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

Date of decision: 5th July, 2013

+ **COMPANY APPLICATION (M) NO. 84 OF 2013**

BRY-AIR (ASIA) PVT. LTD. & ANR. Applicants
Through: Mr. Ashim Sood and Mr. Abhishek
Bansal, Advocates for the
Applicants

CORAM:

HON'BLE MR. JUSTICE R.V.EASWAR

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

1. This is a first motion joint application under Sections 391 to 394 of the Companies Act, 1956 ('Act') in connection with the Scheme of Amalgamation ('Scheme') between Bry-Air (Asia) Private Limited (hereafter referred to as 'Transferee company') and HRG Impex Private Limited (hereafter referred to as 'Transferor company') [hereafter collectively referred to as 'Applicant companies']. A copy of the proposed Scheme is enclosed with the application.
2. The registered offices of the Applicant companies are situated within the National Capital Territory of Delhi and are within the jurisdiction of this Court.

3. The details of the dates of incorporation of the Applicant companies, their authorized, issued, subscribed and paid up capital have been enclosed with the application.
4. The copies of the Memorandum and Articles of Association as well as the latest audited annual accounts for the year ending 31st March 2012 of the Applicant companies have also been enclosed with the application.
5. Learned counsel for the Applicant companies submits that no proceedings under Sections 235 to 251 of the Act are pending against the Applicant companies as on date of the present application.
6. The proposed Scheme has been approved by the Boards of Directors ('BoDs') of the Applicant companies. Copies of the board resolutions have been filed along with the application.
7. The status of the equity shareholders, secured and unsecured creditors of the Applicant companies and the consents obtained by them for the proposed Scheme is set out in a table forming part of the application which reads as under:-

Company	No. of equity share-holders	Consent given	No. of secured creditors	Consent given	No. of unsecured creditors	Consent given
Transferor company	2	Yes	NIL	N.A.	1	Yes
Transferee company	4	Yes	Dispensation is being sought for	Dispensation is being sought for	Dispensation is being sought for	Dispensation is being sought for

8. A prayer been made for dispensation of the meetings of the equity shareholders and unsecured creditors of the Transferor company. In view of the consents given by the equity shareholders and the sole unsecured creditor, their meetings are dispensed with. Since the Transferor company does not have any secured creditor, therefore, the requirement of convening their meeting does not arise.
9. A prayer has been made for dispensation of the meetings of the equity shareholders, secured creditors and the unsecured creditors of the Transferee company. In view of the consents given by all the equity shareholders, the requirement of convening their meeting is dispensed with.
10. As regards the meetings of the secured and unsecured creditors of the Transferee company, it has been submitted that the Transferee company shall be the continuing entity post sanction of the Scheme and would be meeting the debts towards the creditors in the normal course of business. It is further submitted that in terms of the

Scheme, there is no variation in the rights of the creditors and there is no variation in the amounts owed to such creditors. It is further submitted that the net worth of the Transferee company as on 31st December 2012 was ₹134,72,95,048/- (Rupees One Hundred Thirty Four Crores Seventy Two Lakhs Ninety Five Thousand Forty Eight only) and the net worth of the Transferor company as on 31st December 2012 was ₹2,20,576/- (Rupees Two Lakhs Twenty Thousand Five Hundred Seventy Six only). As such, the consolidated net worth of the merged entity would be ₹134,74,15,624/-(Rupees One Hundred Thirty Four Crores Seventy Four Lakhs Fifteen Thousand Six Hundred Twenty Four only) and this shall be sufficient to meet the debts owed to the creditors of the Transferee company. In view of the above the requirement of convening the meetings of the secured and unsecured creditors of the Transferee company are dispensed with.

11. The application is allowed in the aforesaid terms.

Order be given dasti

R.V. EASWAR, J.

JULY 05, 2013

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