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

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Date of Judgment: 25.7.2012

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CO.PET.189/2012

PROWESS BUILDCON PRIVATE LIMITED

.....Petitioner no.1/1st Transferor Company.

AND

CLEVA BUILDERS & DEVELOPERS PRIVATE LIMITED

.....Petitioner no.2/2nd Transferor Company.

WITH

SAKET COURTYARD HOSPITALITY PRIVATE LIMITED

.....Transferee Company/Non Petitioner

Through: Mr.Ravi Bassi, Advocate for the
petitioners.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion joint petition has been filed under Section 391(2) & 394 of the Companies Act, 1956 by Prowess Buildcon Private Limited and Cleva Builders & Developers Private Limited with Saket Courtyards Hospitality Private Limited seeking sanction of the Scheme of Amalgamation.

2. The registered offices of Transferor Company Nos. 1 & 2 are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

3. The registered office of the Transferee Company is situated within the jurisdiction of Punjab & Haryana High Court. A separate second motion petition is being filed on behalf of the Transferee Company under Section 391 & 394 of the Companies Act, 1956, in connection with the Scheme of Amalgamation of Prowess Buildcon Private Limited and Cleva Builders & Developers Private Limited with Saket Courtyard Hospitality Private Limited.

4. 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.

5. 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 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. As both the Transferor Companies are wholly owned subsidiaries of the Transferee Company. The investments of the Transferee Company held by it in the Transferor Companies shall set off and the entire issued, subscribed and paid-up Equity Share Capital of the Transferor Companies shall stand automatically cancelled and extinguished and there would not be any issue and allotment of shares by the Transferee Company to the shareholders of the Transferor Companies in pursuance of the Scheme.

9. The Petitioner Companies had earlier filed CA (M) NO. 62/2012 seeking directions of this Court for dispensation of the meetings of Shareholders and Creditors of Petitioner Nos. 1 & 2. Vide order dated 11.04.2012, this Court allowed the application and dispensed with the convening of meetings of Shareholders & Unsecured Creditors of Petitioner Nos. 1 & 2.

10. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order

dated 01.05.2012, 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 31.05.2012. Copies of Newspapers, in original, containing the publication have been filed along with the Affidavit of Service.

11. 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 23.07.2012 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 do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

12. In response to the notices issued in petition, Mr. Rakesh Chandra,
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Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 24th July 2012. Rely on para 15.1, Part IV of the Scheme of Amalgamation, he has stated that the Memorandum of Association of a Company can be changed/alterd only after following the procedure prescribed under the relevant provisions of the Companies Act, 1956 and the Transferee Company may be asked to follow the procedure prescribed under the Companies Act. Report of Regional Director is taken on record. The transferee company has its registered office in the State of Haryana; a separate petition for sanction of Scheme of Arrangement is pending before the High Court of Punjab and Haryana. If required the transferee company shall follow the procedure in accordance with the Companies Act.

13. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Sanjay Goenka, Authorized Representative of Transferor Company Nos. 1 & 2 has filed an affidavit dated 23rd July 2012, confirming that neither Transferor Company Nos. 1 & 2 nor their Legal Counsel has received any objection pursuant to citations published in the newspapers.

14. 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 Section 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 and 2 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 and 2 be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, Petitioner nos.1 and 2 shall stand dissolved without winding up. It is, however, clarified that this order will not be construed

as on 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, since the jurisdiction of the Transferee Company is before the Hon'ble High Court of Punjab and Haryana and the said company has already moved a petition over there, this order is subject to the sanction of the Scheme by Hon'ble High Court of Punjab and Haryana.

15. 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.

16. The petition is allowed in the above terms.

INDERMEET KAUR, J

JULY 25, 2012

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