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

+ CO.Appl.(M) 126/2013 in CO.PET. 655/2013

**IN THE MATTER OF WORLD WIDE FINEVEST AND
LEASING LIMITED AND ORS.**

.....Petitioner

Through- Mr. P. Nagesh with
Mr. Ashutosh Gupta
Advocates for the Petitioner
Companies
Mr. Atma Sah, Assistant
Registrar of Companies for
the Regional Director
Mr. Rajiv Bahl, Advocate for
the official Liquidator.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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21.05.2014

SANJEEV SACHDEVA, J (ORAL)

1. This Second motion joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'Act') by M/s. AAR INFRA TECH LIMITED (Transferor Company No. 1), M/s. WESTERN SUPER HORTICULTURE MARKETS LIMITED (Transferor Company No. 2), WESTERN OVERSEAS PRIVATE LIMITED (Transferor Company No. 3), WESTERN FINCAP LIMITED (Transferor Company No. 4), WORLD WIDE FINVEST AND LEASING LIMITED (Transferor Company No. 5/Petitioner Company No. 1), ULTRA TECH PRODUCTS PRIVATE LIMITED (Transferor Company No. 6/Petitioner Company No.2), SHREE JI IMPEX PRIVATE LIMITED (Transferor Company No. 7/Petitioner Company No. 3), WESTERN

EDUCATION PROMOTERS LIMITED (Transferor Company No. 8), NARAYAN BUILDERS PRIVATE LIMITED (Transferor Company No. 9/Petitioner Company No.4), L.N. NYLON PRIVATE LIMITED (Transferor Company No.10/Petitioner Company No. 5), KARNAM TEXTFAB PRIVATE LIMITED (Transferor Company No. 11/Petitioner Company No.6), KARNAM TRADE VENTURES PRIVATE LIMITED (Transferor Company No.12/Petitioner Company No.7) and TANVI FINCAP PRIVATE LIMITED (Transferee Company/Petitioner Company 8) are seeking sanction of the Scheme of Amalgamation (hereinafter referred to as 'Scheme'). A copy of the proposed Scheme is filed along with the present application.

2. The Registered Offices of Transferor Companies No. 5, 6, 7, 9, 10, 11 & 12 and the Transferee Company are situated at New Delhi and are within the jurisdiction of this Court.
3. The details of 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 Memorandum and Articles of Association of the Petitioner Companies have been enclosed with the Petition.
5. The copies of resolutions passed by the Board of Directors of the Petitioners 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 Companies Act 1956 are pending against the Petitioner Companies.
7. The petitioner companies had earlier filed C.A. (M) No. 126 of 2013 seeking directions of this Court for dispensation of the meetings.

Vide Order dated 24th September, 2013, this court allowed the application and dispensed with the requirement of convening meetings of Equity Shareholders of the Applicant Companies (herein known as “Petitioner Companies”), Share Applicants of the Transferor Companies 5, 6, 7 and the Transferee Company, Unsecured Creditors of the Transferor Companies 5, 6, 9 and the Transferee Company.

8. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated 13th December, 2013, notice in the Petition was directed to be issued to the Regional Director, Northern Region, the Official Liquidator and Citations were also directed to be published in “Business Standard” (English, Delhi Edition) and “Business Standard” (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 Newspapers on 12th March, 2014, copies of the newspapers cuttings, in original, containing the publications have been filed with the affidavit of service.
9. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received the official liquidator has filed his report dated 21st April, 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 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 Section 394(1) of the Companies Act, 1956.

10. In response to the notices issued in the Petition, the Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit / report dated 21.04.2014. Stating some observation, specifically as follows:-

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- i. That M/s Tanvi Fincap Pvt. Ltd. (Transferee Company) is a Non-Banking Finance Companies (NBFC) and registered with the Reserve Bank of India. It is submitted that the Petitioner Transferee Company may be asked to give an undertaking for all compliances from Reserve Bank of India being concerned Regulator, if deemed fit & proper by the Hon'ble Court.
- ii. That on perusal of the Balance Sheet as at 31.03.2013 of the Petitioner Transferor Company No, 5, 6 & 7 are having Share Application money pending for allotment. This fact has also been mentioned in the Company Application No. 126 of 2013 filed by the Petitioner Companies before the Hon'ble Court, wherein it has been stated that all the Petitioner Companies have obtained No Objection for the same. However, it may kindly be seen that these three Transferor Companies have the following Share Application Money pending for allotment with them as under:-

M/s Worlwide Finvest & Leasing	Rs. 19,25,000/-
M/s Shreeji Impex Private Limited	Rs. 38,00,000/-
M/s Ultratech Products Private Limited	Rs. 1,06,00,000/-

However, in the Balance Sheet as on 31.03.2013, it is seen that Transferor Company No. 10 M/s Nylon Pvt. Ltd. has also received Share Application Money amounting to Rs. 13,00,000 pending for allotment.

- iii. That Registrar of Companies, Delhi has reported that all the Transferor & Transferee Companies, are closely held Companies. The entire funds collected by these Companies in previous years by way of issue of Equity Shares on premium to certain private limited companies/or individuals have been parked as investment and granting loans & advances. The shares of these Companies have changed hand from time to time. None of the Transferor & Transferee Companies (except Transferor Company 6) are doing any significant business activity and reported nominal income except in the Financial Year ended 31.03.2013. Therefore, it appears that the proposed Scheme of Amalgamation is consolidation of such funds collected and invested in past into Transferee Company, however, there is no mention as to whether such Companies are registered with RBI as NBFC, if so, these Companies have obtained no objection from the RBI with regard to the proposed Scheme of Amalgamation. Further, these Companies have Share Application Money pending for allotment and there is no mention in the Petition that what would be effect of such money after such Amalgamation.”

11. In reply to the aforesaid observations of the RD, the petitioner companies have filled rejoinder affidavit dated 02.05.14 wherein it is stated as follows:

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- i. With reference to (I.) above, it is submitted that the Transferee Company Undertakes to comply with all compliances in respect to Reserve Bank of India;

- ii. With reference to (II.) above, it is submitted that it is true that the Companies have the share application money in the Financial Year 2012-13 and the Companies have also obtained NOC from all the share applicants which are also Annexed with the Rejoinder to the Affidavit filed by the Regional Director dated 2.05.2014. It is further stated that, the share application money, outstanding in the transferor companies, shall upon amalgamation, be treated as share application money, itself, in the Transferee Company. Furthermore, the Petitioner Companies undertakes to comply with all the provisions of the Companies Act, 2013.

It is submitted that, all the share applicants, have given their consent for the scheme of amalgamation.

- iii. With reference to (III.) above, it is submitted that mergers in maxim are done with the objective of consolidation and to drive synergy with the merged strength of the Transferor and Transferee Companies. Further in respect to the registration of the petitioner companies with RBI, it is submitted that that only the Transferee Company i.e. Tanvi Fincap Private Limited, is registered with RBI as NBFC. Further, in accordance with Company Circular DNBS (PD) C.C. No. 63/02.02/2005-06 dated January 24th 2006, Non Deposit Accepting NBFC are required to inform Reserve Bank of India (RBI) about scheme of merger or amalgamation along with Court's order approving the same within a period of one month from the date of the final order. Hence, in accordance with the above said circular, there is no requirement of taking prior approval for sanctioning Scheme of Arrangement from RBI. Furthermore it is submitted that the

treatment of the Share Application Money, has already been dealt and provided in reply to point (ii).”

12. The concerns raised by the Regional Director is that the Transferor Company and Transferee Company are closely held companies and funds collected by the companies of the previous years by way of equity shares on premium to certain private limited company and invoice has been termed as investment and granting loans and advance. The share of the companies has changed hands from time to time and it appears that the purpose of the scheme of amalgamation is consolidation of funds collected and invested in past into two Transferee Company.
13. The Regional Director has further raised a concern that there is no mention as to whether the company is registered with RBI and NBFC and, if so, whether no objection has been obtained from RBI for the scheme of amalgamation and further, there is no mention in the petition as to what would be the effect of share application money pending for allotment in these companies post amalgamation.
14. The Regional Director has raised a concern that the share application money as mentioned in the Balance Sheet as on 31.03.2013 is continuing to be shown in the Books of Accounts as share application and shares qua the same has not been allotted.
15. Learned counsel for the petitioner submits that within 60 days of the sanction of the scheme, the shares shall be allotted by the Transferee Company and in case the shares are not so allotted, the amount shall be treated as deposit and shall be refunded with interest in accordance with the provisions of the Companies Act, 2013.

16. Learned counsel for the petitioner submits that an affidavit of undertaking has been filed on behalf of the Transferee Company and the Transferee Company undertakes to comply with all applicable legislations including rules and regulations of the concerned regulators including Reserve Bank of India and further, he undertakes on behalf of the Transferor and Transferee Company that the Transferor company shall be liable to comply with all the provisions of the Act and the rules and regulations and the transferor shall continue to be liable in case of breach of any provisions of the Reserve Bank of India.
17. It is directed that in case it is found that the transferor company has violated any provision of the Reserve Bank of India Act then the Directors of the Transferor Company guilty of breaching the provisions of the Reserve Bank of India Act shall continue to be liable irrespective of the sanction of the Scheme.
18. Mr. Atma Sah, Asstt. Registrar of Companies submits that the Income Tax Authorities have responded to the letter issued by the Regional Director and have contended that a demand of Rs.18,932/- for the Assessment Year 2010-11 is outstanding against the Transferor Company No.5.
19. No issue with regard to the above issuance of shares on premium or transfer of funds by way of investment or granting of loan or advance is raised by the Income Tax Authorities. The Income Tax Authorities has further not raised any issue with regard to the share application money pending in the petitioner company. It is directed that the Income Tax Authorities shall be permitted to proceed against the Transferee Company in respect of any liability that may arise on account of sanction of the Scheme. Mr. Atma Sah submits that the

Income Tax Authorities has further raised an issue that there should not be any writing off, of any liability by the Transferee Company. Learned counsel for the petitioner submits that no liability of the Transferee Company can be and is sought to be written off.

20. Learned counsel for the petitioner undertakes on behalf of the Transferee Company that as per the scheme, the liability of the Transferee Company including liabilities for payment of outstanding tax are to be borne by the Transferee Company and shall be borne by the Transferee Company.
21. Learned counsel for the petitioner submits that the share application money pending the allotment in the Transferor Company shall be shown as share application money pending in the Transferee Company. He further submits that 'no objection' has been obtained to the scheme of amalgamation from the individuals whose money has been invested as share application money in the Transferor Company.
22. Mr. Atma Sah, Assistant Registrar of Companies submits that in the Transferor Company Nos.6 & 7, the sum total of the subscribed capital and the share application money exceed the authorized capital of the Transferor Company and is in violation of the provisions of the Companies Act, 2013.
23. Learned counsel for the petitioner submits that the deposit was received prior to coming into force of Companies Act, 2013 and in any case, in terms of undertaking given above, within 60 days, the allotment shall be made by the Transferee Company else the amount shall be treated as deposit refundable with interest. He further submits that even if the amount is treated as share application money in the Transferee Company as per the scheme, the sum total of the

subscribed capital and the share application money of the Transferee Company would be far less than the authorized capital of the Transferee Company. In view of the above, the concerns of the Regional Director are addressed.

24. No objection has been received to the Scheme of Amalgamation from any other party. Ms. Rama Gupta, Authorized Representative of Transferor Company 5, Ms. Madhu Gupta Authorized Representative of Transferor Company 6, Mr. Manoj Kumar Authorized Representative of Transferor Company 7 and 9, Mr. Shobhit Jain Authorized Representative of Transferor Company 10, Mr. Varun Gupta Authorized Representative of Transferor Company 11 and 12 and Mr. Anil Kumar Authorized Representative of Transferee Company has filed their affidavit dated 15th April, 2014 confirming that neither the petitioner companies nor their Legal Counsel has received any objection pursuant to the citations published in the Newspapers.
25. In view of the approval accorded by the Shareholders, Share Applicants and Creditors of the Petitioner Companies, representations/ reports filed by the Regional Director, Northern Region and the official liquidator, attached with this court to the proposed Scheme, 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 Arrangement under Section 391-394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law.
26. A certified copy of the order be filed with the Registrar of Companies within 30 days from receipt of the same. In terms of the provisions of Section 391- 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 the Petitioner/ 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 Petitioner/ Transferor Companies be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Petitioner/ Transferor Companies shall stand dissolved without winding up.

27. 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.
28. Learned counsel for the petitioners states that the petitioner Companies would voluntarily deposit a sum of Rs. 2,00,000/- in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is accepted.
29. The petition is allowed in the above terms.
Order Dasti.

SANJEEV SACHDEVA, J

MAY 21, 2014