

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

% *Date of Judgment: 12.12.2012.*

+ **COMPANY PETITION NO. 457 OF 2012**

IN THE MATTER OF:

Indiabulls Financial Services Limited

... Petitioner/ Amalgamating Company
AND

Indiabulls Housing Finance Limited.

...Petitioner/Amalgamated Company

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Anirudh Das and Mr. Rohan Dheman,
Advocates for the Petitioner Companies
Mr. K.S. Pradhan, Dy. Registrar of Companies
for the Regional Director
Mr. Rajiv Bahl, Advocate for the Official
Liquidator

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion Petition has been filed under Section 391(2) and 394 of the Companies Act, 1956 ("Act") by the Petitioner Companies seeking sanction and approval of the Scheme of

Arrangement amongst Indiabulls Financial Services Limited and Indiabulls Housing Finance Limited and their respective shareholders and creditors.

2. The registered office of the Petitioner/ Amalgamating Company and the Petitioner/Amalgamated Company is situated at New Delhi, within the jurisdiction of this Court.
3. Details with regard to the date of incorporation of the Petitioner/ Amalgamating Company and the Petitioner/Amalgamated Company, 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 accounts of the Petitioner/Amalgamating Company and the Petitioner/Amalgamated Company for the year ended 31 March 2012, respectively, have also been enclosed with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner/Amalgamating Company and the Petitioner/Amalgamated Company approving the Scheme have also been placed on record.
6. It has been submitted that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner/Amalgamating Company and the Petitioner/Amalgamated Company.
7. So far as the share exchange ratio under the Scheme is concerned, the Scheme provides that upon the same becoming effective, every Equity Shareholder of the Petitioner/Amalgamating Company shall be entitled to receive 1 equity shares of face value Rs. 2/- (Rupees Two Only) each in the equity share capital of the Petitioner/Amalgamated Company for every 1 equity share of face value Rs. 2/- (Rupees Two Only) each held in the equity share capital of the Petitioner/Amalgamating Company.

8. The Petitioner Companies had earlier filed Company Application (M) No.113 of 2012 seeking dispensation from convening the meetings of the equity shareholders of the Petitioner/Amalgamated Company and seeking directions for convening the meetings of the equity shareholders, secured creditors and unsecured creditors of the Petitioner/Amalgamating Company and secured creditors and unsecured creditors of the Petitioner/ Amalgamated Company. Vide orders dated 10 July 2012 and 20 July 2012, this Court had dispensed with the requirement of convening meeting of the Equity Shareholders of the Petitioner/Amalgamated Company. Further this Court had directed the convening of the meetings of the equity shareholders, secured creditors and unsecured creditors of the Petitioner/Amalgamating Company and the secured creditors and unsecured creditors of the Petitioner/ Amalgamated Company.
9. The said meetings of the equity shareholders and unsecured creditors of the Petitioner/Amalgamating Company and unsecured creditors of the Petitioner/ Amalgamated Company were held on

08 September 2012. Further, the meeting of the secured creditors of the Petitioner/ Amalgamating Company and the Petitioner/ Amalgamated Company were held on 15 September 2012. The equity shareholders, secured creditors and the unsecured creditors of the Petitioner/Amalgamating Company and the secured creditors and unsecured creditors of the Petitioner/ Amalgamated Company have unanimously approved the Scheme.

10. The Petitioner Companies thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 28 September 2012, notice on the Petition was directed to be issued to the Regional Director (Northern Region), Ministry of Corporate Affairs, the Registrar of Companies and the Official Liquidator. Notice of Petition was also directed to be published in Indian Express (English Edition) and Jansatta (Hindi Edition). Affidavit of Service and Publication has been filed by the Petitioner Companies showing compliance regarding service of the Petition on the Regional Director (Northern Region), the Registrar of Companies and the Official Liquidator, and also regarding

publications of Notice of Petition in the aforesaid newspapers on 05 December 2012. Copies of the newspaper, in original, containing the publications have been filed along with the Affidavit of Service.

11. 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 November 2012 wherein he has stated that the affairs of the Petitioner/Amalgamating Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.
12. In response to the notices issued in the Petition, Mr. Rakesh Chandra, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Representation Affidavit dated 21 November 2012. Relying on Clause 9.1 of Part II of the Scheme, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the Petitioner/ Amalgamating Company shall

become employees of the Petitioner/ Amalgamated Company without any break or interruption in service upon sanctioning of the Scheme by the Hon'ble Court.

The learned Regional Director has in Para 5.1 and 6.1 of the Representation Affidavit dated 21 November 2012 submitted that the Petitioner/Amalgamated Company may be asked to follow the procedure prescribed under the Companies Act, 1956 and file requisite forms with the Registrar of Companies, Delhi.

The learned Regional Director has in Para 7 of the Representation Affidavit dated 21 November 2012 submitted that the Petitioner/ Amalgamated Company may be asked to comply with the conditions raised by the Bombay Stock Exchange and National Stock Exchange.

The learned Regional Director has in Para 8 of the Representation Affidavit dated 21 November 2012 submitted that the Petitioner/

Transferor Company is a Non Banking Finance Company

registered with the Reserve Bank of India. The learned Regional Director stated that the Petitioner/ Amalgamating Company may be asked to give an undertaking for compliance of all the Rules and Regulations of Reserve Bank of India, being the concerned regulator.

The learned Regional Director has in Para 9 of the Representation Affidavit dated 21 November 2012 submitted that the Petitioner/ Amalgamated Company is a Housing Finance Company regulated by the National Housing Bank, New Delhi. The learned Regional Director stated that the Petitioner/ Amalgamated Company may be asked to give an undertaking for compliance of all the Rules and Regulations of National Housing Bank, being the concerned regulator.

The learned Regional Director has in Para 8 of the Representation Affidavit dated 21 November 2012 submitted that the Petitioner Companies may be asked to give an undertaking for necessary compliance of the Provisions of the Competition Act, 2002 with regard to the proposed Scheme.

13. The Petitioner Companies in response to the Representation Affidavit dated 21 November 2012, have filed reply dated 04 December 2012. The Petitioner Companies have in the Reply Affidavit dated 04 December 2012 stated that provisions of Section 391 (1) of the Act confers the power on a Company to propose a compromise or arrangement between itself and its shareholders and creditors on any class of them. In terms of Section 390 (b) of the Act, the expression ‘Arrangement’ includes re-organization of the share capital of a Company. It is further submitted that in terms of Section 94 of the Act, a Company has the power to alter its share capital and subsequently give notice thereof to the Registrar of Companies under Section 95 of the Act. It is also submitted that the change to the object clause of the Petitioner/Transferee Company is being effected as an integral part of the Scheme. It is further submitted that the Equity Shareholders of the Petitioner/Amalgamated Company have approved the Scheme including the proposed change in its Memorandum of Association and that upon sanction of the

Scheme, the order of this Court shall be filed with the Registrar of Companies and the same shall be treated as intimation to the Registrar of Companies for change in the Memorandum of Association. The Petitioner Companies further rely upon the judgment of this Court dated 19 July 2007 in Company Petition No.75 of 2007, judgment dated 02 August 2006 in Company Petition Nos.102-103 of 2006, judgment dated 03 March 2011 in Company Petition No.448 of 2010 and judgment dated 17 October 2011 in Company Petition No.318 of 2011. It is accordingly submitted that there is no requirement to follow the separate procedure prescribed under the Act for altering the Memorandum of Association.

14. It has also been stated that the Petitioner/Amalgamated Company shall comply with the conditions communicated by the Bombay Stock Exchange Limited in its letter dated 28 June 2012 and of the NSE letter dated 07 June 2012. It has further been submitted that the Petitioner/ Amalgamating Company shall comply with the applicable rules and regulations of the Reserve Bank of India

and the Petitioner/Amalgamated Company shall comply with the applicable rules and regulations of the National Housing Bank, New Delhi.

15. It is submitted that the Petitioner Companies shall further comply with the applicable rules and regulations issued by the Reserve Bank of India as also the provisions of the Foreign Exchange Management Act, 1999 with respect to any foreign shareholding in their respective issued and paid up share capital.
16. It is also submitted on behalf of the Petitioner Companies that the provisions of the Competition Act, 2002 are not attracted and the Petitioner Companies are not required to comply with the merger control provisions contained in Sections 5 and 6 of the Competition Act, 2002 as the Scheme provides for the merger of the Petitioner/Amalgamated Company into and with its wholly owned subsidiary. It is accordingly submitted that in view of the provisions of Schedule I read with Regulation 4 of the Competition Commission of India (Procedure in regard to the

Transactions of Business Relating to Combination) Regulations, 2011 and Item 8A as inserted in Schedule 1 of the aforesaid Regulations, the transactions proposed in the Scheme is exempted from the purview of the Competition Act, 2002. In any event, counsel for the Petitioner Companies submits that the Petitioner/Amalgamated Company undertakes to comply with the provisions of the Competition Act, 2002 as applicable, subsequent to the sanction of the Scheme by this Court.

17. This Court is of the view that the objections raised by the learned Regional Director with respect to the alteration in the share capital and the alteration of the Memorandum of Association of the Petitioner/ Amalgamated Company are without merit in view of the judgments as cited herein-above. This Court has held that the sanction under Sections 391 to 394 of the Act is a single window clearance and there is no requirement of separate procedure to be followed for amendment of Memorandum of Association under the provisions of the Act. It is pertinent to mention that sub division of the face value of the equity shares of

the Petitioner/Amalgamated Company and the change in the object clause is being implemented as an integral part of the Scheme. The Equity Shareholders of the Petitioner Companies have approved the Scheme in its entirety. Upon sanction of the Scheme, the order of the Court shall be filed with the Registrar of Companies and the same shall constitute compliance of the provisions of the Act for change in the Memorandum of Association. Further, the undertakings given at paras 3 (b), 3 (e), 3 (f), 3 (g), 3 (h) and sub-para of para 3 (i) of the Reply Affidavit dated 04 December 2012 are accepted.

18. The Petitioner Companies in the affidavit dated 04 December 2012 have stated that no objection has been received by the Petitioner Companies or its Counsel to the Scheme of Arrangement from any party. It is further submitted by the counsel for the Petitioner Companies that even as on date, no objection has been received to the Scheme of Arrangement from any other party.

19. In view of the approval accorded by the equity shareholders, secured creditors and unsecured creditors of the Petitioner Companies, Representation Affidavit filed by the Regional Director, Northern Region, to the proposed Scheme, there appears to be no impediments to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Section 391-394 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 391-394 of the Companies Act, 1956 and in terms of the Scheme, the whole of the undertaking, properties, rights and powers of the Petitioner/Amalgamating Company be transferred to and vest in the Petitioner/Amalgamated Company without any further act of deed. Similarly, in terms of the Scheme, all liabilities and duties of the Petitioner/Amalgamating Company be transferred to the Petitioner/Amalgamated Company without any further act or deed. Upon the Scheme coming into effect, the

Petitioner/Amalgamating 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.

20. Learned counsel for the Petitioners states that the Applicant / transferee Company would voluntarily deposit a sum of Rs. 1 lac in the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.
21. The Petition is disposed off in above terms.

Order Dasti

INDERMEET KAUR, J

DECEMBER 12, 2012

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