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

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Date of Judgment: 15.10.2012

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COMPANY PETITION NO. 228/2012

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

IN THE MATTER OF

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

UPPAL SONS HOLDINGS PRIVATE LIMITED

A company incorporated under the
Companies Act, 1956 and having its
Registered Office at
5th Floor, South Tower, NBCC Place,
Pragati Vihar, Lodhi Road,
New Delhi-110003

... **Transferor Company (Petitioner Company-1)**

AND

UPPAL HOUSING PRIVATE LIMITED

A company incorporated under the
Companies Act, 1956 and having its
Registered Office at
5th Floor, South Tower, NBCC Place,
Pragati Vihar, Lodhi Road,
New Delhi-110003

.... **Transferee Company (Petitioner Company-2)**

Through: Vijay Nair, Adv. for the Petitioners.
Mr. Rajiv Bahl, Advocate 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 Company and the Transferee Company seeking sanction of the Scheme of Amalgamation & Arrangement of the Transferor Company- Uppal Sons Holdings Private Limited with the Transferee Company- Uppal Housing Private Limited.
2. The registered office of the Petitioner Transferor Company and the 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 Company and the Transferee Company, their authorised, issued, subscribed and paid up share 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 March 31, 2011 of the

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

5. Copies of the Resolutions passed by the Board of Directors of the Transferor Company and the Transferee Company approving the Scheme of Amalgamation & Arrangement 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 Company shall issue and allot to the equity shareholders of the Transferor Company, 1,455 (One Thousand Four Hundred and Fifty Five) Equity shares of face value of Rs. 10/- each, for every 100 (One Hundred) Equity shares of the face value of Rs. 10/- each held by the shareholders in the Transferor Company.
8. The Transferor Company had filed Company Application (M) No.

68 of 2012 under Section 391 (1), 392, 393 and 394 of the

Companies Act, 1956 seeking approval of the Scheme of Amalgamation & Arrangement along with the Application seeking dispensation with the requirements of calling and holding meetings of equity shareholders and unsecured creditors of the Transferor Company as the same had already consented in writing to the proposed scheme of Arrangement. This Court had, vide its order dated 25.04.2012, dispensed with the requirement of calling and holding of meetings of equity shareholders and unsecured creditors of the Transferor Company. This Court also observed that since the Transferor Company does not have Secured Creditor, the requirement of convening their meeting did not arise.

9. The Transferee Company had filed Company Application (M) No. 69 of 2012 under Section 391 (1), 392, 393 and 394 of the Companies Act, 1956 seeking approval of the Scheme of Amalgamation & Arrangement along with the Application seeking dispensation with the requirements of calling and holding meetings of equity shareholders, secured creditors and unsecured creditors of the Transferee Company, as the same had already

consented in writing to the proposed scheme of Arrangement. This Court had, vide its order dated 26.04.2012, dispensed with the requirement of calling and holding of meetings of equity shareholders, secured creditors and unsecured creditors of the Transferee Company.

10. The Petitioner Transferor Company and the Transferee Company have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation & Arrangement. Vide order dated 15.05.2012, notice in the Petition was directed to be issued to the Regional Director (Northern Region), Ministry of Corporate Affairs 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), Ministry of Corporate Affairs and the Official Liquidator, and also regarding publication in the aforesaid newspapers on 04.06.2012 in Business Standard (English Edition) and Dainik Bhaskar (Hindi Edition). Copies of the newspaper

cuttings in original containing the publications have been filed alongwith the affidavit of service.

11. Pursuant to the notices issued, the Official Liquidator has filed his report, wherein he has not given any adverse observation against the proposed Scheme of Amalgamation & Arrangement.
12. That the Regional Director in the Affidavit dated 05.09.2012 has observed that
 - (a) there is no clause in the scheme of amalgamation regarding transfer of employees of the Transferor Company in the Transferee Company.
 - (b) there is no mention whether the Petitioner Companies have complied with the Accounting Standard 14 issued by the Institute of Chartered Accountants of India.
 - (c) the Transferee Company may be asked to follow the procedure prescribed under the Companies Act, 1956 for alteration of its Memorandum of Association.
13. The Petitioner Companies have filed an affidavit dated 09.10.2012, in response to the observations of the Regional Director made in his affidavit, stating as follows:
 - (a) That the Transferor Company does not have any employee, and accordingly, no clause has been included in the scheme with respect to transfer of employees of the Transferor Company to the Transferee Company.

- (b) That the scheme has been prepared in compliance with the Accounting Standard – 14 mentioned hereinabove. Post merger, accounting aspects as specified in the Accounting Standard – 14 shall be duly complied with.
 - (c) The Transferee Company shall comply with the procedure prescribed under the Companies Act, 1956 for alteration of the Memorandum of Association of the Transferee Company.
- 14. The Petitioner Companies have thus explained/agreed to abide by the observations/requirements pointed out by the Regional Director (Northern Region).
- 15. No objection has been received to the Scheme of Amalgamation & Arrangement from any other party. Mr. Vijay Nair, Counsel for the Petitioner Companies has filed an affidavit dated 20.09.2012 stating that neither the Petitioner Companies nor their counsels have received any objection pursuant to citations published in the newspapers.
- 16. 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 & Arrangement, there appears to be no

impediment to the grant of sanction to the Scheme of Amalgamation & Arrangement.

17. Consequently, sanction is hereby granted to the Scheme of Amalgamation & Arrangement 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 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.

18. 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.
19. The Petition is allowed in the above terms.

Order Dasti

INDERMEET KAUR, J

OCTOBER 15, 2012
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