstances, the aforementioned Supplementary Affidavit, sworn on 27.8.2004, was filed on behalf of the Petitioners-Companies alongwith Misc.

Application No. 164346 of 2004 (Paper No. A-8) wherein, besides clarifying various other points, the position in regard to No-Objection Certificate of the lessor was also explained.

90. It is, inter alia, stated in the said Supplementary Affidavit (Paper No. A-8) that the Transferor Company is having lease-hold land belonging to Kanpur Industrial Development Cooperative Estate Limited (lessor); and that the Transferor Company has deposited Rs. 20,000/- towards transfer charges by Receipt No. 70 dated 17.6.2004. Copy of the said Receipt No. 70 dated 17.6.2004 has been fixed as Annexure-SA-3 to the said Supplementary Affidavit (Paper No. A-8).

91. It is, inter alia, further stated in the said Supplementary Affidavit that in the circumstances, Kanpur Industrial Development Cooperative Estate limited has issued a letter dated 20.8.2004 wherein it has, inter alia, been stated that the transfer charges of Rs. 20,000/- have been received from the Transferor Company and that the Management Committee in its meeting held on 22.6.2004 has decided to issue No-Objection Certificate to the transferor Company and that the lessor has no-objection that consequent to the orders of the; High Court, the lease-hold rights in respect of the land in question would stand transferred to the Transferee Company (Leayan Overseas Private Limited).

92. Copy of the said letter dated 20.8.2004 has been filed as Annexure-SA-2 to the said Supplementary Affidavit (Paper No. A-8).

93. It is submitted by Shri Satvendar Singh, learned counsel for the Petitioners-Companies that the requisite transfer charges, namely, Rs. 20,000/- having been deposited by the Transferor Company with the lessor by the said Receipt No. 70 dated 17.6.2004, and the lessor having expressed its no-objection to the transfer of lease-hold rights in favour of the Transferee Company by the said letter dated 20.8.2004, the query raised by the Official Liquidator in regard to the No-Objection' Certificate from the lessor for the transfer of lease-hold rights of the Transferor Company to the Transferee Company consequent upon the amalgamation, is duly explained.

94. Shri S.K. Saxena, Official Liquidator has fairly stated that in view of the said letter dated 20.8.2004 containing no-objection of the lessor to the transfer of leasehold rights of the Transferor Company in the land in question to the Transferee Company, his query in this regard has been duly explained by the Petitioners-Companies.

95. It is pertinent to note that in his Report No. 122 of 2004 (Paper No. A-4), it is, interalia, stated by the Official Liquidator that as required under the Second Proviso to Section 394(1) of the [Companies Act, 1956](#), on the scrutiny of the Books of Accounts and papers and the clarifications given by the Transferor Company the Official Liquidator is of the opinion that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the Interest of its members or to the public interest; and that the Company Petition under Section 391 and 394 of the [Companies Act, 1956](#) may be decided by this Court on merits.

96. Coming now to the representation/affidavit of the Regional Director, Northern Region, Ministry of Company Affairs, Kanpur (Paper No. A-5), it is, interalia, stated in the said representation/affidavit that as per Clause 5.15 (a) of the proposed Scheme of Amalgamation, all the employees of the Transferor Company shall become the employees of the Transferee Company without break or interruption in their services upon sanctioning of the proposed Scheme of Amalgamation by this Court.

97. The said representation/affidavit of the said Regional Director quotes paragraph 6.5(a) of the proposed Scheme of Amalgamation, which is as under:

'(a) In the event of any of the said sanctions and approvals not being obtained and/or the Scheme not being sanctioned by the Hon'ble High Court and/or the order(s) not being passed as aforesaid on or before 30.6.2004 or within such further period or periods as may be agreed upon by and between the Transferor Company and the Transferee Company, this Scheme shall stand revoked and cancelled and become null and void and be of no effect.'

98. It is, interalia, further stated in the said representation/affidavit that in view of the above-quoted paragraph 6.5(a) of the proposed Scheme of Amalgamation, the

matter was taken up with the Transferor Company as well as the Transferee Company; and that it has been intimated that the Board of Directors of the Transferor Company as well as the Transferee Company, in their respective Board Meetings held on 23.4.2004 and 26.4.2004 have passed necessary Resolutions extending the period for sanctioning the proposed Scheme of Amalgamation upto 31.3.2005.

99. It is submitted by Shri S.K. Saxena, Official Liquidator that in view of paragraph 6.5(a) of the proposed Scheme of Amalgamation, in case the order sanctioning the proposed Scheme of Amalgamation were not passed on or before 30.6.2004, the proposed Scheme of Amalgamation would stand revoked and cancelled and become null and void and be of no effect. It is submitted by the Official Liquidator that in view of the said paragraph 6.5(a) of the proposed Scheme of Amalgamation, the Transferor Company as well as the Transferee Company were required to clarify the position in this regard.

100. Shri Satvendar Singh, learned counsel for the Petitioners-Companies submits that the said paragraph 6.5(a) of the proposed Scheme of Amalgamation itself provides that In case the order sanctioning the proposed Scheme of Amalgamation were not passed on or before 30.6.2004, it was open to extend the time for 'such further period or periods as may be agreed upon by and between the Transferor Company and the Transferee Company'.

101. It is submitted by Shri Satvendar Singh, learned counsel for the Petitioners-Companies that the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company at their respective meetings have extended the period upto 31.3.2005. He refers to the affidavit (Paper No. A-6) as well as the Supplementary Affidavit (Paper Ho. A-8) filed on behalf of the Petitioners-Companies.

102. It is, interalia, stated in the said affidavit (Paper No. A-6) that the Board of Directors of the Transferor Company and the Transferee Company in their respective Board Meetings held on 23.4.2004 and 26.4.2004 have passed the Resolution (s) extending the period, for sanctioning the proposed Scheme of Amalgamation upto 31.3.2005 or within such further period or periods as may be

agreed upon by and between the Transferor and Transferee Companies.

103. Copy of the said Resolution passed by the Board of Directors of the Transferor Company (KTC Private Limited) on 23.4.2004 has been filed as part of Annexure-1 to the said affidavit, and appears at pages 4 and 5 of the Paper Book of the said affidavit. Copy of the said Resolution passed by the Board of Directors of the Transferee Company (Leayan Overseas Private Limited) on 2.6.4,2004 has been filed as part of Annexure-1 to the said affidavit, and appears at pages 6 and 7 of the Paper Book of the said affidavit.

104. During the course of hearing, question arose as to whether the extension of period contemplated in the aforesaid paragraph 6.5(a) of the proposed Scheme of Amalgamation could be done only by calling fresh meeting(s) as contemplated under Section 391(1) and (2) read with Section 393 of the [Companies Act, 1956](#) or such extension could be done by the Board of Directors of the Transferor Company and the Transferee Company by passing Resolutions at their respective Board Meetings.

105. The Petitioners-Companies have clarified their stand on the said question in paragraphs 10 and 11 of the said Supplementary Affidavit (Paper No. A-8).

106. Paragraph 10 of the said Supplementary Affidavit quotes paragraph 6.2(a) of the proposed Scheme of Amalgamation, which is as follows:

'(a) The Transferor Company and the Transferee Company by their respective Board of Directors either by themselves or by any Committee constituted by the Board of Directors in this behalf may make or assent from time to time on behalf of all persons concerned to extension, modification or amendments of this Scheme or any of conditions or limitation which the Court and/or any authorities/persons may deem fit to approve of or impose and to resolve all doubts or difficulties that may arise for carrying out the Scheme and to do and execute all acts, deeds, matters and things necessary for putting the Scheme into effect.'

107. It is, interalia, stated in paragraph 11 of the said Supplementary Affidavit (Paper No. A-8) that thus, the proposed Scheme of; Amalgamation specifically

provides that the Board of Directors or the Committee constituted by the Board of Directors can extend, modify or amend the proposed Scheme of Amalgamation or any condition .. therein for putting the proposed Scheme of Amalgamation into effect.

108. It is submitted by Shri Satvendar Singh, 'teamed counsel for the Petitioners-Companies that in view of the said paragraph 6.2(a) of the proposed Scheme of Amalgamation, the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company had power to extend the period mentioned in paragraph 6.5(a) of the proposed Scheme of Amalgamation. Thus, the aforesaid Resolutions passed by the Board of Directors of the Transferor Company and the Board of electors, of the Transferee Company extending the period mentioned in paragraph 6.5(a) of the proposed Scheme of Amalgamation were fully valid.

109. I have considered the submissions made by Shri Satvendar Singh, learned counsel for the Petitioners-Companies on the said question, and I am inclined to accept the same.

110. Reading paragraph 6.5(a) and paragraph 6.2(a) of the proposed Scheme of Amalgamation together, it is evident that the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company may agree to the extension of the period mentioned, in paragraph 6.5(a) of the proposed Scheme of Amalgamation- Paragraph 6.2(a) of the proposed Scheme of Amalgamation, interalia, provides that the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company either by themselves or by any Committee constituted by the Board of Directors in this behalf 'may make or assent from time to time on behalf of all persons concerned to any extension modification or amendments of this Scheme'. It is evident from the said paragraph 6.2(d) of the proposed Scheme of Amalgamation that the respective Board of Directors of the Transferor Company and the Transferee Company have been given power to make or assent to any extension of the proposed Scheme of Amalgamation, and this would be done by such Board of Directors on behalf of all persons concerned.. In view of the wide powers given in the said paragraph 6.2(a) of the proposed Scheme of Amalgamation, I am of the opinion that it is not

necessary to call fresh meeting(s) as per the provisions of Section 391(1) and (2) read with Section 393 of the [Companies Act, 1956](#) for extending the period as contemplated in paragraph 6.5(a) of the proposed Scheme of Amalgamation.

111. It is, thus, evident that the question raised in the representation/affidavit of the Regional Director (Paper No. A-5) regarding the period mentioned in paragraph 6.5(a) of the proposed Scheme of Amalgamation has been satisfactorily explained by the Petitioners-Companies.

112. From the narration of the facts given above, it is evident that the requirement for holding the meetings of the Equity Shareholders and the Secured Creditors of the Transferor Company, as per the requirements of Section 391(1) read with Section 393 of the [Companies Act, 1956](#) was dispensed with by this Court by its order dated 30.1.2004 passed on the aforesaid Company. Application No. 3 of 2004.

113. Further, the requirement for holding the meeting of the Equity Shareholders, the Preference Shareholders and the Secured Creditors of the Transferee Company, as per the requirements of Section 391(1) read with Section 393 of the [Companies Act, 1956](#), was dispensed with by this Court by the said order dated 30.1.2004' passed on the aforesaid Company Application No. 3 of 2004.

114. Further, the meeting of the Unsecured Creditors of the Transferor Company, as per the directions given in the said order dated 30.1.2004, was held on 13.3.2004 at the time and place mentioned in the said order dated 30.1.2004.

115. Quorum of the said meeting of the Unsecured Creditors of the Transferor Company, as fixed by this Court in the said order dated 30.1.2004, was 5 by number and 40% by value of the Unsecured Creditors of the Transferor Company.

116. As is evident from a perusal of the Report submitted by Shri J. Nagar, Chairman of the said meeting of the Unsecured Creditors of the Transferor Company, the said meeting held on 13.3.2004 was attended by 28 Unsecured Creditors of the Transferor Company (either personally or by proxy) representing 39.40% of the total debt of the Transferor Company as on 31.12.2003. Further, the

Resolution, as reproduced above, approving the proposed Scheme of Amalgamation was passed by 100% of the value of the Unsecured Creditors of the Transferor Company present and voting.

117. Further the meeting of the Unsecured Creditors of the Transferee Company,' as per the directions given in the said order dated 30.12.2004 was held on 13.3.2004 . at the time and place mentioned in the said order dated 30.1.2004.

118. Quorum of the said meeting of the unsecured Creditors of the Transferee Company, as fixed by this Court In the said order dated 30.1.2004, was 5 by number and 40% by value of the Unsecured Creditors of the Transferee Company.

119. As is evident from a perusal of the Report Submitted by Shri J. Nagar, Chairman of the said meeting of the Unsecured Creditors of the Transferee Company, the said meeting held ton 13.3.2004 was attended by 15 Unsecured Creditors of the Transferee Company (either personally or by proxy) representing 95.53% of the total debt of the Transferee Company as on 31.12.2003. Further, the Resolution, as reproduced above, approving the proposed Scheme of Amalgamation was passed by 100% of the value of the Unsecured Creditors of the Transferee Company present and voting.

120. It is further evident from a perusal of the Company Petition and Annexure-C thereto that the Petitioners-Companies have brought on record the Annual Report in respect of the Transferor Company containing the Audited Balance Sheet and Profit and Loss Account as well as other particulars of the Transferor Company for the year ended on 31.3.2003. Similarly, a perusal of the Company, Petition and Annexure-E thereto shows that the Petitioners-Companies have brought on record the Annual Report in respect of the Transferee Company containing the Audited Balance Sheet and Profit and loss Account as well as other particulars of the Transferee Company for the year ended on 31.3.2003.

121. Further, summary of the financial position of the Transferor Company as on 31.3.2003 has been given in paragraph 7 of the Company Petition. In paragraph 8 of the Company Petition, It is interalia, stated that subsequent to the date of the said Accounts, there has been no substantial change in the financial position of

the Transferor Company excepting those arising or resulting from the usual course of business.

122. Further, summary of the financial position of the Transferee Company as on 31.3.2003 has been given in paragraph 14 of the Company Petition. In paragraph 15 of the Company Petition, it is inter alia, stated that subsequent to the date of the said Accounts, there has been no substantial change in the financial position of the Transferee Company excepting those arising or resulting from the usual course of business.

123. It is, inter alia, stated in paragraph 32 of the Company Petition that the proposed Scheme of Amalgamation does not involve any compromise or Composition with the Creditors of the Petitioners-Companies in any manner whatsoever.

124. In paragraph 33 of the Company Petition, it is, inter alia, stated that no proceedings under Sections 235 to 251 of the [Companies Act, 1956](#) are pending against the Petitioners-Companies.

125. It is, inter alia, further stated in paragraph 33 of the Company Petition that no proceedings under Sections 397 and 398 of the [Companies Act, 1956](#) have ever been launched against the Petitioners-Companies.

126. In paragraph 34 of the Company Petition, it is averred that the Auditors of the Petitioners-Companies do not disclose any mismanagement in the affairs of the Petitioners-Companies.

127. It is, inter alia, stated in paragraph 35 of the Company Petition that the sanction of the proposed Scheme of Amalgamation will be for the benefit of the Petitioner-Transferor Company and the Petitioner-Transferee Company.

128. It is, inter alia, stated in paragraph 37 of the Company Petition that the Company Petition is made bonafide and in the interest of justice.

129. In paragraph 38 of the Company Petition, it is, inter alia, averred that no one will be prejudiced if the proposed Scheme of Amalgamation is sanctioned, and the

sanction of the said Scheme will benefit and will be in the interest of the Petitioners-Companies, their Shareholders, Creditors, Employees and all concerned.

130. It is, interalia, further stated in paragraph 33 of the Company '?. Petition that the Petitioners-Companies have disclosed all the material particulars in relation to the Transferor Company and the Transferee Company.

131. As already noted above, despite the notices of the hearing of the Company Petition having been advertised in the Newspapers, no-objections have been filed in the matter.

132. Further, as discussed above, the queries/questions raised by the Official Liquidator and the Regional Director have been satisfactorily explained by the Petitioners-Companies.

133. Having regard to the aforesaid, the Court is satisfied that the Petitioners-Companies have disclosed to the Court all material facts relating to the Petitioner-Transferor Company and the Petitioner-. Transferee Company, as per the requirements of the Proviso to Sub-section (2) of Section 391 of the [Companies Act, 1956](#). Nothing adverse has been brought to the notice of the Court dissuading it from giving its approval to the proposed Scheme of Amalgamation.

134. In view of the aforesaid discussion, the proposed Scheme of Amalgamation, annexed as Annexure-A to the Company Petition at page 12 of the Paper Book of the Company Petition, is hereby sanctioned,; as per' the provisions of Sections 391 and 394 of the [Companies Act, 1956](#).

135. In View of the sanction of the proposed Scheme of Amalgamation, it is directed, as per the provisions of Section 394(2) of the [Companies Act, 1956](#), that all the properties, rights, interests and powers of the Transferor Company and all time liabilities, obligations, duties and engagements of the Transferor Company shall be transferred to and vested in the Transferee Company as per the terms of the Scheme of Amalgamation.

136. It is further directed that the Transferor Company (K.T.C. Private Limited) will stand dissolved, without winding-up, as per the Scheme of Amalgamation.

137. Let the order be issued in Form No. 42 of the Companies (Court) Rules, 1959.

138. Certified copy of the order will be filed by the Petitioners-Companies with the Registrar of Companies, Kanpur within 30 days of the issuance of the certified copy of order, as per the requirements of Section 394(3) of the [Companies Act, 1956](#).

139. The Company Petition stands disposed of accordingly.

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