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

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Date of Judgment: 19.9.2012

+ **COMPANY PETITION NO. 305 OF 2012**

In the matter of

The Companies Act, 1956

And

Petition under Sections 391(2) & 394 of the Companies Act, 1956

Scheme of Arrangement of

BIJLI INVESTMENTS PRIVATE LIMITED

Petitioner/Transferor Company

And

PRIYA EXHIBITORS PRIVATE LIMITED

Petitioner/Transferee/ Demerged Company

And

BIJLI HOLDINGS PRIVATE LIMITED

Petitioner/Resulting Company

Through: Mr. Deepak Diwan and Ms. Adarika
Ghose, Advocates for the Petitioners.
Mr. K.S. Pradhan, Deputy Registrar of
Companies for the Regional Director
(North).
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 Company and Transferee/ Demerged Company and Resulting Company seeking sanction of the Scheme of Arrangement of Bijli Investments Private Limited and Priya Exhibitors Private Limited and Bijli Holdings Private Limited which involves Merger of Transferor Company with Transferee Company and Demerger of a Investments division of Demerged Company into Resulting Company.
2. The registered offices of the Petitioner Transferor Company and Transferee Company and Resulting 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 and Resulting 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 Transferor and Transferee Companies have also

been enclosed with the Petition. It is stated that as the Resulting Company is a newly incorporated Company therefore there is no Audited Balance sheet as on date.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Arrangement 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 Arrangement is concerned, the Scheme provides that, upon the Scheme finally coming into effect:

For Merger-

a. The shareholders of the TRANSFEROR COMPANY will become the shareholders of PEPL and together entitled to 110972 equity shares of Rs.100/- each in lieu of their shareholding in the amalgamating company. Mr. Sanjeev Kumar will get 10 equity shares of PEPL and other shareholders will get balance shares of PEPL in the same proportion as they are holding in the TRANSFEROR COMPANY. Since, Mr. Sanjeev Kumar being allotted only Ten number of shares in PEPL, therefore, he will be compensated by way of 38% of the ultimate share capital of BHPL, the Resulting Company which is a fair compensation based on the recommendation of the valuers.

- b. Any cross holdings between TRANSFEROR COMPANY and PEPL shall stand extinguished.*

For Demerger

- a) All the shareholders of PEPL, Demerged Company (including those Members who were allotted shares pursuant to the amalgamation of the Amalgamating Company into PEPL) will get shares in BHPL, Resulting Company in proportion to their shareholding in PEPL.*
- b) The Share Capital of PEPL pursuant to the demerger will be reduced to Rs. 18048600 comprising of 180486 equity shares of Rs. 100/- each to be held by each shareholder in proportion to their shareholding in the merged company (post merger).*
- c) The resulting Company will issue and allot 119013 equity shares of RS.10/- each to the members of PEPL in proportion to their shareholding in PEPL (post merger of BIPL into PEPL) in consideration for the demerger.*
- d) The Resulting Company BHPL will issue and allot 685847 equity shares of Rs.10/- each to Mr. Sanjeev Kumar as per Part-B, para 1.18(a) of the Scheme in consideration for the merger of BIPL into PEPL.*
- e) The existing paid up equity share capital of BHPL (Resulting Company) of Rs.1 lac will be set off as follows:*
- i. Rs.50,000/- to be adjusted against preliminary expenses.*
 - ii. Rs.50,000/- to be returned to the subscriber shareholders.*

8. The Petitioner Companies had earlier filed CA (M) No. 98 of 2012 seeking directions of this Court for dispensation of meetings. Vide order dated 1st June, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders and Secured and Un-secured Creditors of the Transferor Company and the Transferee Company and Resulting Company.

9. The Petitioner Transferor Company and the Transferee Company and Resulting Company have thereafter filed the present Petition seeking sanction of the Scheme of Arrangement. Vide order dated 6th July, 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 'Financial Express' (English, Delhi Edition) and 'Jansatta' (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 newspapers on 11-09-2012. 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 18-09-2012 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.

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/Report dated 14th September, 2012. Relying on Clause 1.16(b) of the Scheme of Arrangement, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the Transferor Company viz. Bijli Investments Private Limited shall become the employees of the Transferee Company viz. Priya Exhibitors Private Limited and as per Clause 2.14(a) of Part –C of the Scheme of Arrangement all the staff/employees of the Demerged Company namely M/s Priya Exhibitors Private Limited engaged in “Investment Division” shall become the employees of the Resulting Company viz. M/s Bijli Holdings Private Limited without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon’ble Court.

12. Mr. Rakesh Chandra, Learned Regional Director also stated that as per Para 1.18(a) of the Scheme which provides that “the shareholders of the TRANSFEROR COMPANY will become the shareholders of

PEPL and together entitled to 110972 equity shares of Rs.100/- each in lieu of their shareholding in the amalgamating company. Mr. Sanjeev Kumar will get 10 equity shares of PEPL and other shareholders will get balance shares of PEPL in the same proportion as they are holding in the TRANSFEROR COMPANY. Since, Mr. Sanjeev Kumar being allotted only Ten number of shares in PEPL, therefore, he will be compensated by way of 38% of the ultimate share capital of BHPL, the Resulting Company which is a fair compensation based on the recommendation of the valuers.”

13. Further, Mr. Rakesh Chandra, Learned Regional Director also stated that the Exchange Ratio has been determined by M/s RMG Advisory Private Limited, and has not been worked by an independent valuer. Normally, the valuation of shares and swap ratio are calculated by the professional firm of Chartered Accountant. Hon’ble Supreme Court of India has also observed the fact in the matter of Miheer H. Mafatlal versus Mafatlal Industries. He further stated that the Counsel for the petitioners has submitted a Certificate by M/s Sibram Tripathy & Co., Chartered Accountants stating that “I fully endorse it & it has been prepared under my instructions, the Valuation Report of RMG

Transaction Advisory Private Limited., of whom I am a Director, dated 30th May, 2012 addressed to Bijli Investment Private Limited, Priya Exhibitors Private Limited and Bijli Holdings Private Limited.

14. Further, Mr. Rakesh Chandra, Learned Regional Director also submitted that RMG Transaction Advisory Private Limited has not furnished the basis of the valuation/ workings of swap ratio as was called by the office of the Deponent vide Letter dated 17.07.2012, as such, it is not understood as to how Mr. Sanjeev Kumar will be compensated by way of 38% of the ultimate share capital of BHPL.

15. In response to the above observations of the Learned Regional Director, Learned Counsel for the Petitioner Companies, submitted vide his Affidavit dated 18.09.2012 that :

- *RMG Transaction Private Limited, the Valuation Company comprises of directors who are all professionals comprising of finance, accountancy and corporate law fields and are eminently qualified in their respective fields. I further agreed to provide him the certificate of Mr. Sibaram Tripathy, Chartered Accountant and Director of RMG Transaction Advisory Private Limited under whose supervision the valuation assignment was carried out.*
- *That no further query was made by the Regional Director regarding the intricate workings of the valuer and this is normally never insisted upon. The deponent only came to know of this from the copy of the affidavit of the*

Regional Director. During the queries made by the Official Liquidator's office, the detailed workings of the valuer were provided to their office and there is no reason not to share the same with the Regional Director.

Further, the three petitioner companies are closely held companies whose shareholders comprise of the mother, two sons and daughter-in-law and all of them (including Mr. Sanjeev Kumar) have given their consent to the apportionment of shares amongst them as indicated in the Scheme of Arrangement as per the Valuer's Report.

- *That a typographical error has been noticed in para 2.22 c) of the Scheme. The figure of 119013 equity shares should be read as 11,19,013 and is apparently a typographical error.*

The Board Resolutions of the petitioner companies and Consent letters from the Shareholders of all the petitioner Companies in this connection were also placed on record. These objections thus no longer survive.

16. No objection has been received to the Scheme of Arrangement from any other party. Mr Pankaj Dhawan, Authorised Signatory of the Resulting Company, has filed an affidavit dated 17th September, 2012, confirming that neither the Petitioner Companies nor their Legal

Counsel has received any objection pursuant to citations published in the newspapers.

17. 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 Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. 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. Also, the property,

rights and powers of the Investments Division of the Demerged Company be transferred to and vest in the Resulting Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Investments Division of the Demerged Company be transferred to the Resulting 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.

18. 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.

19. The petition is allowed in the above terms.

Order dasti.

INDERMEET KAUR, J

SEPTEMBER 19, 2012
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