

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

% *Date of Judgment:19.7.2012*

+ **CO. PET. 140/2012**

M/S CDH BIOSCIENCE PRIVATE LIMITED & ORS.

..... Petitioners

Through: Mr. Amit Goel, Advocate, Advocate for petitioners.

Mr. Rajiv Behl, Advocate for the Official Liquidator.

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

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion joint Petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 (for short “Act”) seeking sanction of the Scheme of Amalgamation (for short “Scheme”) of CDH BIOSCIENCE PRIVATE LIMITED (Transferor Company No.1) and EX SERVICEMEN ABHIMANYU COAL CARRIERS PRIVATE LIMITED

(Transferor Company No. 2) with CENTRAL DRUG HOUSE PRIVATE LIMITED (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 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, 2011 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 Transferor and Transferee 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 Scheme of Amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Company shall issue shares in the following manner:-

7 equity shares of Rs. 100/- each credited as fully paid for every 1 equity share of Rs. 10/- each fully paid held by the shareholders of the Transferor Company No. 1

144 equity shares of Rs. 100/- each credited as fully paid for every 1 equity share of Rs. 100/- each fully paid held by the shareholders of the Transferor Company No. 2

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.

8. The Petitioner Companies had earlier filed CA(M) No. 44 of 2012 seeking directions of this Court for dispensation of meetings. Vide order dated 16th March, 2012, this Court allowed the Application and dispensed with the requirement of convening

meetings of Shareholders of the Transferor and Transferee Companies, Unsecured Creditors of Transferor Company No. 1 and Secured as well as Un-secured Creditors of the Transferee Company. Since there was no Secured Creditor in Transferor Company No. 1 and no Secured or Un-secured Creditor in the Transferor Company No. 2, the question of their meetings did not arise.

9. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 28th March, 2012 notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Notice was duly accepted on behalf of the Regional Director and the Official Liquidator. Citations were also directed to be published in “Financial Express” (English, Delhi Edition) and “Dainik Jagran” (Hindi, Delhi Edition). Affidavits of Publication have been filed by the Petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 05.07.2012. Copies of the newspapers cuttings, in

original, containing the publications have been filed along with the Affidavit of Publication.

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 18.07.2012 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 the Transferor Company No. 1 & 2 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 16.07.2012. Relying on Clause 9.2 of the Scheme, he has stated that all the employees of both the Transferor Companies shall become the employees of the Transferee Company without any break or

interruption in their services upon sanctioning of the Scheme by the Court.

12. No objection has been received to the Scheme from any other party. Learned counsel for Petitioner Companies has submitted that the Petitioner Companies have filed affidavit of Mr. Shankar Lal Aggarwal, Director of Transferee Company dated 16.07.2012 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.
13. Even today, Mr. K. S. Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region and Mr. Rajiv Behl, learned counsel for Official Liquidator state that they have no objection to the present Scheme being sanctioned.
14. In view of the approval accorded by the Shareholders of the Petitioner Companies, Unsecured Creditors of Transferor Company No. 1 and Secured as well as Un-secured Creditors of the Transferee Company and there being no Secured Creditor in Transferor Company No. 1 and no Secured or Un-secured

Creditor in the Transferor Company No. 2; affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court 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 30 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 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.

15. Learned counsel for the Petitioner states that the Petitioner Companies 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 said statement is accepted.
16. The Petition is allowed in the above terms.

Order dasti.

INDERMEET KAUR, J

JULY 19, 2012
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