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

+ CO.PET. 274/2011

**IN THE MATTER OF RAINBOW OXYGEN  
PRIVATE LIMITED & ORS.**

..... Petitioners

Through: Mr. Amit Goel, Advocate for  
petitioners.

Mr. S.P. Singh, Inspector, for  
Official Liquidator.

Mr. K.S. Pradhan, Deputy Registrar of  
Companies for Regional Director,  
Northern Region.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**ORDER**

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**16.11.2011**

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. RAINBOW OXYGEN PRIVATE LIMITED (hereinafter referred to as 'Transferor Company') with M/S. ADITYA AIR PRODUCTS PRIVATE LIMITED (hereinafter referred to as 'Transferee Company').

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Signature Not Verified

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

3. It is stated that the Transferor Company was incorporated on 7<sup>th</sup> October, 2003 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi. The Transferee Company was incorporated on 17<sup>th</sup> March, 1992 in the State of Madhya Pradesh and thereafter, vide an order passed by the Western Region Bench of Company Law Board, the registered office of the Transferee Company was shifted to NCT of Delhi w.e.f. 08<sup>th</sup> June, 2006.

4. Copies of the Memorandum and Articles of Association as well as the audited balance sheets Annual Accounts as on 31<sup>st</sup> March, 2011 along with report of the Auditors of the Transferor and Transferee Companies have also been enclosed with the Petition.

5. A copy of the Scheme has been placed on record and the salient features of the Scheme have been incorporated and detailed in the Petition.

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

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

8. 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:

- 49 (Forty Nine) equity shares of the face value of Rs. 10/- each at par of the Transferee Company, credited as fully paid up, as on the Effective Date for every 100 (One Hundred) fully paid equity shares of the face value of Rs.10/- (Rupees Ten) each held by the shareholders of the Transferor Company.
- The Share Valuation Report certifying the Fair Exchange Ratio of the equity shares for the merger of the Petitioner Companies has also been placed on record.

9. The Petitioner Companies had earlier filed Co. Appl. (M) No. 103 of 2011 seeking directions of this Court for dispensation of meetings. Vide order dated 31<sup>st</sup> May, 2011, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders,

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Secured and Unsecured Creditors of the Transferor and Transferee Companies.

10. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 12<sup>th</sup> July, 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 'Business Standard' (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 10<sup>th</sup> October, 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 04<sup>th</sup> November, 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

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been conducted in a manner prejudicial to the interest of its 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 02<sup>nd</sup> November, 2011. Relying on Clause 6(a) of Part-III of the Scheme, he has stated 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 sanctioning of the Scheme by the Court.

13. No objection has been received to the Scheme from any other party. Today, learned counsel for Petitioner Companies has handed over in Court an affidavit dated 15<sup>th</sup> November, 2011 of Mr. Aditya Mohinder Kumar Goel, Director of Transferee Company confirming that neither the Petitioner Companies nor their counsel has received any objection pursuant to citations published in the newspapers. The same is taken on record.

14. Even today, during the course of hearing Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director (Northern Region)

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and Mr. S.P. Singh, Inspector, appearing for Official Liquidator state that they have no objection to the Scheme being sanctioned.

15. 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 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 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 Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. It is,

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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.

16. Mr. Amit Goel, learned counsel for the Petitioner Companies states that the Petitioner Companies would voluntarily deposit a sum of ₹ 50,000/- with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.

17. The Petition is allowed in the above terms.

Order dasti.

  
MANMOHAN, J

NOVEMBER 16, 2011

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