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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Co.Pet. 599/2013

**IN THE MATTER OF GREENVIEW SALES PVT.
LIMITED & ORS.**

Through: Mr. Rajeev K. Goel and
Mr.Naresh Kumar,
Advocates
Mr.Atma Sah, Asstt. ROC
Mr.Rajiv Behl, Adv for
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CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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08.07.2014

SANJEEV SACHDEVA, J (ORAL)

CP.NO. 599 OF 2014 & CA 682 of 2014

1. This is second motion joint Petition has been filed under sections 391 - 394 of the Companies Act, 1956 ("ACT ") by Greenview Sales Pvt Ltd (Transferor Company No 1) , Primary Tradecomm Pvt Ltd (Transferor Company No 2), Umakant Commodeal Pvt Ltd (Transferor Company No 3), with Harcomp Airflex Pvt Ltd (Transferee Company)(Collectively referred as (" Petitioner Companies ") seeking sanction to the

Scheme of Amalgamation (Scheme) . A copy of the Scheme is enclosed with the present petition.

2. The registered offices of all the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.
3. The details with regard to the date of incorporation of the petitioner Companies, their authorized issued , subscribed and paid up share capital have been given in petition.
4. Copies of memorandum and articles of association as well as audited accounts for the year ended 31st March, 2013 of the Petitioner Companies have been enclosed with the petition.
5. Copies of the resolution passed by the Board of Directors of the Petitioner Companies approving the Scheme have also placed on record.
6. Learned Counsel for the Petitioners 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 CA (M) 147 of 2013 seeking directions of this Court for

dispensation/convening of meetings. Vide order dated 28th October, 2013, this Court allowed the Application and requirement of convening all the meetings of Shareholders and Un-secured Creditors of the Transferor Companies and the Transferee Company and the Secured Creditors of the Transferee Company were dispensed with. None of the Applicant Transferor companies had any Secured Creditors.

8. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Amalgamation. Vide order dated 13th November, 2013, notice of the Petition was directed to be issued to the Registrar of Companies, Regional Director, Northern Region, Ministry of Corporate Affairs, Noida and the Official Liquidator attached with this Court. Citations were also directed to be published in 'Business Standard' (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. Copies of the newspaper cuttings, in original, 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, learned Official Liquidator has filed his report dated 25th March, 2014, 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, which are subject matter of dissolution, 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 second proviso of the section 391(4) 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 22nd April, 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.

11. The Learned Regional Director has made the following observations:

- “4. That the Deponent further craves leave to submit that in compliance of the Ministry’s Circular No.1/2014 dated 15.01.2014, the chief Income Tax Commissioner, New Delhi vide letter-dated 31.01.2014 was requested to examine the Scheme of Amalgamation and submit their comments/observation, if any within 15 days. A letter-dated 07.02.2014 has received from the chief Income Tax Commissioner, New Delhi has transferred our letter to the Commissioner of Income Tax, Delhi-IV, V & VI and requested them to furnish their comments/observation to the office of the Deponent. Since, 15 days has already been lapse and no comments has yet been received from Income Tax Department.*
- 5. That the Deponent further craves leave to submit that Registrar of Companies, Delhi has reported that that all the Transferor & Transferee Companies, are closely held Companies. None of the Transferor & Transferee Companies are doing any significant business activity except parking their funds as investment and/or granting loans. The Transferor Company No.1 had issued shares on premium in the Financial Year ended 31.03.2009 and later on such Investments have sold their shares*

ultimately to certain individuals. None of the Company have mentioned in the Petition and/or annexure thereto to whether such Companies are registered with Reserve Bank of India as NBFC, if so whether they have obtained No Objection from Reserve Bank of India with regard to the proposed Scheme of Amalgamation."

12. In response to the aforesaid observations, the Petitioner Transferee Company in the Reply Affidavit dated 24th April, 2014 and Reply Affidavit dated 19th May, 2014, has submitted as under:

"4. That with respect to the aforesaid observation of the learned RD, we wish to make the following respectful submissions:

i. All the Transferor Companies are engaged in trading in air-conditioners and accessory materials; investments in Group Companies; providing loans and advances and other related activities. Whereas the Transferee Company is engaged in trading, contracting and maintenance of air-conditioning systems and other related activities. Business activities of the Transferor & Transferee Companies have been duly disclosed in the 1st motion Application as well as in the 2nd motion Petition filed before this Hon'ble Court.

ii As regards allotment of shares at a high premium, it is submitted that allotment of shares is an agreement between the issuer company and the proposed allottees. The companies Act, 1956, does not prohibit a company to issue shares at a premium. Under the provisions of the companies Act, 1956, any company, old or new, can issue shares at any premium. Even a new company can make an IPO at any premium it feels appropriate. It is pertinent to note that the Transferor and the Transferee Companies are closely held group companies. The proposed Scheme of Amalgamation is unanimously approved by the Board of Directors, Shareholders and Creditors of all the Companies. There is no complaint against the Scheme from any one .

It may be pointed out that this Hon'ble court has already rejected objections raised by the leaned RD with regard to issue of shares at a premium in several cases in recent past.

A copy each of orders passed by this Hon'ble Court enclosed herewith and collectively marked as Annexure:1.

4.iii We do hereby clarify and confirm that none of the Transferor and Transferee Companies is registered with the RBI as a non banking finance company. Hence, question of obtaining "No Objection" from

the RBI for the proposed Scheme of Amalgamation does not arise at all. The aforesaid confirmation has been communicated by the Petitioner Companies to the learned Regional Director in their reply to the query letter issued by the RD. It is pertinent to mention that even for a company registered with the RBI as a NBFC, obtaining 'No Objection' from the RBI for the proposed Scheme of Amalgamation is not required. In terms of the RBI Circular DNBS(PD) C.C.No. 63/02.02/2005-06 dated 24th January, 2006, where merger and amalgamation takes place in terms of the High Court order in Pursuance of section 391 and 394 of the Companies Act, 1956, the NBFC shall inform the RBI about merger or amalgamation along with Court's order approving the same within a period of one month from the date of the order. In the cases of amalgamation of non banking finance companies, the learned Regional Director always points out the aforesaid circular and requests this Hon'ble Court to take an undertaking from the Transferee Company that it will intimate the RBI about the sanction of the Scheme by the Court in compliance with the aforesaid RBI Circular."

13. It is directed that the Petitioner Transferee Company shall comply with all the compliances of the Reserve

Bank of India and shall will take other necessary steps in this regard, if any. Further, the Petitioner Companies and their Directors shall be bound for any action which may be taken by the RBI in future for any act of commission or omission by the Petitioner Companies with regard to NBFC regulations. In view of the aforesaid clarifications and directions the concern raised by the Learned Regional Director is addressed.

14. It is clarified that any income tax liability which is payable by the Transferor Companies shall be paid by the Transferee Company as all liabilities of the Transferor Companies stand transferred to the Transferee Company. Therefore, any liability that falls on the Transferor Companies on account of any earlier transaction shall have to be borne by the Transferee Company. It is also clarified that the Income Tax authorities shall be entitled to proceed against the transferee company in respect of any liability that may arise on account of sanction of the scheme. It is also clarified that any tax benefit by way of refund or any credit that may be available to the Transferor Companies shall also enure to the Transferee Company as all assets of the Transferor Companies stand vested with the Transferee Company pursuant to the Scheme. Needless to mention that the Transferee Company shall

also have the right to challenge the validity of the assessments made or any demands made by the Income Tax Authorities to the same extent as the Transferor Companies. It is also clarified that the Income Tax Authorities shall have the right to raise demands which are valid and as per law and the Transferee Company shall be entitled to benefits, refunds and credits in accordance with applicable law.

15. Mr Rajeev Goel, Learned Counsel for the Petitioner Companies, submitted that the Transferor Companies is holding some shares of the Transferee Company which would be cancelled on implementation of the Scheme of Amalgamation as a crossholding. He submitted that technically, there would be a reduction of capital of the Transferee Company to that extent. He, however, clarified that such reduction would not involve either the diminution of any liability in respect of un-paid share capital or the payment to any shareholder of any paid-up share capital, and accordingly, the provisions of section 101(2) of the Act will not be applicable. My attention was drawn to the provisions of Rule 85 of the Companies (Court) Rule, 1959, which provides that where a proposed compromise or arrangement involves a reduction of capital of the company, the procedure prescribed by the Act and the Companies (Court) Rules

relating to the reduction of capital, and the requirements of the Act and the Rules in relation thereto, shall be complied with, before the compromise or arrangement so far as it relates to reduction of capital, is sanctioned. Mr Goel submitted that Rule 85 only provides for compliance with relevant provisions with regard to the reduction of capital. It is submitted that Rule 85 does not provide for filing of separate petition under sections 100 to 104 of Act. He also submitted that no separate petition is required to be filed under sections 100 to 104 of Act for such capital reduction.

16. It is submitted that the substantial compliance with the provisions of sections 100 to 104 of the Companies Act, 1956, and the applicable rules of the Companies (Court) Rule, 1959, have already been made with regard to the proposed reduction of share capital on account of cancellation of cross holding of share in the following manner:

“a. Members of the Transferee Company have considered and unanimously approved the proposed Scheme of Amalgamation and the proposed reduction of capital by passing a Special Resolution in the Extra ordinary General Meeting held on 13th March, 2014.

b. All the un-secured creditors of the Transferee Company have already given

their written consents/NOC to the proposed Scheme of Amalgamation. The Transferee Company does not have any Secured Creditor.”

17. An Application being CA 682 of 2014 has been filed the Petitioner Transferee Company seeking exemption from filing a separate Petition under sections 100 to 104 of the Companies Act, 1956 for the aforesaid reduction of capital.
18. In view of the fact that the substantial compliance with the provisions of sections 100 to 104 of the Companies Act, 1956, and the applicable rules of the Companies (Court) Rule, 1959, have already been made with regard to the proposed reduction of share capital of the Transferee Company, requirement of filing a separate petition under sections 100 to 104 of the Act, is dispensed with and the present Application (CA 682 of 2014) to this effect is allowed.
19. No objection has been received to the Scheme of Amalgamation from any other party. Mr Atul Kumar Gupta, Director of the Transferee Company has filed an affidavit confirming that neither the Petitioner Companies 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/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, 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 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.
21. Certified copy of the formal order 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 property, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, 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.

22. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty 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.
23. Learned counsel for the Petitioner Companies states that the Petitioner Companies would collectively 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.

SANJEEV SACHDEVA, J

JULY 08, 2014/sv