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

% *Date of Judgment: 01.10.2012*

+ **COMPANY PETITION NO. 251 OF 2012**

**CHILDPLANET DOT COM PRIVATE LIMITED**

..... Transferor Company No.1

**AND**

**PRAYAGA CONSTRUCTION INDIA PRIVATE LIMITED**

... Transferor Company No.2

**AND**

**COMPETENT HOLDINGS PRIVATE LIMITED**

..... Transferee Company

Through Mr. Mukesh Sukhija, Advocate  
for the Petitioners

Mr. S.K. Pradhan, Dy. Registrar for the  
Regional Director

Mr. Rajiv Bahl, Advocate for the Official  
Liquidator

**CORAM:**

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

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

1. This joint Petition has been filed under sections 391(2) & 394 of the Companies Act, 1956 by the Petitioner Transferor Companies

and Transferee Company seeking sanction of the Scheme of Amalgamation of M/s CHILDPLANET DOT COM PRIVATE LIMITED (Transferor Company No. 1); PRAYAGA CONSTRUCTION INDIA PRIVATE LIMITED (Transferor Company No. 2); with COMPETENT HOLDINGS PRIVATE LIMITED (Transferee Company).

2. The registered offices of 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 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 Accounts as at 31<sup>st</sup> March , 2011 of the Petitioner Transferor and Transferee Companies 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 Share Exchange ratio is concerned, the Scheme provides that upon amalgamation of the 'Transferor Companies No. 1 to 2' into the 'Transferee Company' pursuant to the Scheme of Amalgamation, the following would be the share Exchange Ratio:
  - a. *For Every 1(One) Equity Shares held in M/s.Prayaga Construction India Private Limited (The transferor Company No-2), 7(Seven) Equity Share Will be allotted in the Competent Holdings Private Limited (The Transferee Company)*
  - b. *For Every 63 (Sixty Three) Equity Shares held in M/s Childplanet Dot.com Private Limited(The transferor Company No-1), 1 (One) Equity Share will be allotted in the Competent Holdings Private Limited (The Transferee Company)*

8. The Petitioner Companies had earlier filed CA (M) No. 83 seeking directions of this Court for dispensation/convening of meetings. Vide order dated May 07, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders of all the Companies and meeting of the Secured Creditors in the Transferee Company. Further there was no secured creditor in the Transferor Company No. 1 and 2 accordingly there is no requirement of convening the meetings of the secured creditors in these Companies. Also none of the Transferor Company or the Transferee Company had any Un-Secured Creditor; accordingly there is no requirement of convening the meetings of the un-secured creditors in any of the Applicant Companies.

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 May 21, 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 the 'The  
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Statesman’ (English, Delhi Edition) and ‘Dainik jagran’ (Hindi, Delhi 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 of citations in the aforesaid newspaper on July 19, 2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

- 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 13.08.2012 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 No, 1 to 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. Rakesh Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 27<sup>th</sup> August 2012. Relying on Clause 7 of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the Transferor Companies No. 1 to 2 shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble. Further the Ld. Regional Director had raised the following observations:

- v. *That the Deponent further craves leave to submit that on perusal of the balance Sheet as at 31.03.2011 of the Petitioner Transferee Company namely M/s Competent Holdings Pvt. Ltd., it has been observed that the Company has granted unsecured loans or advances to two Companies listed in the register maintained under Section 301 of the Companies Act, 1956. This fact also reflect in the Schedule- 'E' to the Balance Sheet as at 31.03.211 of the Transferee Company. This is prima facie contravention of the Provisions of Section 295 of the Companies Act, 1956, as the Company hs given loans & advances to M/s Prayaga Constructions (India) Pvt. Ltd., a private limited Company in which directors are interested in terms of Provisions of Section 295 of the Companies Act, 1956. Further by contravening the Provisions of Section 295 of the Act by the Director of a Company,*

*the concerned Directors vacate his office by operation of law pursuant to the Provisions of Section 283(1)(h) of the Companies Act, 1956 which is a material fact in the state of affairs of the Company. The Transferee Company vide its letter-dated Nil (received on 23.08.2012) has given undertaking that they will move Compounding Application under Section 621-A of the Companies Act, 1956 for default committed under Section 295 of the Companies Act, 1956 with the Registrar of Companies, Delhi.*

- vi. In this regard it is submitted that the Transferor Company No. 2 viz. M/s Prayaga Constructions (India) Pvt. Ltd. Has also contravened the Provisions of Section 295 of the Companies Act, 1956 along with the Transferee Company. As such the Transferor Company No. 2 and the Transferee Company may be asked to file Compounding Application under Section 621-A of the Companies Act, 1956 for default committed under Section 295(4) and 283(1)(h) of the Companies Act, 1956 with the Registrar of Companies, Delhi.*
- vii. That the Deponent further craves leave to submit that Transferee Company namely M/s Competent Holdings Pvt. Ltd. Was a public limited Company and converted into a Private limited Company with effect from 08.04.2011, but in the 'Compliance Report' for the Financial Year 2010-11 which is duly signed by P.K.S. Associates, Company Secretaries on 02.09.2011, it has been stated that it is Private Limited Company, while in the Financial Year 2010-2011, the Transferee Company was a Public Limited Company.*

**12.** That with regard to the above observations, Mr. Ashwani Kapoor, Director of the Petitioner Transferee Company filed his affidavit dated 28<sup>th</sup> September 2012, giving his following reply to the observations raised by the Ld. Regional Director:

- i. That all the Transferor Companies and the Transferee Company are group Companies and are controlled by same set of shareholders and Directors.*
- ii. That the Transferee Company has given inter corporate loans to the Transferor Company No. 2 and the said loans were given on good faith. The alleged violation of Section 295 of the Companies Act, by the Transferee and Transferor Company no. 2 was unintentional and without any malafide. Further the said inter corporate loans have not caused any loss to any of the shareholders, Government or others. Moreover the said inter corporate loans have already been repaid in full by the Transferor Company No. 2 to the Transferee Company. However the Transferor Company no. 2 & Transferee Company along with its Directors, have already filed an Application to the Ld. Company Law Board, New Delhi Bench, New Delhi through Registrar of Companies, NCT of Delhi & Haryana U/s 621A of the Companies Act, 1956 for compounding of the alleged offence vide Form 61 through SRN B57238628 dated 10<sup>th</sup> September 2012.*
- iii. Further in terms of the Clause 4 of the Scheme all the Legal Proceedings as may be pending in respect of the Respective Transferor Companies shall not be abated or discontinued or in any way prejudicially affected by the Transfer of Undertaking. The relevant para is reproduced hereunder for ready reference:*

#### 4. LEGAL PROCEEDINGS

*All legal proceedings of whatever nature by or against the Respective Transferor Companies pending on the Effective Date, shall not be abated, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the Transferor Companies or of anything contained in this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies as if the Scheme had not been made.*

*Further it was submitted that the Transferee Company is not going to be dissolved pursuant to the Scheme and the legal proceedings can always be initiated against the Company. Moreover the Petitioner Companies takes reliance of the judgment of this Hon'ble Court in the matter of Salil Industries Limited in CP No. 149/2010 ,para no. 17:*

*In support of the above submission, learned counsel relied on the judgment of Single Judge of the Gujarat High Court in the matter of Core Healthcare Limited Vs. Nirma Limited [(2007) 138 Comp Cas 204 (Gujarat)] wherein the court has held that “the Scheme can always be sanctioned subject to and without prejudice to the liability, if any, in the Civil and Criminal proceedings in respect of past transactions and the liability, if any, of the Board, Directors, Management etc., in civil and criminal proceedings would continue.”*

*In view of the submissions made at the bar and the settled law on the subject, the objection raised by the Regional Director is rejected and*

*the Scheme is sanctioned subject to and without prejudice to the liability, if any, in the civil and criminal proceedings in respect of past transactions. It is further clarified that the proceedings pending before the ACMM, Tis Hazari, Delhi against the transferor company and/or its Board, Directors and management etc. shall continue and the liability, if any, of the Board, Directors, Management etc., in the said proceedings would continue as if the Scheme has not been made.*

- 13.** The objection of the Regional Director thus no longer survives.
- 14.** No objection has been received to the Scheme of Amalgamation from any other party by either of the Petitioner Company or the counsel. Ms. Amita Kapoor & Mr. Ashwani Kapoor, the Directors of the respective companies given their affidavit dated 18-08-2012 confirming that neither the Petitioner Companies nor the 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 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 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 No. 1 to 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 the Transferor Companies No. 1 to 2 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 requirement 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. One lac in the  
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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 01, 2012**  
**A**