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

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Date of Judgment: 24th August, 2012

+ **CO.PET. 248/2012**

IN THE MATTER OF AMALGAMATION OF

M/S PJS INVESTMENTS PVT. LTD. Petitioner/Transferor
Company No. 1

AND

M/s RAMSONS SECURITIES LTD. Transferor Company
No. 2

AND

M/s AMBALICA ENTERPRISES
PVT. LTD. Transferor Company
No. 3

AND

M/s AMRIT ENTERPRISES
PRIVATE LIMITED Transferor Company
No. 4

AND

M/s BHOLAY FINVEST
PRIVATE LIMITED Transferor Company
No. 5

AND

M/s MANGALAM PORTFOLIOS
PRIVATE LIMITED Transferor Company
No. 6

AND

M/s LASIK TRADING PRIVATE
LIMITED

....Transferor Company
No. 7

AND

M/s SURABHI SALES AGENCIES
PRIVATE LIMITED

....Transferor Company
No. 8

AND

M/s HIM FEEDS PRIVATE LIMITED

....Transferor Company
No. 9

With

M/s ESTEEM FINVENTURES LIMITED Transferee Company
Transferee Company)

Through Mr. Chandra Shekhar Yadav,
Adv.
Mr. K.S. Pradhan, Dy. Registrar
(NR), ROC.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This petition has been filed under Section 391 to 394 of the Companies Act, 1956 by M/s PJS INVESTMENTS PRIVATE LIMITED (hereinafter referred to as Transferor Company no. 1), M/s RAMSONS SECURITIES LIMITED (hereinafter referred to as Transferor Company no. 2), M/s AMBALICA ENTERPRISES PRIVATE LIMITED (hereinafter referred to as Transferor Company no.

3), M/s AMRIT ENTERPRISES PRIVATE LIMITED (hereinafter referred to as Transferor Company no. 4), M/s BHOLAY FINVEST PRIVATE LIMITED (hereinafter referred to as Transferor Company no. 5), M/s MANGALAM PORTFOLIOS PRIVATE LIMITED (hereinafter referred to as Transferor Company no. 6), M/s LASIK TRADING PRIVATE LIMITED (hereinafter referred to as Transferor Company no. 7), M/s SURABHI SALES AGENCIES PRIVATE LIMITED (hereinafter referred to as Transferor Company no. 8), M/s HIM FEEDS PRIVATE LIMITED (hereinafter referred to as Transferor Company no. 9) with M/s ESTEEM FINVENTURES LIMITED (hereinafter referred to as Transferee Company) seeking sanction of their Amalgamation.

2. The registered offices of the Petitioners i.e. Transferor and Transferee Companies are situated at New Delhi/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 Petitioners have also been enclosed with the petition.

5. 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.

6. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. 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:

- i. 11 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 9 equity shares of the Transferor Company No. 1 of Rs. 10/- each, held by the member.
- ii. 6 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 4 equity shares of the Transferor Company No. 2 of Rs. 10/- each, held by the member.

- iii. 10 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 1 equity share of the Transferor Company No. 3 of Rs. 100/- each, held by the member.
- iv. 16 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 1 equity shares of the Transferor Company No. 4 of Rs. 100/- each, held by the member.
- v. 6 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 5 equity shares of the Transferor Company No. 5 of Rs. 10/- each, held by the member.
- vi. 5 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 6 equity shares of the Transferor Company No. 6 of Rs. 10/- each, held by the member.
- vii. 5 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 8 equity shares of the Transferor Company No. 7 of Rs. 10/- each, held by the member.
- viii. 17 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 9 equity shares of the Transferor Company No. 8 of Rs. 10/- each, held by the member.

ix. 11 equity shares of the Transferee Company of Rs. 10/- each to be issued for every 10 equity shares of the Transferor Company No. 9 of Rs. 10/- each, held by the member.

Any fraction of shares arising out of the aforesaid share exchange process, if any, shall be paid in cash.

8. The Petitioner Companies had earlier filed C.A. (M) No. 64 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 27th April, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured Creditors and Un-secured Creditors of the Petitioner Companies.

9. The Petitioners i.e. Transferor and Transferee Companies have thereafter, filed the present petition seeking sanction of the Scheme of Amalgamation. Vide Order dated 21st May, 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 “Jansatta” (Hindi Edition). Affidavit of Publication has

been filed by the Petitioners showing compliance regarding publication in the aforesaid Newspapers on 20th June, 2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with this Affidavit.

10. In response to the notices issued in the petition, Mr. Rakesh Chandra, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 14th Aug, 2012. Relying on Clause 4.2.1 of Part 4 of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation, all the staff/employees of the Transferor Company shall become employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court. He has further stated that as per para 3.1.2 of part 3 of the Scheme, the accounting treatment in details has been given which is in accordance with Accounting Standard 14 issued by the Institute of Chartered Accountants of India.

11. The Regional Director has further stated that Transferor Company No. 1, 2, 6 & 8 and Transferee Company are non banking finance companies and registered with Reserve Bank of India and according to

Circular No. RBI/2005-06/285 DNBS (PD) CC No. 63/02.02/2005-2006 dated 24.01.2006, a non banking finance company needs to inform the Reserve Bank of India within one month from the date of the order of the court about merger or amalgamation. He has further stated that on perusal of report of Registrar of Companies, Delhi and balance sheet as at 31.03.2011 of the Petitioner Transferee Company, it has been observed that the company has violated provisions of Section 295 and by contravening the said provision by the Director of the company, the concerned directors vacate his office by operation of law pursuant to provisions of Section 283 (1) (h) of the Companies Act, 1956. It is further stated by him that the transferee company vide letter dated 13.08.2012 has given undertaking that they will move compounding application under Section 621 A of the Companies Act, 1956 for default committed under Section 295 and 283 (1) (h).

12. In response to the observations of Regional Director, Mr. Kartar Singh Director of The Transferor Company No. 1 has filed affidavit dated 21.08.2012 wherein it has been stated that a compounding application has been made to the Appropriate Authority and acknowledgements thereof have been filed. He has undertaken that the

order of sanction of scheme if approved by the court will be submitted to Reserve Bank of India within one month from the date of the order. He has further stated that the copy of the Scheme has already been sent to Reserve Bank of India vide letter dated on 22.06.2012. The undertaking is accepted and the petitioners shall remain bound by the same. In view thereof, the observations/objections raised by the Regional Director do not survive.

13. The Official Liquidator has filed his report dated 21st August, 2012 stating that the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of the report and has further stated that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its member or to public interest as per the second proviso of Section 394 (1) of the Companies Act, 1956.

14. No objection has been received to the Scheme of Amalgamation from any other party. Mr. Kartar Singh, Director of Transferor Company No. 1, in his aforesaid affidavit filed on 21st August, 2012, has confirm that neither the Petitioner Companies 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 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 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 property, rights and powers of the Transferor Company 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 Company be transferred to the Transferee Company without any further act or deed. 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 department which may be specifically required under any law.

16. Learned Counsel for the Petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- in 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

AUGUST 24, 2012
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