

* IN THE HIGH COURT OF DELHI AT NEW DELHI
COMPANY JURISDICTION
+ **CP No. 2 of 2008**
% **27.02.2008**

In the matter of the Companies Act, 1956:

Scheme of Amalgamation of:

Devyani Exim Pvt. Ltd. ... Petitioner/Transferor Company

with

Arctic Drinks Ltd. ... Petitioner/Transferee Company

Through : Mr. Abhimanyu Mahajan &
Mr. Ashish Dholakia, Advocate
Ms. Manisha Tyagi, for the OL
Mr. R.D. Kashyap, Dy. RoC

VIPIN SANGHI, J. (ORAL)

1. This is a petition under Sections 391 and 394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of Devyani Exim Pvt. Ltd. (Transferor company) with Arctic Drinks Ltd. (Transferee company).
2. The registered offices of both the Transferor and Transferee companies are situated at F-2/7, Okhla Industrial Area, Phase - I, New Delhi - 110020, that is, within the jurisdiction of this Court.
3. The Transferor company was incorporated on 28.01.1987. The

authorized share capital of the Transferor company is Rs.4,50,00,000/- divided into 45,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up equity share capital of the Transferor company is Rs.4,07,00,000/- divided into 40,70,000 equity shares of Rs.10/- each.

4. The Transferee company was incorporated on 01.03.1980. The 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 equity share capital of the Transferee company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each.

5. The Transferor and the Transferee companies had filed the joint 1st motion Company Application (M) No. 157/2007, which was allowed by order dated 21st November, 2007. All the equity shareholders, gave their consent to the scheme and the secured and unsecured creditors have either given their consent in writing, or have been paid off. Copies of all the consents have been filed on record. Therefore, by the aforesaid order, the requirement of conducting statutory meetings of equity shareholders, secured and unsecured creditors of both the petitioner companies were dispensed with.

6. Vide order dated 4th January 2008, citations were directed to be published in "Indian Express" (English edition) and "Jansatta" (Hindi edition), in terms of Companies (Court) Rules, 1959. An affidavit

dated 21st February 2008 has been filed by one Mr. Gautam Seth, the authorized signatory of the petitioner companies about the publication of the citations in “Indian Express” (English) and “Jansatta” (Hindi) on 12th February 2008. The said publication containing the said citations were also produced along with the affidavit. However, no member of the public has appeared to raise any objection to the scheme.

7. Notices were issued to the OL and the Regional Director (Northern Region) vide order dated 4th January 2008. Pursuant to the notice issued to the OL, a report dated 25th February 2008 has been filed by the Official Liquidator. The Official Liquidator sought information from the petitioner company vide its letter no. OL/TECH/AMAL/104/365 dated 6th February 2008, upon which the requisite information was furnished by the Petitioner companies.

8. The OL has considered the accounts of petitioner companies as on 31st March 2007. The OL in its report has stated that he has not received any complaint against the Scheme of Amalgamation from any person/parties interested in the scheme in any manner whatsoever, and on the basis of information submitted by the petitioner companies. Thus it was inferred that the affairs of the petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors, or public interest, and is well in accordance with the provisions of Section

394(1) of the Companies Act, 1956.

9. The report has also been filed by Shri Dhan Raj, Regional Director (Northern Region) by an affidavit, dated 22nd February 2008. Relying on Clause 17 of Part V of the Scheme of Amalgamation, it was submitted that all the employees of the Transferor company shall become the employees of the Transferee company without any break or interruption in their services upon the sanctioning of the said Scheme of Amalgamation.

10. The Regional Director further submitted that in Para 7 of Para-III of the Scheme, which provides for the Accounting Standards, there is no mention whether the petitioner companies have complies with the Accounting Standard-14 (Accounting for Amalgamation), issued by the Institute of Chartered Accountants of India. The petitioner have undertaken that they will adopt the said Accounting Standard-14. Thus the objection of the Regional Director does not subsist.

11. There is no other legal impediment to sanction of the Scheme of Amalgamation which is annexed to the petition. Consequently, sanction is hereby granted to the Scheme of Amalgamation of Transferor company with the Transferee company, under Sections 391 and 394 of the Companies Act, 1956. The Transferee company will comply with the statutory requirements in accordance with law. Certified copies of this order be filed with the Registrar of Companies within eight weeks. It is also clarified that this order will not be

construed as an order granting exemption from payment of stamp duty that is payable in accordance to law. Upon sanction becoming effective from the appointed date of amalgamation, that is 1st April 2007, the Transferor company shall stand dissolved without being wound up. One set of costs of Rs.10,000/- shall be paid by the applicants into the Common Pool Fund within three weeks.

12. The petition is disposed of in terms of the above order.

February 27, 2008
aj/as

VIPIN SANGHI, J.