

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: July 06, 2012*

+ **COMPANY PETITION NO. 17 OF 2012**

IN THE MATTER OF:

ADELIE BUILDERS & DEVELOPERS PRIVATE LIMITED &
ORS... Petitioners No.1 to 11.

WITH

DLF UNIVERSAL LTD Petitioner No.12.

Through: Mr.Ravi Bassi and Mr.Sheel Kumar,
Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion joint petition has been filed under Sections 391(2) & 394 of the Companies Act, 1956 by Adalie Builders & Developers Private Limited & others with DLF Universal Limited seeking sanction of the scheme of amalgamation.

2. The registered offices of transferor company Nos. 1 to 5 are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

3. The registered offices of transferor company Nos. 6 to 11 and the transferee company are situated within the jurisdiction of Punjab & Haryana High Court. A separate second motion petition is being filed on behalf of transferor company Nos. 6 to 11 and the transferee company under Sections 391 & 394 of the Companies Act, 1956, in connection with the scheme of amalgamation of Adelie Builders & Developers Private Limited & others with DLF Universal Limited.

4. Details with regard to the date of incorporation of all the transferor and transferee companies, their authorized, issued, subscribed and paid up capital have been given in the petition.

5. Copies of the Memorandum and Articles of Association as well as the latest audited annual accounts for the year ended 31.03. 2010 of all the petitioner companies have also been enclosed with the petition.

6. Copies of the resolutions passed by the Board of Directors of the petitioner companies approving the scheme of amalgamation have also been placed on record.

7. It has been submitted by the learned counsel for all the petitioner companies that no proceedings under Sections 235 and 251 of the Companies Act, 1956 are 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 shares in the following manner:

Transferor Company Nos. 1 & 4:

As transferor company Nos. 1 & 4 have a value less than zero, the transferee company will issue one share as a consideration to each shareholder of the transferor company Nos. 1 & 4.

Transferor Company No. 2:

1879 equity shares of Rs. 10/- each, credited as fully paid-up, of the transferee company for every 1000 equity shares of Rs.10/- each held in transferor company No. 2.

Transferor Company No. 3:

114 equity shares of Rs. 10/- each, credited as fully paid-up, of the transferee company for every 1000 equity shares of Rs.10/- each held in transferor company No. 3.

Transferor Company No. 5:

83 equity shares of Rs. 10/- each, credited as fully paid-up, of the transferee company for every 1000 equity shares of Rs.10/- each held in transferor company No. 5.

9. The petitioner companies had earlier filed CA (M) No. 145 / 2011 seeking directions of this Court for dispensation of the meetings of shareholder and creditors of petitioner Nos. 1 to 5. Vide order dated 09.11.2011, this Court allowed the application and dispensed with the convening of meeting of the unsecured creditors of petitioner Nos. 1 to 4. Further, this Court has directed petitioner No. 5 to convene the meeting of its unsecured creditors on 24.12.2011. Further, Ms. Narayani K. Sibal and Shri Rahul Sharma were appointed as Chairperson and Alternate Chairperson to convene the above said meetings. Further, this Court dispensed with the convening of meetings of the shareholders of petitioner Nos. 1 to 5.

10. In compliance of the orders of this Court the meeting of the unsecured creditors of petitioner No. 5 was convened on 24.12.2011 at

Y.M.C.A Tourist Hostel, 1, Jai Singh Road, New Delhi 110001. The scheme of amalgamation was unanimously approved, without any modification, by the unsecured creditors who were present and casted their vote in the meeting. The Chairperson has filed the report of the meeting before this Court on 02.01.2012.

11. The petitioner companies have thereafter filed the present petition seeking sanction of the scheme of amalgamation. Vide order dated 13.01.2012, notice in the petition was directed to be issued to the Regional Director, Northern Region and Official Liquidator. Citations were also directed to be published in "Business Standard" (English Edition) and "Veer Arjun" (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 and Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 28.02.2012. Copies of Newspapers, in original, containing the publication have been filed along with the affidavit of service.

12. 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 02.07.2012 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 transferor companies Nos. 1 to 5 do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

13. 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 / report dated 12.04.2012. Relying on Clause 7, Para IV of the scheme of amalgamation, he has stated that, upon sanction of the scheme of amalgamation, all the permanent employees of all the transferor companies shall become the employees of the transferee company without any break or interruption in their service upon sanctioning of the scheme of amalgamation by the Hon'ble Court.

14. No objection has been received to the scheme of amalgamation from any other party. Mr. Ankur Jain, authorized representative of transferor company Nos. 1 to 5 has filed an affidavit dated 02.07.2012, confirming that neither transferor company Nos. 1 to 5 nor their legal counsel has received any objection pursuant to citations published in the newspapers.

15. In view of the approval accorded by the shareholders and creditors of the petitioner companies; representation / reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed scheme of amalgamation, there appears to be no impediment to grant of sanction to the scheme of amalgamation. Consequently, sanction is hereby granted to the scheme of amalgamation under Sections 391 and 394 of the Companies Act, 1956. 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 30 days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Companies Act, 1956, and in terms of the scheme, the whole or part of

the undertaking, the properties, rights and powers of petitioner Nos. 1 to 5 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 petitioner Nos. 1 to **55** be transferred to the transferee company without any further act or deed. Upon the scheme coming into effect, petitioner Nos. 1 to 5 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. Further, since the jurisdiction of petitioner Nos. 6 to 12 are before the Hon'ble High Court of Punjab & Haryana and the said companies have already moved a petition over there, this order is subject to the sanction of the scheme by Hon'ble High Court of Punjab & Haryana.

16. Learned Counsel for the petitioner companies states that the petitioner companies would voluntarily deposit a sum of Rs.1,00,000/-

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

17. The petition is allowed in the above terms.

18. Order *dasti*.

INDERMEET KAUR, J

July 06, 2012

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