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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 84/2011

IN THE MATTER OF

M/S C.L. (INDIA) PRIVATE LIMITED & ORS. Petitioners

**Through: Mr. Hemant Sharma, Advocate for
petitioners.**

**Mr. Kanwal Chaudhary, Advocate for
Official Liquidator.**

**Mr. Atma Sah, Assistant Registrar of
Companies for Regional Director,
Northern Region.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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08.11.2011

1. This second motion joint Petition has been filed under Sections 391 & 394 of the Companies Act, 1956 (for short 'Act') seeking sanction of the Scheme of Amalgamation (for short 'Scheme') of M/S. C.L. (INDIA) PRIVATE LIMITED (hereinafter referred to as 'Transferor Company No.1'), M/S. I.I.I. OVERSEAS PRIVATE LIMITED (hereinafter referred to as 'Transferor Company No.2') and M/S. I.I.I. FASHION PRIVATE

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Signature Not Verified

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

LIMITED (hereinafter referred to as 'Transferor Company No.3') (collectively as 'Transferor Companies') with M/S. II INSPECTION & EXPORT PRIVATE LIMITED (hereinafter referred to as 'Transferee Company').

2. The registered offices of the Transferor and Transferee Companies are situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of the Transferor and Transferee Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2010 of all the Transferor and Transferee Companies have also been enclosed with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme have also been placed on record.

6. It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Petitioner Companies.

7. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Company shall issue and allot shares in the following manner:

- 2275 (Two Thousand Two Hundred Seventy Five) equity shares of Rs. 10/- each, of the Transferee Company for every 100 (Hundred) fully paid equity shares of Rs.100/- (Rupees Hundred Only) each held in the Transferor Company No.1.
- 38 (Thirty Eight) equity shares of Rs. 10/- each, of the Transferee Company for every 100 (Hundred) fully paid equity shares of Rs.10/- each held in the Transferor Company No.2.
- No share of the Transferee Company shall be issued to the Transferor Company No.3 as the net worth per share of the Transferor Company No.3 is negative.

8. The Petitioner Companies had earlier filed Co. Appl. (M) No. 24 of 2011 seeking directions of this Court for dispensation of meetings. Vide order dated 02nd February, 2011, this Court allowed the Application and

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dispensed with the requirement of convening meetings of Equity Shareholders, Secured and Unsecured Creditors of the Transferor and Transferee Companies with the undertaking that the Applicant Companies would pay off all the trade creditors whose dues have been outstanding for a period of six months or more as on date within a period of eight weeks.

9. In this respect, Mr. Hideo Kojima, Director, on behalf of all the Petitioner Companies has filed an affidavit dated 03rd November, 2011 before this Court along with proof of payment i.e. Bank Statement of respective Petitioner Company.

10. The Petitioner Companies filed the present Petition seeking sanction of the Scheme. Vide order dated 22nd February, 2011, 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 'The Statesman' (English, Delhi Edition) and 'Veer Arjun' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners confirming the publication of citations in the aforesaid newspapers on 27th August, 2011 and corrigendum in 'Veer Arjun' (Hindi, Delhi Edition) on

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28th August, 2011. Copies of the newspapers' cuttings, in original, containing the publications have been filed along with the said Affidavit.

11. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated 05th September, 2011 wherein he has stated that he has not received any complaint against the proposed Scheme 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 to public interest.

12. In response to the notices issued in the Petition, Mr. B.K. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 15th July, 2011. Relying on Clause 9.1 of Part-II of the Scheme, he has stated that all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court.

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13. In response to the said observation of the Regional Director, the Petitioner Companies undertake that the same shall be duly ensured.

14. No objection has been received to the Scheme from any other party. Mr. Hemant Sharma, learned counsel for the Petitioner Companies, has filed an affidavit dated 02nd November, 2011, confirming that neither the Petitioner Companies nor he has received any objection pursuant to citations published in the newspapers.

15. Even today, during the course of hearing Mr. Atma Sah, Assistant Registrar of Companies appearing for Regional Director (Northern Region) and Mr. Kanwal Chaudhary, learned counsel for Official Liquidator state that they have no objection to the Scheme being sanctioned.

16. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; affidavit/report filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the Official Liquidator to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner Companies

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will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act and in terms of the Scheme, the whole or part of the undertakings, the properties, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

17. Mr. Hemant Sharma, learned counsel for the Petitioner Companies states that the Petitioner Companies would voluntarily deposit a sum of

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₹1,00,000/- with the Common Pool fund of the Official Liquidator within
three weeks from today. The said statement is accepted.

18. The Petition is allowed in the above terms.

Order dasti.


MANMOHAN, J

NOVEMBER 08, 2011

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