

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

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Date of Judgment: 20.12.2012

+ **CO. PET. 340/2012**

IN THE MATTER OF :

S.A. INFRATECH PRIVATE LIMITED

.....TRANSFEROR COMPANY

WITH

RAMPRASTHA PROMOTERS & DEVELOPERS

PRIVATE LIMITED

.....TRANSFeree COMPANY

THROUGH:

Mr. Virender Ganda Sr. Advocate
with Mr. S.K. Giri Advocate for
petitioners.

Mr.S.K. Pradhan, Dy. Registrar
on behalf of the ROC.

Mrr. S.B. Gautam, official
liquidator.

INDERMEET KAUR, J. (Oral)

1 This second motion joint Petition has been filed under Section 391 and 394 of the Companies Act, 1956 (for short 'Act') by the Petitioner Companies seeking sanction of the Scheme of Amalgamation (for short 'Scheme').

2 The Petitioner Companies had earlier filed CA (M) No. 105 of 2012 seeking directions of this Court for convening of meetings. Vide order dated 31.05.2012, this court allowed the Application whereby the Transferor Company was exempted from convening meetings of shareholders and Creditors and the transferee Company was exempted from convening meetings of the shareholders and directed convening of meetings only of Secured and Unsecured Creditors of the Transferee Company. In the meetings directed by this Court, the Scheme was approved unanimously by those who were present and voting.

3 The Petitioner Companies had thereafter filed the present Petition seeking sanction of the Scheme. Vide Order dated 24.07.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator attached with this Court. Citations were also directed to be published in 'Business Standard' (English, Delhi Edition) and 'Nav Bharat Times' (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. Copies of the

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newspaper cuttings, in original, containing the publications have been filed along 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 31.10.2012, wherein he has stated that he has not received any complaint against 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, Mr. Rakesh Chandra , Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 04.012.2012. Relying on Clause 4 of Part – II of the Scheme, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services. In the Affidavit, it has been further stated as under:-

“ That the Deponent craves leave to submit that as per Clause 4 of Part-II of the Scheme of Amalgamations , all the Permanent staff/

employees of the Transferor Company 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 Court.

That the Deponent further craves leave to submit that the above information observation furnished by the Registrar of Companies. Delhi are material information with reference to the state of the affairs of the Company. Therefore, it is submitted that the Transferor & Transferee Companies may be asked to give an undertaking for all compliances from Reserve Bank of India as required under FEMA for above transactions involving foreign banks/ entities. If deemed fit & proper by the Hon'ble Court".

6 Learned Senior Counsel for Petitioner undertakes to this Court that the petitioners Companies shall comply with the Accounting Standard-14 issued by the Institute of Chartered Accountant of India. He also confirms all relevant statutory Compliances as required the applicable Provision of FEMA have been duly complied with by the Transferee Company to the satisfaction of the Reserve Bank of India and this connections he also draws attention of this Court to the affidavit dated 14.12.2012 filed by Mr. Arvind Walia an authorized Person of the Transferee Company in the said affidavit, it has been stated as under:

“3. That in response to the contents of para 4, it is hereby confirmed that the Petitioner Companies shall comply with the Accounting Standard -14 issued by the Institute of Chartered Accountants of India.”

“9. That the Petitioner Companies do hereby undertake and confirm that all the relevant statutory compliances as required under the applicable provisions of FEMA have duly complied with, by the Transferee Company, to the satisfaction of Reserve Bank of India.”

Ld. Sr. Counsel for the petitioner companies hereby undertake that the transfer of shares as referred to in para 6 of the aforesaid affidavit dated 14.12.2012 shall be incorporated in Annual Return made upto 30.9.2008 and the revised annual return shall be revised within two weeks from the date hereof.

7 In view of the aforesaid, the observation made by the Regional Director, no longer survives.

8 No objection has been received to the Scheme from any other party. Mr. Sandeep Yadav Director for the Petitioner Companies has filed an affidavit confirming that neither the Petitioner Companies nor he has received any objection pursuant to citations published in the newspapers.

9 In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator,

attached with the Court to the proposed scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under section 391 and 394 of the Act. The Petitioner Company will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within thirty days from the date of receipt of the same. In terms of the provisions of Section 391 and 394 of the Act, and in terms of the Scheme, the whole or part of the undertakings, all properties, 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. 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 The Petitioner Companies voluntarily state that they would deposit a sum of Rs. One lac with the Common Pool fund of the Official Liquidator within three weeks from today.

11 The Petition is allowed in above terms.

Order dasti.

INDERMEET KAUR, J

DECEMBER 20, 2012
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