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IN THE HIGH COURT OF DELHI AT NEW DELHI
COMPANY JURISDICTION
COMPANY PETITION NO. 41 OF 2014

**Institute of Quality Private Limited and Ors. ...Petitioner
Companies**

**Through: Mr. Anirudh Das, Mr. Kamaljeet Singh,
Advocates for the Petitioner Companies.**

**Mr. Atma Sah, Assistant Registrar of
Companies appearing for the Regional
Director.**

**Mr. Rajiv Behl, appearing for the Official
Liquidator.**

CORAM :

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

O R D E R (oral)
05.05.2014

1. This second motion petition has been filed under Sections 391-394 of the Companies Act, 1956 ("Act") by the Petitioner Companies, seeking sanction and approval of the Scheme of Amalgamation between Institute of Quality Private Limited, Pace Services Private Limited and Pace Industries Private Limited and their respective Shareholders ("Scheme").
2. The Registered Office of the Petitioner Companies are situated at New Delhi within the jurisdiction of this Court.

3. The details of the respective dates of incorporation of the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been set out in the Petition.
4. The copies of the Memorandum and Articles of Association of the Petitioner Companies have been enclosed with the Petition. The latest audited accounts of the Petitioner Companies as on 31.03.2013 have been placed on record.
5. The copies of the resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme have also been filed along with the Petition.
6. Learned counsel for the Petitioner Companies submits that no proceedings under Sections 235 and 251 of the Act are pending against the Petitioner Companies.
7. The Petitioner Companies had earlier filed Company Application (Main) No.172 of 2013, seeking dispensation from convening the meetings of the Equity Shareholders of the Petitioner Companies and the Preference Shareholders of the Petitioner/Amalgamating Company 2 to consider the Scheme. The Petitioner Companies have no Secured Creditors or Unsecured Creditors.
8. By order dated 02.01.2014, this Court allowed the Company Application and dispensed with the requirement of convening the meetings of the Equity Shareholders of the Petitioner Companies and the Preference Shareholders of the Petitioner/Amalgamating Company 2. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme by the Court.

9. By order dated 28.01.2014, notice of the Petition was directed to be issued to the Official Liquidator, Registrar of Companies and the Central Government. Citation of the Petition was also directed to be published in the “The Indian Express” (English Edition) and “Jansatta” (Hindi Edition).
10. Affidavit dated 14.04.2014 has been filed by the Petitioner Companies, showing compliance regarding service of notice of the Petition on the Official Liquidator, Registrar of Companies and the Regional Director and also regarding publication of notice of the Petition in “THE INDIAN EXPRESS” (English Edition) and “JANSATTA” (Hindi Edition). Copies of the newspapers containing the citations have been filed along with the Affidavit dated 14.04.2014 of the authorized signatory of the Petitioner Companies.
11. In response to the notice issued on the Petition, the Official Liquidator has filed Report dated 23 April 2014. It has been stated in the said Report that the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation. It has further been stated in the Report that the affairs of the Petitioner/Amalgamating Company 1 and 2 do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the 2nd proviso of Section 394 (1) of the Act.
12. In response to the notice issued on the Petition, the Regional Director has filed Report dated 24.04. 2014.
13. The Regional Director in his report has observed that there is no transfer of employees of the transferor company No.2 in the

scheme. The Regional Director has further submitted that M/s Pace Industries Pvt. Ltd. (Petitioner/Amalgamated Company) is a Non-banking Finance Company (NBFC) and registered with the Reserve Bank of India (RBI) and the Petitioner/Amalgamated Company may be asked to give an undertaking for all compliances from the RBI being concerned Regulator.

14. Learned counsel for the petitioner submits that the scheme provides for the transfer of employees of the transferor company No.2 in the transferee company.
15. Learned counsel has submitted that in Definition clause 1.2.1(c) (v), the amalgamating Company No.2 means and includes any and all employees who are on the pay roll of the amalgamating company No.2 including those engaged at its office at their correct terms and conditions including all Employees Benefits such as Provident Fund, Employees State Insurance, gratuity funds and superannuation funds etc.
16. With regard to the objection of the Regional Director in respect of compliances of the Reserve Bank of India, learned counsel for the petitioner undertakes on behalf of the petitioners that the petitioner transferee company shall comply with all the statutory requirements including the requirements of the Reserve Bank of India and further that upon the scheme becoming effective, the petitioner/ amalgamated company shall continue to be regulated by the

RBI and shall comply with all regulations and rules issued by RBI in this regard.

17. In view of the above, the concerns raised by the Regional Director has been duly addressed.
18. No objection has been received to the Scheme from any other party. The Petitioner Companies in the Affidavit dated 14.04.2014 have also confirmed that the Petitioner Companies nor their counsel have received any objection pursuant to the citations published in the newspapers.
19. In view of the approval accorded by the shareholders of the Petitioner Companies, Representation/Report filed by the Official Liquidator and the Regional Director, Northern Region and the submissions of the Petitioner Companies, 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 391-394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.
20. A Certified Copy of the formal order be filed with the Registrar of Companies, NCT of Delhi and Haryana within 30 days from the date of receipt of the same. The sanction order of this Court shall be binding on the shareholders and creditors of the Petitioner Companies. Upon the Scheme becoming effective in terms of the Scheme, the Petitioner/Amalgamating Company 1 and Petitioner/Amalgamating Company 2 shall stand dissolved without the process of winding up.

21. It is, however clarified that this order will not be construed as an order granting exemption from payment of duty or any other charges if payable in accordance with law or permission or compliance with any other requirements which may be specifically required under law.
22. Learned Counsel for the Petitioner Companies states that Petitioner Companies(collectively) would voluntarily deposit a sum of Rs 1,50,000/- in the common pool fund of the Official Liquidator within three weeks from today.
23. The statement is accepted The petition is allowed in the above terms.

SANJEEV SACHDEVA, J

05 MAY 2014/n

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

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CO.PET. 47/2014

**IN THE MATTER OF MOONRISE
CONSTRUCTIONS PRIVATE LIMITED AND ORS**

..... Petitioners

Through: Mr.Saurabh Kalia and
Mr.Sameer Chaudhary,
Advocates for the Petitioner.
Mr.Atma Sah, Asstt.ROC
Mr.Rajiv Bahl, Adv for the
Official Liquidator.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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05.05.2014

SANJEEV SACHDEVA, J (ORAL)

1. This second motion joint petition filed under Sections 391 to 394 of the Companies Act, 1956 ('Act') by the Petitioner Companies seeking sanction of the Scheme of Amalgamation ('Scheme') among Moonrise Constructions Private Limited (Transferor / Petitioner Company No.1), Thyme Town Planners Private Limited (Transferor / Petitioner Company No.2), Novotel Town Planners Private Limited (Transferor / Petitioner Company No.3), Linear Estates Private Limited (Transferor / Petitioner Company No.4), Wular Real Estate & Land Developers Private Limited (Transferor / Petitioner Company No.5), Map Buildcon Private Limited (Transferor / Petitioner Company No.6), Robin

Builders And Developers Private Limited (Transferor / Petitioner Company No.7), Outlook Housing & Land Developers Private Limited (Transferor Company / Petitioner No.8), Crux Promoters And Developers Private Limited (Transferor / Petitioner Company No.9), Pine Real Estate Private Limited (Transferor / Petitioner Company No.10), Mab Buildcon Private Limited (Transferor / Petitioner Company No.11), Ekant Developers Private Limited (Transferor / Petitioner Company No.12), Mass Buildcon Private Limited (Transferor / Petitioner Company No.13), Lilac Promoters & Developers Private Limited (Transferor / Petitioner Company No.14), Lavender Housing & Land Developers Private Limited (Transferor / Petitioner Company No.15), Sanjeevani Town Planners Private Limited (Transferor / Petitioner Company No.16), Bloom Housing And Land Developers Private Limited (Transferor / Petitioner Company No.17), Edge Builders & Promoters Private Limited (Transferor / Petitioner Company No.18), Daffodil Town Planners Private Limited (Transferor / Petitioner Company No.19), Bns Constructions Private Limited (Transferor / Petitioner Company No.20), Apn Buildcon Private Limited (Transferor / Petitioner Company No.21), Angelica Promoters & Developers Private Limited (Transferor / Petitioner Company No.22), Gemini Town Planners

Private Limited (Transferor / Petitioner Company No.23), Fine Grow Promoters & Developers Private Limited (Transferor / Petitioner Company No.24), Sage Promoters & Developers Private Limited (Transferor / Petitioner Company No.25), Ratna Promoters And Developers Private Limited (Transferor / Petitioner Company No.26), Zircon Town Planners Private Limited (Transferor / Petitioner Company No.27), Major Real Estate And Land Developers Private Limited (Transferor / Petitioner Company No.28), Nishat Promoters And Developers Private Limited (Transferor / Petitioner Company No.29), Annie Town Planners Private Limited (Transferor / Petitioner Company No.30), Unimark Info Technology Private Limited (Transferor / Petitioner Company No.31), Spring City Promoters And Developers Private Limited (Transferor / Petitioner Company No.32), Finial Infratech Private Limited (Transferor / Petitioner Company No.33), Sagittarius Housing And Land Developers Private Limited (Transferor / Petitioner Company No.34), Penguin Housing And Land Developers Private Limited (Transferor / Petitioner Company No.35), Olive Infra Projects Private Limited (Transferor / Petitioner Company No.36), Gloria Developers Private Limited (Transferor / Petitioner Company No.37), Fiona Developers Private Limited (Transferor / Petitioner Company No.38), Anant Infratech Private Limited

(Transferor / Petitioner Company No.39) And Scilla Town Planners Private Limited (Transferor / Petitioner Company No.40) With Uppal-Chadha Hi-Tech Developers Private Limited (Transferee / Petitioner Company No.41). A copy of the proposed Scheme is enclosed with the petition .

2. The Registered Offices of the Petitioner Companies are situated within the jurisdiction of this Court.
3. The details of the dates of incorporation of Petitioner Companies, their 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 financial data from the latest audited annual accounts for the year ended 31st March 2013 of the Petitioner Companies have also been set out in the petition.
5. The copies of the resolution passed by Board Of Directors of the Petitioner Companies approving the scheme have also been filed along with the petition.
6. Learned Counsel for the Petitioner Companies submits that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed C.A. (M) No. 02 of 2014 seeking directions of this Court for dispensation of the meetings of shareholders of all the Transferor / Petitioner Companies No.1 to 40 and Transferee / Petitioner Company No.41 and for dispensation of the meetings of Secured and Unsecured Creditors of all the Transferor / Petitioner Companies No.1 to 40 and Transferee / Petitioner Company No.41.
8. By Order dated 06.01.2014, this court allowed the application and dispensed with the requirement of convening meetings of Equity Shareholders of all the Transferor / Petitioner Companies No.1 to 40 and Transferee / Petitioner Company No.41. The Hon'ble Court was also pleased to dispense with the requirement of convening meetings of Secured and Unsecured Creditors of all the Transferor / Petitioner Companies No.1 to 40 and Transferee / Petitioner Company No.41.
9. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme. By order dated 21.01.2014, notice in the Petition was directed to be issued to the Regional Director (RD), Northern Region (NR), Ministry of Corporate Affairs and the Official Liquidator (OL). Citations were also directed to be published in "Statesman" (English) and "Veer Arjun"

(Hindi). An Affidavit of service and publication has been filed by the petitioners showing compliance regarding service of the petition on the RD; Registrar of Companies (ROC), NCT of Delhi & Haryana and the OL and also regarding Publication of Citations in the aforesaid newspapers on 19.02.2014. Copies of the newspapers cuttings in original containing the publications have been filed with the affidavit of compliance.

10. In response to the notice issued on the petition Official Liquidator has filed the report dated 01.05.2014. It has been stated in the said report that the Official Liquidator has not received any complaint against the proposed Scheme from any person / party interested in the Scheme in any manner and that that the affairs of all the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, or to public interest. It has further been stated in the report that affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the 2nd Proviso of section 394(1) of the Act.
11. In response to the notices issued in the petition, RD has filed an affidavit dated 29.04.2014. That the RD in Para 3

of the affidavit has stated that, all the staff / employees of all the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court. In this regard the Petitioner Companies have filed an Affidavit dated 03.05.2014 stating that the Petitioner Companies abides by the statement and undertake that the aforesaid statement stated by the Ld. Regional Director, (NR) will be followed that all staff/employees of the transferor company shall become the employees of the transferee company without any break or interruption in their service upon the sanction of the scheme of amalgamation on the same terms and conditions of service.

12. That the RD in Para 4 of the affidavit has stated that, in regard to the applicability of Land & Ceiling Act, the Petitioner Transferee Company vide its letter dated 28.04.2014 has stated that the Transferee Company has earmarked as area of 4494.31 acres for developing Hi-Tech Townships. Therefore, post merger the consolidated land area of all the transferor companies shall fall within this ceiling limit as approved. The Petitioner Companies have filed an Affidavit dated 03.05.2014 stating that post merger, the consolidated land area of all the Transferor Companies shall be under the ceiling limit as approved

by the Ghaziabad Development Authority. Thus the area earmarked by Uppal Chadha Hi-Tech Developers for developing a Hi tech Townships and that post merger, the consolidated land area of all the Transferor Companies shall be under the ceiling limit as approved and further it is submitted that the transferee companies have duly complied with the provisions of Uttar Pradesh Zamindari Bhagidari Commission Act, 1950, in respect of ceiling limits. Thus the said observation of Ld. Regional Director stands redressed.

13. No objection has been received to the Scheme from any other party, the director of the Petitioner Companies has stated in his affidavit dated 03.05.2014 that neither he nor the counsel has received any objection pursuant to the citations published in the newspapers.
14. Mr. Rajiv Behl, Learned counsel for the OL states that in view of the statements made on affidavit by the Petitioner Companies, he has no objection to the Scheme being sanctioned.
15. In view of the approval accorded by the shareholders and creditors of the Petitioner companies, representations / reports filed by the RD and the OL, 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 Section 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with the law.

16. A certified copy of the order be filed with the ROC within 30 days from receipt of the same. In terms of the provisions of Section 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 all 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.
17. 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.
18. Learned counsel for the petitioners states that the petitioner Companies would voluntarily deposit a sum of Rs. 2,50,000/- (Collectively) in the Common Pool Fund

of the OL within three weeks from today. The statement is accepted.

19. The petition is allowed.

SANJEEV SACHDEVA J.

MAY 05, 2014/sv

