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

Date of decision: 12th July, 2013

+ CO. PET. NO. 126 OF 2013

Value First Digital Media Private Limited Petitioner
Through: Mr. Mahesh Agarwal and Rajeev
Kumar, Advocates for the Petitioner

Mr. K.S. Pradhan, Dy. Registrar of
Companies for the Regional Director.

CORAM:

HON'BLE MR. JUSTICE R.V.EASWAR

R. V. EASWAR, J.: (ORAL)

1. This petition has been filed under Sections 391 to 394 of the Companies Act, 1956 ('Act') by the Petitioner seeking sanction of the Scheme of Arrangement ('Scheme') between Value First Digital Media Private Limited (hereinafter referred to as 'Petitioner Transferee company') and Gingersoft Media Private Limited (hereinafter referred to as 'Demerged company') and their respective shareholders and creditors.

2. The registered office of the Petitioner-Transferee company is situated at New Delhi, within the jurisdiction of this Court. The

registered office of the demerged company is situated at Hyderabad, outside the jurisdiction of this court.

3. The details of the date of incorporation of Petitioner-Transferee company, its authorized, issued, subscribed and paid up capital have been set out in the petition.

4. The Copies of the Memorandum and Articles of Association as well as the latest audited annual accounts of the Petitioner-Transferee company have also been placed on record.

5. The copies of the resolutions passed by the Boards of Directors ('BoDs') of the Petitioner-Transferee company and Demerged company approving the Scheme has also been placed on record.

6. Learned counsel for the Petitioner submits that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner-Transferee company.

7. As regards the share exchange ratio for arrangement is concerned, the Scheme in Clause 9 provides that:-

“As the entire issued share capital in mGinger is held by ValueFirst, mGinger is a wholly owned subsidiary of ValueFirst. Since ValueFirst is not permitted to issue shares to itself under the provisions of the Act, no new shares will be issued by ValueFirst in consideration of transfer of Demerged Business Undertaking in terms of Clause 4 of this Scheme”.

8. The Petitioner-Transferee company had earlier filed CA (M) No. 17 of 2013 in this Court seeking directions for dispensation of requirement of convening the meetings of the equity shareholders, preference shareholders and secured creditors and also for the directions for convening the meeting of the unsecured creditors of the Petitioner-Transferee company. By order dated 22nd January 2013, this Court allowed the application and dispensed with the requirement of convening the meetings of the equity shareholders, preference shareholders and secured creditors of the Petitioner-Transferee company. This Court further directed to convene the meeting of the unsecured creditor of the Petitioner-Transferee company. Pursuant to the direction of this Court, meeting of the unsecured creditors was convened on 2nd March 2013. The chairperson appointed in the said meeting submitted their report whereby it has been stated that the

proposed Scheme was approved by the unsecured creditors of the Petitioner-Transferee company unanimously.

9. The Petitioner-Transferee company had thereafter filed the present petition seeking sanction of the Scheme. By order dated 19th March 2013, notice of the petition was directed to be issued to the Regional Director ('RD'). Citations were also directed to be published in 'The Indian Express' (English) and 'Jansatta' (Hindi). An affidavit of service and publication has been filed by the Petitioner showing compliance regarding service of the petition and also regarding publication of citations in the aforesaid newspapers on 26th May 2013. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the said affidavit.

10. In response to the notices issued, the RD has filed his affidavit dated 26th June 2013. Relying on Clause 7.1 of Part-II of the Scheme, he has stated in para 3 of his affidavit that all the employees of the Demerged company engaged in 'Advertising & Sampling Business' shall become the employees of the Transferee company without any break or interruption in their services upon sanctioning of the Scheme.

11. Further, the RD, in paras 5 and 5.1 of the said affidavit has observed as follows:

“5. That the Deponent further craves leave to submit that the Petitioner Transferee company by its letter dated 10th June 2013 has stated that 55,100 shares are held by the foreign companies in the Petitioner Transferee company.

5.1 It is submitted that the Petitioner Transferee company may be asked to give an undertaking for all compliances from Reserve Bank of India (‘RBI’) as required under FEMA for above transactions involving foreign entities, if deemed fit and proper by this Court.”

12. In reply to the abovesaid observation, a rejoinder affidavit dated 8th July 2013 has been filed by Mr. Vishwadeep Bajaj, Managing Director of the Petitioner Transferee company, stating that the Demerged company is a wholly owned subsidiary of the Petitioner Transferee company, therefore no shares will be issued by the Petitioner pursuant to the approval of the Scheme either to the Indian shareholders or the foreign company. He further submits that the Petitioner-Transferee company shall make all the necessary compliances as may be applicable, as per the requirement of RBI under FEMA.

13. Further, the RD, in para 6 of the said affidavit has also observed that the case should be decided subject to the outcome of the Hon'ble High Court of Andhra Pradesh.

14. In reply to the abovesaid observation, the said rejoinder filed by the Petitioner-Transferee company states that the High Court of Andhra Pradesh has already approved the present Scheme by order dated 23rd April 2013. Copy of the said order has been filed along with the rejoinder affidavit.

15. In view of the aforesaid submissions, the observations raised by the RD no longer survive.

16. No objection has been received to the Scheme from any other party. Mr. Vishwadeep Bajaj, Managing Director of the Petitioner-Transferee company, has filed an affidavit dated 9th July 2013, confirming that neither the Petitioner company nor its counsel has received any objection pursuant to citations published in the newspapers.

17. In view of the approval accorded by the shareholders and creditors of the Petitioner-Transferee company, affidavit filed by the

RD 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 Act. The Petitioner-Transferee company will comply with the statutory requirements in accordance with law.

18. The Certified copy of the order will be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of Sections 391 and 394 of the Act, and in terms of the Scheme, the whole of the undertaking, the properties, assets rights and powers of the Demerged Business undertakings of the Demerged company shall be transferred to and vest in the Petitioner-Transferee company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Demerged Business undertakings of the Demerged company shall be transferred to the Petitioner-Transferee company without any further act or deed.

19. 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 department which may be specifically required under any law.

20. Learned counsel for the Petitioner states that the Petitioner-Transferee company would voluntarily deposit a sum of Rs.50,000/- in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is taken on record.

21. The petition is allowed in the above terms.

Order be given dasti.

R. V. EASWAR, J.

JULY 12, 2013

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