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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 220/2011

IN THE MATTER OF

M/S. CSM WORLDWIDE INDIA

SOLUTIONS PRIVATE LTD. Petitioner

Through Mr. Shally Bhasin with Mr. Rajeev
Kumar, Advocates for petitioner-
company.Mr. K.S. Pradhan, Dy. ROC for
Regional Director (NR).**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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11.11.2011

1. This second motion Petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 (for short 'Act') seeking sanction of the Scheme of Amalgamation (for short 'Scheme') of M/s. Global Insight India Private Limited (hereinafter referred to as 'Transferor Company No. 1') and M/s. CSM Worldwide India Solutions Private Limited (hereinafter referred to as 'Transferor Company No. 2/Petitioner Company') with M/s. HIS Parts Management Private Limited (hereinafter referred to as 'Transferee Company').

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2. The registered office of the Transferor Company No. 2 is situated at New Delhi, within the jurisdiction of this Court. The registered offices of Transferor Company No. 1 and Transferee Company are situated at Gurgaon and Bangalore respectively, outside jurisdiction of this Court.

3. Details with regard to the date of incorporation of 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 and Provisional Accounts of the Transferor and Transferee Companies have also been placed on record.

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 shares in the following manner:-

- 100 (Hundred) Equity Share of Rs. 10/- each in the Transferee Company credited as fully paid up for every 393 Equity Shares of Rs. 100/- each fully paid up held by such member in Transferor Company No. 1
- 1 (One) Equity Share of Rs. 10/- each in the Transferee Company credited as fully paid up for every 815 Equity Shares of Rs. 10/- each fully paid up held by such member in Transferor Company No. 2”

8. The Petitioner Company had earlier filed CA (M) No. 83 of 2011 seeking directions of this Court for dispensation of meetings of equity shareholders. Vide order dated 29th April, 2011, this Court allowed the Application and dispensed with the requirement of convening meetings of equity shareholders. The Petitioner Company does not have any secured or unsecured creditors.

9. The Petitioner Company has thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 6th May, 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 'Indian Express' (English, Delhi Edition) and 'Dainik Bhaskar' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 18th October, 2011. Copies of the newspapers' cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

10. 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 18th October, 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 Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

11. In response to the notices issued in the Petition, Mr. B.K. Bansal, learned Regional Director, Northern Region, Ministry of

Corporate Affairs has filed his affidavit on 29th August, 2011. Relying on Clause 6.1 of the Scheme, he has stated that, upon sanction of the Scheme, all the permanent 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.

12. In para No. 4.1 of the affidavit, Mr. B.K. Bansal has observed that the Memorandum of Association of a company can be changed only after following the procedure prescribed under the relevant provisions of the Act. In reply to aforesaid observation, a rejoinder affidavit dated 8th November, 2011 has been filed on behalf of Petitioner Company by Mr. Pankaj Kumar, Authorised Signatory of the Petitioner Company. It is submitted that as held in the case of *PMP Auto Industries Ltd. (1994) 80 C.C. 289* approval of Scheme in terms of Sections 391-394 of the Act is a 'Single Window Clearance' and no further act on the part of company is required to be done after the approval of the Scheme, for giving effect to alteration in the Memorandum of Association of the company. The affidavit further states that the proposed Scheme has been approved by all the shareholders of the Petitioner Company. The Petitioner Company has

no secured or unsecured creditors. In view of the abovesaid, the objection raised by the Regional Director no longer survives.

13. No objection has been received to the Scheme from any other party. Mr Pankaj Kumar, Authorised Signatory of Petitioner Company, has filed an affidavit dated 8th November, 2011, confirming that neither the Petitioner Company nor their counsel has received any objection pursuant to citations published in the newspapers.

14. In view of the approval accorded by the shareholders of the Petitioner Company; affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court 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 Company will comply with the statutory requirements in accordance with law including permission of the Reserve Bank of India, if any, for repatriation of funds. 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 Petitioner

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Company 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 Petitioner Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Petitioner Company 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.

15. Learned counsel for the Petitioner Company submits that High Court of Punjab and Haryana has sanctioned the Scheme filed by the Transferor Company No. 1 vide order dated 18th August, 2011 passed in Co. Pet. 71/2011.

16. Further, since the jurisdiction of the Transferee Company is before the High Court of Karnataka and the Transferee Company has already moved a petition over there, this order is subject to the sanction of the Scheme by High Court of Karnataka.

17. Learned Counsel for the Petitioner states that the Petitioner Company would voluntarily deposit a sum of Rs. 1,00,000/- with the

Common Pool fund of the Official Liquidator within three weeks from
today. The statement is accepted.

18. The Petition is allowed in the above terms.

Order Dasti.


MANMOHAN, J

NOVEMBER 11, 2011

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