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

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Date of Judgment: 28th August, 2012

+ **CO.PET. 282/2012**

IN THE MATTER OF THE COMPANIES ACT, 1956
SECTIONS 391 AND 394 AND
IN THE MATTER OF AMALGAMATION OF

TARASPAN SOLUTIONS PVT. LTD. & ORS. Petitioner/
Transferor Company

AND

PETAN COMMUNICATION
SOLUTIONS PVT. LTD.

..... Petitioner/
Transferee Company

Through: Mr. Saurabh Kalia and
Mr. Sameer Chaudhary, Adv.
Mr. K.S. Pradhan, Deputy
Registrar of Companies on behalf
of Regional Director (NR)
Mr. Rajiv Bahl, Adv. for the
Official Liquidator.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion joint Petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'Act') by the petitioner Companies seeking sanction of the Scheme of Amalgamation (hereinafter referred to as 'Scheme')

2. The petitioner Companies had earlier filed C.A.(M) No. 93 of 2012 seeking directions of this Court for dispensation of the meetings. Vide order dated 25th May, 2012, this Court allowed the application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Companies.

3. The petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 01.06.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region, the Official Liquidator Citations were also directed to be published in “Business Standard” (English) and “Jansatta” (Hindi). Affidavit of service and publication has been filed by the petitioners showing compliance regarding service of the petition on the Regional Director (NR), Registrar of Companies, NCT of Delhi & Haryana and the Official Liquidator and also regarding Publication of Citations in the aforesaid newspapers on 09.08.2012, copies of the newspapers cuttings, in original, containing the publications have been filed with the affidavit of service.

4. 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 23.08.2012 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 Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

5. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit/report dated 16th August, 2012. Relying on Clause 17 of Part-F of the Scheme of Arrangement, he has stated that, upon sanction of the Scheme of Arrangement all the employees of the Transferor Company shall become the employees of Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Arrangement by the Hon'ble Court. In para 5 relying upon para 7.8 Part D (wrongly mentioned as part G) of the Scheme the Regional Director, NR has stated that it provides for change of name of Transferee Company to that of Transferor Company post-merger and the Transferee

Company be asked to follow the relevant procedure under the Companies Act, 1956. The petitioner companies vide their reply affidavit dated 24.08.2012 in para 4 has stated that the said observation is of procedural compliance in nature and the Transferee Company gives an undertaking that post approval of the Scheme, the company will follow the procedure as prescribed under the Companies Act, 1956 for such change of name.

6. That the Regional Director (NR) in para 6 and 6.1 of the reply affidavit has also stated that since the shares are held by certain entities and in the valuation report by the Chartered Accountant that he has followed regulations issued by RBI vide Notification No.FEMA 205/2010-RB dated 07.4.2012. In view of the same the Petitioner Companies may be asked to clarify whether compliance of Rules and Guidelines of FEMA/RBI with regard to transfer of shares to Foreign Company have been complied with or not, if deemed fit and proper by this Hon'ble Court. The Petitioner Companies in their response dated 24.08.2012 has stated that the valuation report by the independent valuer namely M/s Prakash K Prakash, Chartered Accountant in their report has clearly mentioned that they have considered the relevant RBI

Guidelines for valuation of equity shares including the relevant notifications as well valuation by Discounted Cash Flow Statement while determining valuation. Apart from the above the Petitioner Companies does not need any permission from the RBI with respect to the above Amalgamation and only regulatory filing is required to be done post-merger. The Petitioner Companies undertakes that they will do all the compliances as required under law with respect to RBI. Further the business activities of both the Companies are covered under 100% automatic route as detailed below and verified from attached FDI Policy 2012. In this regard the relevant provision of the FDI Policy, 2012 of the Govt. of India is quoted which specifically provides:

“3.5.4 Acquisition of shares under Scheme of Demerger/Amalgamation – Mergers/demergers/ amalgamations of companies in India are usually governed by an order issued by a competent Court on the basis of the Scheme submitted by the companies undergoing merger/demerger/amalgamation. Once the scheme of merger or demerger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that:

- (i) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap, and
- (ii) the transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI Policy”

This it is clear from the above that the only condition which is required to be followed is that the allotment shall not exceed sectoral cap and the companies should not be engaged in prohibited category under the FDI Policy. In the present case the Transferor and Transferee Company are engaged in the business of Software Development Services and Cash and Carry Wholesale Trading and other related activities. In terms of FDI Policy, both the business are in 100% Automatic Route, which is clear from the FDI Policy. Further both the companies also do not fall in the prohibited category as provided under the FDI Policy, 2012. Therefore post-merger the Transferee Company does not need any approval from RBI and only regulatory filing is required, which the Petitioner Companies has undertaken to do so post merger in accordance with law.

7. No objection has been received to the Scheme of Arrangement from any other party, the counsel for the Petitioner Companies has filed

an affidavit dated 24th August 2012 confirming that he has not received any objection pursuant to the citations published in the Newspapers.

8. Even today, during the course of hearing Mr. Rajiv Bahl, learned counsel for the Official Liquidator and Mr. K.S. Pradhan, Deputy Registrar of Companies for Regional Director (Northern Region) state that they have no objection to the present Scheme being sanctioned.

9. In view of the approval accorded by the Shareholders and Creditors of the petitioner Companies, representations/ reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this court to the proposed Scheme of Arrangement, 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 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 Transferor 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. Upon the Scheme coming into effect, the Transferor Company 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.

10. 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.

11. The petition is allowed in the above terms.

Order dasti.

INDERMEET KAUR, J

AUGUST 28, 2012
rb/nandan