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

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Date of Judgment: 20.12.2012

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CO. PET. 454/2012
EXPERION DEVELOPERS (INTERNATIONAL)
PRIVATE LIMITED

..... TRANSFEROR / PETITIONER
COMPANY – I

WITH
EXPERION DEVELOPERS PRIVATE LIMITED

..... TRANSFEREE / PETITIONER

COMPANY- II

Through:- Mr. N.P.S. Chawla, Ms. Simran
Sethi, Advocates for the
Petitioners.
Mr. Mr. K.S. Pradhan, Asst.
Registrar of Companies for the
Regional Director

INDERMEET KAUR, J. (Oral)

1. This joint Petition has been filed under sections 391 & 394 of the Companies Act, 1956 by the Petitioner Companies seeking sanction to the Scheme of Amalgamation between Experion Developers (International) Private Limited and Experion Developers Private Limited. The registered offices of both the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

2. Details with regard to the date of incorporation of both the Petitioner Companies, their authorized, issued, subscribed and paid-up capital have been given in the Petition.

3. Copies of the Memorandum and Articles of Association as well as the audited Annual Accounts for the year ended March 31, 2012 of the both the Petitioner Companies have also been enclosed with the Petition.

4. 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.

5. It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

6. So far as the share exchange ratio for amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Petitioner Company-II shall issue shares in the following manner:

0.62 equity share of the Petitioner Company - II of the face value of Rs. 10/- each for every 1 (One) equity share of the face value of Rs. 10/- each of the Petitioner Company - I.

7. The Petitioner Companies had earlier filed CA (M) No. 149 of 2012 seeking directions of this Court for dispensation/convening of meetings. Vide order dated 14.09.2012, this Court allowed the Application and dispensed with the requirement of convening meetings of all the Equity Shareholders and Unsecured Creditors of both the Petitioner Companies and Unsecured Debenture holder of Petitioner Company- II.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 26.09.2012, notice in the Petition was directed to be issued to the Regional Director (Northern Region), Ministry of Corporate Affairs, the Official Liquidator. Citations were also directed to be published in 'The Statesman' (English, Delhi Edition) and 'Veer Arjun' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners confirming the publication of citations in the aforesaid newspapers on 06.11.2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

9. 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 18.12.2012 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 Petitioner Company -I do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

10. 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 13.12.2012. Relying on Clause 1.17 of Part III of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the Transferor Company/ Petitioner Company -I shall become the employees of the Transferee Company/ Petitioner Company -II without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court.

11. Further, the Regional Director in his affidavit has made the following observations:-

“5(i) It has been observed from the shareholding pattern of the Transferor Company and the Transferee Company that prima facie the Provisions of Section 4(7) of the Companies Act, 1956 shall attract as the entire share capital of the above Companies is not held by the bodies corporate incorporated outside India. Therefore, it seems that the Company has lost the exemption given under the Act to a private Company incorporated in India....

5.1 It is submitted that the Transferor Company may be asked to give an undertaking for all compliances from Reserve Bank of India as required under FEMA/FIPB for above transactions involving foreign entities, if deemed fit & proper by the Hon'ble Court.

6. That the Deponent further craves leave to submit that Registrar of Companies, Delhi has reported that the Transferor Company has not filed its Annual Returns of the year 31.03.2012. Thus there is prima facie violation of under section 159 of the Companies Act, 1956.”

12 The Petitioner Companies by way of the reply to the affidavit of Regional Director as filed with the High Court on 19.12.2012 has stated that the provisions of section 4(7) does not apply to the Petitioner Companies as both the Petitioner Companies are the subsidiaries of Gold Hotels and Resorts Pte. Ltd. (“Parent Company”), a private limited company, incorporated under the laws of Singapore. Further, it is submitted by the Petitioner Companies that the Articles of Association (“AOA”) of the Parent Company are similar to that of any private

limited company incorporated in India under the Act as it limits the number of members to 50 (Fifty) and even the right to transfer shares is also restricted. An undertaking to this effect by the Parent Company has been filed by the Petitioner Companies. Further, as observed by the Regional Director, the Petitioner Companies have also submitted an undertaking with respect to all the compliances of Reserve Bank of India as required under Foreign Exchange Management Act, 1999 and/or Foreign Investment Promotion Board for transactions involving foreign entities. Also, with regard to the observation of the Regional Director that there is prima facie violation under section 159 of the Companies Act, 1956, the counsel of the Petitioner Companies has stated that the Annual Return of the Transferor/Petitioner Company—I was belatedly filed along with the applicable additional fees, therefore there is no contravention of section 159 of Companies Act, 1956. In view of the reply of the Petitioner Company and the submissions made by the Counsel of the Petitioner Company, Mr. K.S. Pradhan does not wish to press this observation. Accordingly the same stands disposed of.

13 No objection has been received to the Scheme of Amalgamation from any other party. Mr NPS Chawla, Advocate has filed an affidavit

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dated 19.12.2012, confirming that they have not received any objection pursuant to citations published in the newspapers.

14 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 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 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 Co. Petition No. 454/2012

Company-I be transferred to the Transferee Company/Petitioner Company -II 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.

15 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.

16 The Petition is allowed in the above terms.

Order Dasti

INDERMEET KAUR, J

DECEMBER 20, 2012
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