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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 342/2011

**IN THE MATTER OF
M/S. DYNAMIC MOVERS
PVT. LTD. & ANR.**

Through

..... Petitioners

Mr. Ashish Middha, Advocate for
Official Liquidator.

Mr. K.S. Pradhan, Dy. ROC for
Regional Director (NR).

Mr. Mayank Goel, Advocate for
Official Liquidator.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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02.11.2011

1. This second motion joint 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. DYNAMIC MOVERS PRIVATE LTD. (hereinafter referred to as 'Transferor Company') with M/S. MFL INDIA LIMITED (hereinafter referred to as 'Transferee Company').

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2. The registered offices of both 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 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 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 this Scheme finally

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coming into effect, the Transferee Company shall issue shares in the following manner:-

- *1 (one) equity share each of Dynamic Movers Private Limited fully paid up equity shares of the face value of Rs.1/- (Rupee one only) each held by the members of the Transferor Company, 2.12 equity shares of Rs.10/- (Rupees ten only) each of the Transferee Company, credited as fully paid up in the capital of the Transferee Company.*

8. The Petitioner Companies had earlier filed CA (M) No. 92/2011 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 20th May, 2011, this Court allowed the Application and dispensed with the requirement of convening meetings of shareholders of the Transferor company and directed convening of meetings of the Secured and Un-secured Creditors of the Transferor Company and the shareholders of the Transferee Company. The Transferee Company had no secured and unsecured creditors. The meetings were duly held and the resolutions were passed by the requisite majority.

9. The Transferor and Transferee Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated

12th August, 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' in English as well as Hindi editions. The 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 30th August, 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 on 29th 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. However, the Official Liquidator has observed that the present authorised capital of

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the Transferee Company after addition of authorised capital of the Transferor Company will not be sufficient to allot shares to the shareholders of the Transferor Company.

11. In pursuance to the aforesaid objection, Mr. Anil Kumar Chaddha, Director of the Transferee Company has filed an affidavit dated 1st November, 2011 undertaking to increase the authorised share capital of Transferee Company by Rs. 21,00,00,000/- by following the due process of law.

12. The aforesaid undertaking is accepted by this Court and the Transferee Company is held bound by the same.

13. In response to the notices issued in the Petition, Mr. S.B. Bansal, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit on 13th October, 2011. Relying on Clause 9 of the Scheme, Regional Director 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 this Court.

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14. No objection has been received to the Scheme from any other party. Mr. Anil K. Chaddha, Director, of the Transferee Company and Mr. Ashish Middha, learned counsel for Petitioner Companies have filed affidavits dated 1st November, 2011 confirming that neither the Petitioner Companies nor their counsel has received any objection pursuant to citations published in the newspapers.

15. Even today, during the course of hearing, Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region and Mr. Mayank Goel, learned counsel for Official Liquidator state that they have no objection to the present 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 and Official Liquidator attached with this Court to the proposed Scheme and the undertaking given by the Transferee Company, 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, all 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, 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 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. Learned Counsel for the Petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. 50,000/- with the Common Pool fund of the Official Liquidator within four weeks from today. The said statement is accepted.

18. The Petition is allowed in the above terms.

Order Dasti.

NOVEMBER 02, 2011
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MANMOHAN, J