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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 290/2011

IN THE MATTER OF**JAYPEE VENTURES PVT. LTD.**

..... Petitioner

Through: Mr. N.P.S. Chawla, Advocate for
petitioner companies.Mr. Rajiv Bahl, Advocate 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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03.11.2011

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 JAYPEE VENTURES PRIVATE LIMITED (hereinafter referred to as 'Transferor Company') with

6

JAYPEE INFRA VENTURES (A Private Company with Unlimited Liability) (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 of the Transferor and Transferee Companies as well as the latest audited Annual Accounts of the Transferor Company for the year ended 31st March, 2010 and the Management Certified Unaudited Provisional Balance Sheet as at 31st March, 2011 of the Transferor Company and Management Certified Unaudited and Provisional Balance Sheet of the Transferee Company as on 30th April, 2011 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 / Petitioner Company-II shall issue and allot shares in the following manner:

- 1 (One) equity share of Rs. 10/- (Rupees Ten Only) each, of the Transferee Company for every 1 (One) fully paid up equity share of Rs.10/- (Rupees Ten Only) each held in the Transferor Company.

8. The Petitioner Companies had earlier filed Co. Appl. (M) No. 112 of 2011 seeking directions of this Court for dispensation of meetings. Vide order dated 05th July, 2011, this Court allowed the Application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company and Equity Shareholders of the Transferee Company. The Transferee Company did not have any Secured and Unsecured Creditors.

8

9. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 15th July, 2011, notice in the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Notice was accepted by Mr. K.S. Pradhan, Deputy Registrar of Companies on behalf of the Regional Director, Northern Region. Further, it was directed that a copy of the Petition be served on the Registrar of Companies at 4th Floor, IFCI Towers, 61, Nehru Place, New Delhi. Citations were also directed to be published in 'Financial Express' (English Edition) and 'Jansatta' (Hindi 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, Official Liquidator and the Registrar of Companies and also regarding publication of citations in the aforesaid newspapers on 15th September, 2011. Copies of the newspapers' cuttings, in original, containing the publications have been filed along with the said Affidavit.

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 26th 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 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, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 27th September, 2011. Relying on Clause 3.18(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. In response to the said observation of the Regional Director, the Petitioner Companies have submitted that it shall be duly ensured 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 Scheme by the Court

12. Further, the Regional Director in his Affidavit has submitted that the Transferee Company may be asked to follow the procedure prescribed under

the relevant provisions of the Act for re-organisation of Authorised Share Capital as well as change/alteration in Memorandum of Association.

13. In this regard, learned counsel of the Petitioner Companies has filed an affidavit stating that Section 391 of the Act is a complete code and no separate procedure is required to be followed for re-organisation of Authorised Share Capital of a Company, alteration to capital clause of the Memorandum of Association and Articles of Association of the Company. Reliance is placed upon the judgment(s) of High Court of Gujarat at Ahmedabad, in the matter of *Bazley Finvest Limited (2005) 64 SCL 480 (Guj)*, wherein the Regional Director had observed that the Scheme provides for increase / sub-division / reclassification of Authorised Capital, therefore, the Company is required to file Form No. 5 with Registrar of Companies with necessary Registration fees in addition to payment of Stamp duty and special resolution for consequent alteration to capital clause of the Memorandum of Association and Articles of Association of the Company as required under Sections 97/94/95/31/16/192 of the Act. However, the High Court of Gujarat at Ahmedabad relying on the decision of the Andhra Pradesh High Court in the case of *Saboo Leasing (P) Ltd., In re 117 Comp*

11

Cas 728 held that the Court is satisfied that the observations made by the Registrar of Companies do not survive and the amalgamation would be in the interest of the Companies and their members and Creditors.

14. The learned counsel for Petitioner Companies has also placed reliance upon the judgment in the matter of *In Re: Spice Communications Limited and Anr. Co. Appls. 578-579/2011 and 611/2011 in Co. Pet. 403/2009*, wherein this Court observed that it has been repeatedly held by various courts that sanction under Sections 391 to 394 of the Act is a 'single window clearance' for the purposes of the Act and there is no need for filing applications under the Act for instance for change of name of company or alteration of Memorandum/Articles of Association.

15. In view of the aforesaid judgment, the objection raised by the Regional Director (Northern Region) is untenable in law.

16. No objection has been received to the Scheme from any other party. Mr. N.P.S. Chawla, learned counsel for the Petitioner Companies, has filed an affidavit dated 01st October, 2011, confirming that neither the Petitioner

12 ✓

Companies nor he has received any objection pursuant to citations published in the newspapers.

17. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports 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 undertaking, 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, 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.

18. Mr. N.P.S. Chawla, learned counsel for the Petitioner Companies states that the Petitioner Companies would voluntarily deposit a sum of ₹1,00,000/- with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted. The Petition is allowed in the above terms.

Order dasti.


MANMOHAN, J.

NOVEMBER 03, 2011

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