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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CO.PET. 114/2010

IN THE MATTER OF:

**M/S. SHREE KHEMI SHAKTI LEASING
& PROPERTIES PRIVATE LIMITED & ORS.**

Through: Mr. Ashish Aggarwal, Advocate for
the petitioner.

Mr. K.S. Pradhan, Deputy ROC for
Regional Director.

Ms. Manisha Tyagi, Advocate for
Official Liquidator.

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Reserved on: 04th January, 2011

Date of Decision: 17th January, 2011

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

J U D G M E N T

MANMOHAN, J

1. This is a second motion petition under Sections 391 and 394 of the Companies Act, 1956 (for short “the Act”) for sanction/approval of a Scheme of Amalgamation amongst M/s. Shree Khemi Shakti Leasing & Properties Pvt. Ltd. (Transferor Company no. 1), M/s. A.J.D. Leasing & Finance Ltd. (Transferor Company no. 2), M/s. P.S.P. Capital Services Pvt. Ltd. (Transferor Company no. 3), M/s. Shri Ram Sevak Fincap Pvt. Ltd. (Transferor Company no. 4), M/s. Exabroad Finance

Pvt. Ltd. (Transferor Company no. 5), M/s. Shri Ram Sevak Finvest Pvt. Ltd. (Transferor Company no. 6), M/s. Newage Shares and Stock Brokers Pvt. Ltd. (Transferor Company no. 7), M/s. S.R.G. Human Resources Development Ltd. (Transferor Company no. 8), M/s. Pruday Investments Pvt. Ltd. (Transferor Company no. 9), M/s. Shri Deoraha Finvest Pvt. Ltd. (Transferor Company no. 10), M/s. Aggarwal Fincap Pvt. Ltd. (Transferor Company no. 11), M/s. Shalani Dhoop Pvt. Ltd. (Transferor Company no. 12), M/s. Yeomans Printpack Pvt. Ltd. (Transferor Company no. 13), M/s. Duggal Contractors and Traders Pvt. Ltd. (Transferor Company no. 14), M/s. Shri Deoraha Finlease Pvt. Ltd. (Transferor Company no. 15), M/s. First India Capital Services Ltd. (Transferor Company no. 16), M/s. Ravico (India) Ltd. (Transferor Company no. 17), M/s. Romano Investments Pvt. Ltd. (Transferor Company no. 18), M/s. Neat Developers Ltd. (Transferor Company no. 19), M/s. Infopark (India) Ltd. (Transferor Company no. 20), M/s. GNG Travels Pvt. Ltd. (Transferor Company no. 21) and M/s. BSSR Impex Pvt. Ltd. (Transferor Company no. 22) with M/s. Vizwise Commerce Pvt. Ltd. (Transferee company).

2. The details of twenty two transferor companies as well as transferee company including their date of incorporation, registered office, their authorised, issued, subscribed and paid up capital have been mentioned in the petition. Copies of the Memorandum of Association and Articles of Association as well as audited annual accounts of all the Transferor Companies and Transferee Company have been placed on record. The Scheme has been annexed as

‘Annexure A’.

3. This Court vide order dated 4th March, 2010 passed in CO. APPL. (M) NO. 183 of 2009, dispensed with the requirement of convening meetings of the shareholders and the creditors of all the petitioner companies as all the shareholders and the creditors had given their consent to the proposed Scheme of Amalgamation.

4. After filing of the present petition, notices were issued to the Regional Director (Northern Region) of Ministry of Corporate Affairs and the Official Liquidator. Notices were also directed to be published in newspapers, namely, “The Statesman” (English) and “Veer Arjun” (Hindi). The petitioners have filed clippings of the notices published in the said newspapers.

5. The Regional Director (Northern Region) in his affidavit has admitted that in the Scheme of Amalgamation, all employees of the transferor companies shall become employees of the transferee company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by this Court. However, the Regional Director has pointed out that two complaints under Sections 17 and 224(8) of the Act are pending in the Court of ACMM, Tis Hazari, Delhi.

6. In response, Mr. Ashish Aggarwal, learned counsel for the petitioners has stated that the transferor company No.14 has filed a compounding application before the Company Law Board in respect of

the aforesaid two cases. He has further pointed out that as per Clause 12 of the Scheme of Amalgamation under the heading 'Legal Proceedings', it has been clearly stipulated that all legal proceedings as against the transferor companies shall be proceeded with against the transferee company. Since lot of emphasis was laid upon Clause 12 of the Scheme of Amalgamation, the same is reproduced hereinbelow:-

"12. LEGAL PROCEEDINGS:

All legal proceedings including any suit, writ petition, appeal, revision or other proceedings of whatever nature (hereinafter called "the Proceedings") by or against any of the Transferor Company be pending, the same shall not abate or be discontinued or be in any way prejudicially affected by reason of the transfer of the Undertakings of the Transferor Companies or of anything contained in the Scheme, but the Proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies as if the Scheme had not been made. On and from the Effective Date/Transfer Date, the Transferee Company shall and may initiate any legal proceeding for and on behalf of the Transferor Companies."

7. During the course of hearing, this Court had clarified that even if the present Scheme of Amalgamation is approved/sanctioned, the two complaints against the transferor company No.14 as well as its Directors and the compounding application would not stand abated but would continue against the transferee company and the erstwhile Directors of the transferor companies. Mr. Ashish Aggarwal, learned counsel for petitioners stated that the petitioners would be bound by the present clarification. Even Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for the Regional Director (Northern Region) was

satisfied and did not press his objection to the Scheme of Amalgamation.

8. Ms. Manisha Tyagi, learned counsel for the Official Liquidator stated that no complaint had been received against the proposed Scheme of Amalgamation by any person/party interested in the scheme. She further stated that according to the Official Liquidator, the affairs of the transferor and transferee companies did not appear to have been conducted in the manner prejudicial to the interest of its members or public interest. Accordingly, she stated that the Official Liquidator had no objection to the proposed Scheme of Amalgamation.

9. Having heard the learned counsel for the parties, I hereby sanction the Scheme of Amalgamation set forth in Annexure A hereto and declare the same to be binding on all the shareholders & creditors of the petitioner companies and all concerned and approve the said Scheme of Amalgamation with effect from the Appointed Date.

10. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Act. The petitioners will comply with the statutory requirements in accordance with law. It is clarified that this order will not be construed as an order granting exemption from payment of stamp duty or tax, if payable. The petition is allowed in above terms.

MANMOHAN, J

JANUARY 17, 2011

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