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

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*Date of Judgment: 9<sup>th</sup> October, 2012*

+ **CO. PET. 141/2012**

PETITION UNDER SECTIONS 391(2) AND 394 OF THE  
COMPANIES ACT, 1956

IN THE MATTER OF

SCHEME OF ARRANGEMENT UNDER SECTIONS 391 TO 394 OF  
THE COMPANIES ACT, 1956

APPU GHAR BUILD TECH  
AND INFRASTRUCTURE PRIVATE LIMITED

... TRANSFEROR  
COMPANY NO.1

ONUS INFRASTRUCTURES  
AND DEVELOPERS  
PRIVATE LIMITED

... TRANSFEROR  
COMPANY NO. 2

APPU GHAR RECREATION  
PARKS PRIVATE LIMITED

... TRANSFEROR  
COMPANY NO. 3

PROP LINKS REAL ESTATE  
CONSULTANTS PRIVATE LIMITED

... TRANSFEROR  
COMPANY NO. 4

**AND**

APPU GHAR HOLDINGS PRIVATE LIMITED

... TRANSFEREE  
COMPANY

Through: Mr. Atul Sharma, Adv. for the  
petitioner.

Mr. Rajiv Bahl, Adv. for the Official Liquidator.

Mr. K.S. Pradhan, Dy. ROC on behalf of Regional Director (NR)

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J.** (Oral)

1. This Second Motion joint Petition has been filed under Sections 391 & 394 of the Companies Act, 1956 by the Petitioner Transferor Companies and the Transferee Company seeking sanction of the Scheme of Amalgamation of Transferor Companies-Appu Ghar Build Tech And Infrastructure Private Limited, Onus Infrastructures and Developers Private Limited, Appu Ghar Recreation Parks Private Limited, Prop Links Real Estate Consultants Private Limited with the Transferee Company-Appu Ghar Holdings Private Limited.
2. The registered office of all the Petitioner Transferor Companies and Transferee Company are situated at New Delhi, within the jurisdiction of this Court.
3. Details with regard to the date of incorporation of the Transferor Companies and the Transferee Companies, their authorised, issued, subscribed are paid up capital have been given in the Petition.
4. Copies of the Memorandum & Articles of Association as well as the latest Audited Annual Accounts as on 30<sup>th</sup> November, 2011 of the

Transferor Companies and the Transferee Company have also been enclosed with the Petition.

5. Copies of the Resolution passed by the Board of Directors of the Transferor Companies and the Transferee Company approving the Scheme of Amalgamation have also been placed on record.

6. It has been submitted that no proceedings under Section 235-251 of the Companies Act, 1956 are pending against the Petitioner Companies.

7. So far as the exchange ratio for the Amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Companies shall issue shares in the following manner:

- (i) in respect of every 1 equity shares of Rs. 10 each of the Transferor Company No. 1, 3.66 equity shares of the Transferee Company of Rs. 10 fully paid up;
- (ii) in respect of every 1 equity shares of Rs. 10 each of the Transferor Company No. 2, 1.24 equity shares of the Transferee Company of Rs. 10 fully paid up;
- (iii) in respect of every 1 equity shares of Rs. 10 each of the Transferor Company No. 3, 2.23 equity shares of the Transferee Company of Rs. 10 fully paid up;

(iv) in respect of every 1 equity shares of Rs. 10 each of the Transferor Company No. 4, 1.54 equity shares of the Transferee Company of Rs. 10 fully paid up.

8. The Petitioner Companies had earlier filed C.A. (Main) No. 41 of 2012 seeking dispensation of the meeting of shareholders as well as the secured and unsecured creditors of the Petitioner Companies. Vide order dated 06.0.2012, the Court allowed the application and dispensed with the requirement of convening meetings of the shareholders as well as the secured and unsecured creditors of the Transferor Companies and the Transferee Company.

9. The Petitioner Transferor Companies and the Transferee Company have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 28.03.2012 , 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 Edition) and Dainik Bhaskar (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 the Official Liquidator, and also regarding publication in the aforesaid newspapers on 03.07.2012 in Business Standard (English Edition) and 08.05.2012 in Dainik Bhaskar (Hindi Edition). Copies of the newspaper cuttings in original containing the publications have been filed alongwith the affidavit of service.

10. Pursuant to the notices issued, the Official Liquidator has filed his report dated 29.06.2012 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 the Transferor Companies and the Transferee Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest subject only to the observations made in paragraph 25. The Official Liquidator has in his report, made an observation in para 25 wherein he states that the Transferor Companies are having huge reserves and surpluses as on 31.03.2011 and the said reserves have been created by issue of shares of the said Companies at premium and the amount has again been invested in the private limited group companies at different premiums. He has further stated that there is transfer of funds from one Company to another.

11. The Petitioner Companies have filed an affidavit an affidavit dated 05.10.2012 in response to the observations of the Official Liquidator made in paragraph 25 of his report stating as follows:

- (i) The Transferor Companies were incorporated to engage in the business of real estate except Appu Ghar Recreation Parks Private Limited, which was incorporated to carry on the business of amusement and entertainment.
- (ii) The Transferor Companies, in order to pursue their objects as incorporated under clause III(A) of the Memorandum of Association of the company and to support its growth plans

floated proposal to prospective investors for infusion of equity into the company over a period of time.

- (iii) It is pertinent to mention here that all the transferor companies are associate/group companies of International Amusement Limited, a subsidiary of “Appu Ghar Entertainment Private Limited”, the ultimate Holding Company, which has established the first world class Amusement Park known as “APPU GHAR” and accordingly established its brand value in the market and among its customers.
- (iv) The prospective investors have subscribed to the equity share capital of the transferor companies at premium keeping in mind its brand value in the market apart from factors like net assets, reserve and surplus etc.
- (v) The Transferor Companies issued shares to the investors at different premiums on the basis of intrinsic value of the company at the time of allotment.
- (vi) The Transferor Companies have built up its Reserve and Surplus over a period of time mainly by crediting amount of security premium in the Reserve and Surplus.
- (vii) Further, the equity shares of the company were issued at premium following the procedure prescribed under the

Companies Act, 1956 and necessary compliances were also made in this regard.

- (viii) It is pertinent to mention here that the Companies Act, 1956 does not prohibit issue of shares at premium by a private limited company, meaning thereby, a private limited company can issue shares at premium by obtaining the approval of the Board of Directors of the company.
- (ix) The Transferor Companies have duly complied with all the provisions of the Companies Act, 1956 while making issue of shares at premium.
- (x) The Transferor Companies have enabling clause in their Memorandum of Association to invest the surplus funds of the company in the equity capital of any other body corporate at par or premium.
- (xi) The Board of Directors of the Transferor Companies has invested the surplus funds of the company in the equity capital of other body corporate keeping in mind interest of stakeholders and necessary compliances were made in this regard.
- (xii) It is pertinent to mention here that section 292 of the Companies Act, 1956 allows the Board of Directors of a particular company to invest the funds of the company in the best interest of its stakeholders.
- (xiii) Further, shareholders of the transferor companies have already accorded their approval to the proposed scheme of

amalgamation and the transferor companies have also not received any complaint against the proposed scheme of amalgamation.

- (xiv) As per para 3.3 (ix) of scheme of amalgamation and as per AS-14, the Reserves and Surplus of the Transferor Companies will become Reserve and Surplus of the Transferee Company after the approval of the present scheme by the Hon'ble Board and it would be utilized for the benefit of the shareholders of the Transferee Company as per the provisions of section 78 of the Companies Act, 1956.
- (xv) Further, as per para 2.2.1 (c) of scheme of amalgamation, all the investment of the transferor companies will become investment of Transferee company which will be beneficial for the shareholders and all concerned of the Transferee Company.
- (xvi) The Official Liquidator has himself stated in paragraph 24 of his Report that the affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interest of its member or to the public as per the proviso of Section 394(1) of the Companies Act, 1956.

12. The Transferor Companies have thus explained the reasons for the creation of Reserves and Surplus in their books of accounts and have further relied upon the report of the Official Liquidator that the affairs of

the Companies have not been conducted in any 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 also filed his affidavit/report dated 27.06.2012. Relying on Clause 2.9 of the Scheme of Amalgamation, all employees of the Transferor Companies shall become the employees of the Transferee Company without any interruption or break in their services as a result of the transferor of the undertakings.

14. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Rakesh Babbar, authorized representative of the all Transferor Companies and the Transferee Company has filed an affidavit dated 27.08.2012 stating that the Petitioner Companies nor their counsel have 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, 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 the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Section 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

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Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of Section 391 and 394 of the Companies Act, 1956, and in terms of the Scheme, the whole or part of the undertaking, the property, rights and powers of the Transferor Companies 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 Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Companies 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.

16. Learned counsel for the Petitioners state 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.

17. The Petition is allowed in the above terms.

Order Dasti

**INDERMEET KAUR, J**

**OCTOBER 09, 2012/rb**

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