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

+ CO.PET. 437/2013

IN THE MATTER OF

SELINA EXIM PVT LTD

.....Petitioner

Through: Mr. Mukesh Sukhija, Advocate  
for the Petitioner.

Mr. Rajneesh Kumar Singh,  
Assistant Registrar of Companies  
for the Regional Director.

Mr. Mayank Goel, Advocate for  
the Official Liquidator.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**ORDER**

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**16.09.2014**

**SANJEEV SACHDEVA, J (ORAL)**

**Co. Appl No. 445/2014**

By the present application, the applicant has sought amendment in the Scheme of Amalgamation and also dispensation of convening separate meeting of Shareholders, Secured Creditors and Un-secured Creditors of the Transferor and Transferee Companies (Applicant Companies) as was granted at the time of the first motion by order dated 22<sup>nd</sup> April 2013.

Mr. Rajneesh Kumar Singh, Asstt. ROC and the learned counsel for the Official Liquidator submit that they have no objection to the application being allowed.

In view of the above, the application is allowed and the amended scheme is taken on record.

The status of the Shareholders, Secured and Un-secured Creditors of the Transferor Company and Transferee Company is apparent from the chart given below:-

| Company            | No. of Share Holders | Consent Given | No. of Secured Creditors | Consent Given | No. of Unsecured Creditors | Consent Given |
|--------------------|----------------------|---------------|--------------------------|---------------|----------------------------|---------------|
| Transferor Company | 3                    | All           | Nil                      | N.A           | Nil                        | N.A           |
| Transferee Company | 4                    | All           | 1                        | All           | 3                          | All           |

In view of the above, a prayer has been made for dispensation of the requirement of convening meetings of Shareholders, Secured Creditors and Un-secured Creditors of the Applicant Companies.

Since there are no Secured Creditors and Un-secured Creditors in Transferor Company therefore the

requirement of convening meeting of Secured Creditors and Un-secured Creditors of Transferor Company does not arise.

The Petitioners have obtained and filed fresh written consents/NOC obtained from the Shareholders of the Transferor Company and the Shareholders, Secured Creditors and Un-secured Creditors of the Transferee Company for the proposed revised scheme. In view of the fresh written consents/NOC obtained from the Shareholders of the Transferor Company and the Shareholders, Secured Creditors and Un-secured Creditors of the Transferee Company, the requirement of convening meetings of the Shareholders of the Transferor Company and the Shareholders, Secured Creditors and Un-secured Creditors of the Transferee Company are dispensed with.

In view of the above, the application is allowed and the revised scheme is taken on record.

**Co. Appl. No.1174/2014**

This is an application filed for correction of a clerical error in the swap ratio mentioned in Clause 13.1 of the Scheme.

Mr. Rajneesh Kumar Singh, Asstt. ROC and the learned counsel for the Official Liquidator submit that they have no objection of the application being allowed.

In view of the above, the application is allowed and the corrected scheme is taken on record.

**CO.PET.437/2013**

1. This second motion joint petition has been filed under sections 391 to 394 of the Companies Act, 1956 (“Act”) seeking sanction of the Scheme of Amalgamation (“Scheme”) of M/s Selina Exim Private Limited (hereinafter referred to as Transferor Company) with Ecodeel Projects Private Limited (hereinafter referred to as Transferee Company) (hereinafter all Companies collectively referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.
2. The registered office of the Petitioner Companies is 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 given in the Petition.

4. The copies of the Memorandum and Articles of Association as well as the Annual Accounts of the Petitioner Companies for the year ended 31<sup>st</sup> March 2013 have also been enclosed with the Petition.
5. The copies of Resolutions passed by the Board of Director of the Petitioner Companies approving the Scheme of Amalgamation 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 Companies Act, 1956 is pending against the Petitioner Companies.
7. The Petitioner Companies had earlier filed C.A (M) No. 46 of 2013 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 22<sup>nd</sup> April, 2013, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders, Secured and Un-Secured Creditors of the Petitioner Companies. There was no

Secured and Un-Secured Creditors in the Transferor Company.

8. The Petitioner Company had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide Order dated 23<sup>rd</sup> August 2013, notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator attached with this Court. Citations were also directed to be published in “The Statesman” (English, Delhi Edition) and “Jansatta” (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. Copies of the newspaper cuttings, containing the publications have also been filed along with the Affidavit of Service.
9. In response to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his Report dated 14<sup>th</sup> November 2013, 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 Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per the 2<sup>nd</sup> proviso of section 394(1) of the Act.

10. In response to the notice issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 18<sup>th</sup> November 2013.
11. The learned Regional Director in its Affidavit in Para No. 3 has observed as follows:-

“ .....

*(i) There is no dissolution clause in respect of the transferor company either in the scheme or in the petition, which is essential requirement in the scheme of amalgamation.*

*(ii) There is no exchange ratio clause mentioned in the scheme of amalgamation for allotment of shares to the members of the transferor company by the transferee company. Exchange ratio is essential requirement in the scheme of amalgamation and the same is required to be approved by the share holders/ creditors of both the companies. Only after it is approved by the*

*shareholders/ creditors, the exchange ratio shall be taken as final as various court judgments. Since exchange ratio is not included in the scheme, it is not approved by the shareholders/ creditors and therefore scheme is incomplete.*

*(iii) Para (c) of the scheme under the heading “preamble” it has mentioned that Ecodel Projects Pvt. Ltd. Has been in the expansion mode organically as well as in organically. As part of its expansion plans, Ecodel Projects has decided to acquire 100% stake of Selina Exim Pvt. Ltd. And the share purchase agreement between Selina Exim Pvt. Ltd. (Name of shareholders) and Ecodel Projects Pvt. Ltd. Shall be signed on 10<sup>th</sup> December, 2012 or 31.12.2012. In case of takeover, section 391/ 394 of the Companies Act, 1956 are not applicable.*

*(iv) Para 4.2.8 of the scheme provides that” This Scheme has been drawn up to comply with the Conditions relating to “Merger” as specified under section 2(19AA) of the Income Tax Act, 1961, if any terms or provisions of the scheme are found or interpreted to be inconsistency with the said provisions at a later date including resulting from an amendment of Law or for any other reason what so ever, the provision of the said section of the income Tax Act, 1961 shall be prevail and the scheme shall stand modified to the extent determined necessary to comply with conditions contained in the section 2(19AA) of the*

*Income Tax Act, 1961” It is submitted that provisions of Section 2(19AA) of the Income Tax Act, 1961 are applicable in the case of Scheme of “Demerger”. and not in the case of scheme Amalgamation/ Merger. As such this cause has no relevance and liable to be deleted from the Scheme.*

*(v) The petitioner has submitted two schemes, one consisting of appointed date as 10.12.2012 and another dated 31.12.2012.”*

12. Learned Counsel for the Petitioner submits that during the pendency of the matter the Board of Directors of the Petitioner Companies decided to carry out amendments in the Scheme of Amalgamation of Selina Exim Private Limited with Ecodel Projects Private Limited in accordance with clause 13 of the earlier Scheme and the Board of Directors of the Transferor Company in the meeting held on 28<sup>th</sup> January 2014 unanimously approved the proposed Revised Scheme of Amalgamation of Selina Exim Private Limited with Ecodel Projects Private Limited.
13. The Petitioner Companies had filed the Application CA. No. 445 of 2014 with a prayer to obtain the dispensation of meetings of Shareholders and Creditors of the Transferor Company and the Transferee

Company and to obtain sanction of the revised Scheme of Amalgamation of Selina Exim Private Limited with Ecodel Projects Private Limited and the said application has been allowed and the revised scheme has been taken on record and the dispensation as prayed for have been granted by this court.

14. The Petitioner Transferee Company had filed another Company Application No. 1174 of 2014 further rectifying the Revised Scheme as filed with the Company Application No. 445 of 2014 with respect to the exchange ratio and the said application has also been allowed by this court.
15. Learned Counsel for the Petitioner submits that an Affidavit of Mr. Vinit Gupta, Director of the Transferee Company, dated 13<sup>th</sup> August 2014 was filed in response of the Affidavit of the learned Regional Director dated 18<sup>th</sup> November 2013 stating as under:-

“ .....

*3. That the Board of Directors of the Petitioner Companies in their meeting held on 28<sup>th</sup> January 2014 decided to revise/ amend the Scheme of Amalgamation of M/s **SELINA EXIM PRIVATE LIMITED with ECODEL PROJECTS PRIVATE***

***LIMITED (herein after referred to as the Revised Scheme).***

*4. That the various clauses in the Revised Scheme addressed the observations raised by the Ld. Regional Director in his affidavit dated 19/11/2013 which are inter-alia as follows:*

*(i) That Section E of the Revised Scheme provides for the Dissolution of the Transferor Company on the Scheme becoming effective, which is as follows:*

**SECTION: E- DISSOLUTION OF TRANSFEROR COMPANY**

***10. Dissolution of the Transferor Company***

*On this Scheme, becoming effective as provided in Clause 3.1 above, the Transferor Company shall stand dissolved without the process of winding up.*

*(ii) The clause 13 of the Section F of the Revised Scheme provides for the Exchange Ratio in which the Transferee Company shall allot the shares to the Shareholders of the Transferor Company in consideration of transfer / vesting of the assets and liabilities by the Transferor Company to the Transferee Company, the extract is reproduced below for ready reference:*

***13. Issue of shares by the Transferee Company***

*13.1.1 Upon the Scheme finally coming into effect and in consideration of the transfer and vesting of all the said assets and liabilities of the Transferor Company to the Transferee Company in terms of the Scheme, the Transferee Company shall, without any further application or deed, issue and allot Equity Share(s) of the face value of Rs. 10/- each in the Transferee Company, credited as fully paid up, to the Members of the respective Transferor Company whose names appear in the Register of Members as on a particular date (Record Date), to be fixed by the Board of Directors of the Transferee Company, in the following ratio:*

*3 (Three) Equity Share of Rs. 10/- (Rupees Ten) of each of Transferee Company for every 1 (One) Equity Shares of Rs. 10/- (Rupees Ten) each held in the Transferor Company-*  
**SELINA EXIM PRIVATE LIMITED**

*(iii) Further the observations raised at point no. (iii) are correct and the said clause has been removed from the Revised Scheme.*

*(iv) The Revised Scheme correctly mentions in the sub clause (f) of clause 1.1 that "This Scheme" or "the Scheme" means the present Scheme of Amalgamation framed under the provisions of sections 391 and 394 of the Companies Act, 1956, and other*

*applicable provisions, if any, where the Transferor Company, proposed to be amalgamated with the Transferee Company in the present form or with any modification(s) approved or imposed or directed by Members/Creditors of the respective Companies and/or by any competent authority and/or by the Hon'ble High Court.*

*(v) That the appointed date is correctly mentioned in sub clause (b) of clause 1.1 in the Revised Scheme as 31/12/2012.*

*5. That the Petitioner Companies have filed a joint application CA No. 445/2014 before this Hon'ble Court to consider the Revised Scheme which has no anomalies as pointed out by the Ld. Regional Director in the Earlier Scheme. Further the Hon'ble Court vide its order dated 26/02/2014 was pleased to issue notice to the Ld. Regional Director and the Ld. Official Liquidator about the same."*

16. In view of the above the concerns raised by the Regional Director are duly addressed.
17. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed its Affidavit dated 29<sup>th</sup> August, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the

Scheme, all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services.

18. The learned Assistant Registrar of Companies for Regional Director submits that a letter has been written to the Income Tax Department. However, no objection has been received from the Income Tax Department. He further submits that apart from this there are no objections to the Scheme of Amalgamation.
19. No objection has been received to the Scheme from any other party. Ms. Shivani Vinit Gupta, Director of the Transferor Company has filed an Affidavit dated 11<sup>th</sup> September 2014 confirming that neither the Petitioner Transferor Company nor their Counsel has received any objection pursuant to citations published in the newspapers.
20. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, representation/report filed by the Regional Director, Northern Region and 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, subject to the sanction of the Scheme by the Gujarat High Court. The Petitioner Companies will comply with the statutory requirements in accordance with law.

21. 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 the provisions of sections 391 and 394 of the Companies Act, 1956, all the properties, rights and powers of the Transferor Company No. 1 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 Company No. 1 be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Petitioner Transferor Company No. 1 shall stand dissolved without winding up.
22. 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.

23. Learned Counsel for the Petitioner states that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

24. The Petition is allowed in the above terms.

Order Dasti.

**SANJEEV SACHDEVA, J**

**SEPTEMBER 16, 2014**

**SV**