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

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Date of Judgment: 16.11.2012

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COMPANY PETITION NO. 332/2012

IN THE MATTER OF SECTIONS 391 TO 394 AND SECTION 100
TO 103 OF THE COMPANIES Act, 1956

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT
BETWEEN

SPORTS STATION (INDIA) PRIVATE LIMITED

.....Transferor/petitioner
Company-I.

AND

SSIPL LIFESTAYLE PRIVATE LIMITED

.....Transferee/petitioner
Company-II

Through: Mr.N.P.S.Chawla and
Ms.Simaran Sethi, Advocate for
the petitioners.

Mr.S.B.Gautam, Official
Liquidator.

Mr.K.S.Pradhan, Deputy ROC on
behalf of Regional Director
(North)

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This joint petition has been filed under Sections 391 to 394 and Sections 100 to 103 of the Companies Act, 1956 by the Transferor Company/Petitioner Company-I and Transferee Company/Petitioner Company-II seeking sanction of the Scheme of Arrangement between Sports Station (India) Private Limited (hereinafter referred to as Transferor Company) with SSIPL Lifestyle Private Limited (hereinafter referred to as Transferee Company).

2. The registered offices of both the petitioner companies are situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of both the petitioner companies, their authorized, issued 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 and the provisional unaudited Annual Accounts for the year ended 31st

March, 2012 of both the Petitioner 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 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 is concerned, the Scheme provides that as the entire issued, subscribed and paid up share capital of the Transferor Company is held by the Transferee Company either directly or through its nominees, therefore, upon sanction of the Scheme of Arrangement, the said share capital of the Transferor Company will stand cancelled and there will be no issue and allotment of shares by the Transferee Company in consideration of the amalgamation of the Transferor Company with the Transferee Company.

8. The Petitioner Companies had earlier filed Company Application (M) No.107 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 01.06.2012, this Court allowed the Application and dispensed with the requirement of convening meetings of the Shareholders, Secured Creditors and un-secured Creditors of both the Petitioner Companies.

9. Both the Petitioner Companies thereafter filed the present Petition seeking sanction of the Scheme of Arrangement. Vide order dated 20.07.2012, 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 '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 newspaper on 02.11.2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the said Affidavit.

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 08.11.2012, wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interest 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, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 08.11.2012. The learned Regional Director in his affidavit has submitted that from the annual return made up to 30.09.2011 by Transferor Company, it has been observed that it is a subsidiary of the Transferee Company. Earlier, it was closely held Company and during the August-September 2011 most of the Shareholders of the Transferor Company have transferred their holding to the Transferee Company. The learned Regional Director, sought clarification as to when the shareholders of the Transferor Company

transferred their shares to the Transferee Company. The Regional Director has further observed that since M/s SSIPL Retail Limited, a public company is holding 63,09,000 shares in the Transferee Company, therefore by virtue of Section 3(1)(iv) of the Companies Act, 1956 the Transferee Company becomes a subsidiary of a public limited company and deemed to be public limited company. Further, being a wholly owned subsidiary of the Transferee Company, the Transferor Company also becomes a subsidiary of a public limited company and deemed to be public limited company, thereby requiring a minimum of 7 shareholders and 3 Directors. Accordingly the Regional Director has observed that there is prima facie contravention of Provisions of Section 12 and 252 of the Companies Act, 1956.

12. In response to the first observation of the learned Regional Director, Mr.N.P.S.Chawla, learned counsel for the Petitioner Companies has submitted that subsequent to the Annual General Meeting of the Transferor Company held on 30.09.2011, all the shareholders of the Transferor Company (except the Transferee Company itself) transferred their shares (19 shares) to the Transferee

Company. Consequently, the Transferor Company became a wholly owned subsidiary of the Transferee Company. The counsel also mentioned that the fact, that the Transferor Company is a wholly-owned subsidiary of the Transferee Company was disclosed as such in Company Application (Main) No.107 of 2012 and thereafter in Company Petition No.332 of 2012 filed with this Hon'ble High Court. Further, in response to the second observation, the Learned counsel for the petitioner Companies submitted that, since both the Petitioner Companies are private limited companies and subsidiaries of public limited companies, therefore they should have a minimum of 7 (seven) shareholders and 3(three) directors. In view of the said fact, Petitioner Companies suo-moto had altered the shareholding pattern and board composition in the month of October, 20912. The same was done in order to strictly comply with the provisions of Section 12 and Section 252 of the Companies Act.

13. The learned counsel for the Petitioner Companies has thus explained/agreed to abide by the observations/requirements pointed out by the Regional Director (Northern Region) and to file requisite

application seeking compounding of the offence within a period of two weeks from today. The Regional Director thus does not further press his objections on account of the reply filed by Petitioner Companies. Hence, the submissions made by the counsel of the Petitioner Companies, hereby stands withdrawn and answered.

14. No objection has been received to the Scheme of Arrangement from any other party. Mr. N.P.S.Chawla, Counsel for the Petitioner Companies, has filed an affidavit dated 08.11.2012, confirming 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, Ministry of Corporate Affairs, to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement under sections 391 to 394 and sections 100 to 103 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 the 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 Company/Petitioner Company-I be transferred to and vest in the Transferee Company/Petitioner Company-II without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Company/Petitioner Company-I be transferred to the Transferee Company/Petitioner Company-II 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. Upon the sanction becoming effective from the appointed date of Amalgamation, that is 1st April, 2012, the transferor company shall stand dissolved without undergoing the process of winding up.

17. 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 week from today. The statement is accepted.

18. The petition is allowed in the above terms.

Order dasti.

INDERMEET KAUR, J

NOVEMBER 16, 2012

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