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

% *Date of Judgment: 3rd September, 2012*

COMPANY PETITION NO.6/2012

IN THE MATTER OF THE COMPANIES ACT, 1956 AND
PETITION UNDER SECTIONS 391 TO 394 OF THE COMPANY
ACT, 1956

PASA INVESTMENT AND LEASING
PRIVATE LIMITED Transferor Company No.1

AND

GUPTA PIGMENTS PVT. LTD. Transferor Company No.2

AND

MET TRADE (GLOBAL) LIMITED Transferee Company

Through: Ms. Maneesha Dhir , Mr. Hemant
Sharma, Mr. Kshitiz Khera and
Ms. Mithu Jain, Adv.
Mr. K.S. Pradhan, Deputy
Registrar of Companies for the
Regional Director (NR)
Mr. Rajiv Bahl, Adv. for the
Official Liquidator.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This Second motion joint petition has been filed under Sections

391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'Act') by the petitioner companies seeking sanction of the Scheme of Merger (hereinafter referred to as 'the Scheme')

2. The petitioner companies had earlier filed C.A. (M) No. 153 of 2011 seeking directions of this Court for dispensation of meetings. Vide order dated 21st November 2011, this Court allowed the application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured and Unsecured Creditors of Transferor Company 1 & 2 and of Transferee Company.

3. The petitioner Companies have thereafter filed the present petition seeking sanction of the 'Scheme'. Vide order dated 06.01.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region and to the Official Liquidator. Citations were also directed to be published in "Financial Express" (English, Delhi Edition) and "Dainik Bhaskar" (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 07th April, 2012, copies of the

news papers cuttings, in original, containing the publications have been filed 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 22nd May, 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 manner prejudicial to the interest of its members, creditors or to public interest.

5. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit/report dated 15.03.2012 wherein it has been averred that there has been no mention whether the Petitioner Companies have complied with the Accounting Standard-14 issued by the Institute of Chartered Accountant. In response to the aforesaid the Petitioner Companies have filed an affidavit on 11th May 2012 wherein they have submitted the undertaken that the Petitioner Companies have complied and shall continue to comply with the Accounting Standard-14 issued by the

Institute of Chartered Accountant. Relying on Clause 9.1 of Part-IX of the 'Scheme', he has stated that upon sanction of the 'Scheme' all the employees of the Transferor Companies shall become the employees of Transferee Company without any break or interruption in their services upon sanctioning of the 'Scheme' of arrangement by the Hon'ble Court. In the affidavit it has been further stated that the Central Government has no objection to the proposed 'Scheme'.

6. The Transferor No. 1 and Transferee Company have included share application money in their respective capitals and in the original scheme the swap ratio was determined taking the said share application monies as capital of the company. Thereafter, new valuation was carried out and M/s Anmol Sekhri Consultants Pvt. Ltd. prepared Valuation Report dated 13th may 2012. As a result of the new Valuation Report, the exchange ratio of Transferor Companies No. 1, 2 & 3 in terms of Clause 13 would be as under:-

a) For every 100 (Hundred) equity shares of Rs. 10/- (ten) of PASA Investments and Leasing Private Limited (fully paid up) held by the members of the Transferor Company 2 (Two) equity shares of Rs. 100/- (Rupee One Hundred Only) of the Transferee Company credited as fully

paid up on the capital of the Transferee Company.

b) For every 100 (Hundred) shares of Rs. 10/- (Ten) of Gupta Pigments Private Ltd. Fully paid up equity shares of the face value of Rs. 10/- (Rupees Ten Only) each held by the members of the Transferor Company 2 (Two) equity shares of Rs. 100/- (Rupees One Hundred Only) each of the Transferee credited as fully paid up in the share capital of the Transferee Company.

7. Accordingly, Consent of Equity Shareholders have been taken on amended scheme and the said amount 'Scheme' was filed by the Authorised representative on behalf of the Transferor Company 1 & 2 and Transferee Company before this Court.

8. No objection has been received to the 'Scheme' from any other party, Mr. Virender Pal Singh, Authorized Signatory of the Transferor and Transferee companies has filed as affidavit dated 10th May 2012 confirming that neither the petitioner companies nor their Legal Counsel has received any objection pursuant to the citations published in the News papers.

9. However the learned Regional Director, Northern Region averred in his affidavit dated 26.07.2012 it has been averred that the as per
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Balance Sheet as at 31.03.2010 of the Transferor Company No. 2 there is no source with the Transferor Company No. 2 to refund the said application money to the applicant. Therefore, the Company has to treat this Share Application Money as part of its Paid-up Share Capital for the purpose of calculating the Share Exchange Ratio for the proposed Scheme of Amalgamation should be calculated and accordingly, the Scheme of Amalgamation should be modified.

10. That the petitioner companies in response to the affidavit of learned Regional Director, Northern Region, submitted an affidavit whereby transferee Company swears to refund the amount of Share Application Money lying with the transferor Company No. 2.

11. Mr. Rajiv Bahl, learned counsel for the Official Liquidator and Mrs. K.S. Pradhan, Deputy Registrar of Companies for Regional Director (Northern Region) stated that they have no objection to the present 'Scheme' being sanctioned.

12. In view of the approval accorded by the Shareholders and Creditors of the petitioner Companies, representations/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this 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 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 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 companies 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 Companies be transferred to the Transferee Company without any further act or deed. Upon the 'Scheme' coming into effect, the Transferor Companies 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.

Companies would voluntarily deposit a sum of Rs.1,00,000/- in the Common Pool Fund of the Official Liquidator within these weeks from today. The statement is accepted.

14. The petition is allowed in the above terms.

Order dasti.

INDERMEET KAUR, J

SEPTEMBER 03, 2012
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