IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 14/2015

Reserved on 1st September, 2015
Date of pronouncement: 21st September, 2015

In the matter of
The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Sections 391 to 394 of the Companies Act, 1956

Scheme of Amalgamation and Arrangement between:

Mapsa Logistics Private Limited
Petitioner/Transferor Company No. 1

Mapsa Infra Private Limited
Petitioner/Transferor Company No. 2

Empee Global Private Limited
Petitioner/Transferor Company No. 3

AND

Mapsa Tapes Private Limited
Petitioner/Transferee Company

Through Mr. Vidur Bhatia and Ms.Mandira Mitra, Advocates for the petitioners
Ms. Aparna Mudiam, Assistant Registrar of Companies for the Regional Director
Ms. Ruchi Sindhwani, Advocate for the Official Liquidator

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation and Arrangement between Mapsa

Logistics Private Limited (hereinafter referred to as the transferor company no. 1); Mapsa Infra Private Limited (hereinafter referred to as the transferor company no. 2); Empee Global Private Limited (hereinafter referred to as the transferor company no. 3) and Mapsa Tapes Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company no. 1 was incorporated under the Companies Act, 1956 on 26th August, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was incorporated under the Companies Act, 1956 on 11th September, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The transferor company no. 3 was originally incorporated under the Companies Act, 1956 on 3rd July, 1995 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of M.P. Industries Private Limited. The company changed its name to Empee Global Private Limited and obtained the fresh certificate of incorporation on 1st September, 2007.

6. The transferee company was incorporated under the Companies Act, 1956 on 21st July, 1988 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The present authorized share capital of the transferor company no.1 is Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.9,90,00,000/- divided into 99,00,000 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferor company no.2 is Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.9,21,00,000/- divided into 92,10,000 equity shares of Rs.10/- each.

9. The present authorized share capital of the transferor company no.3 is Rs.4,00,00,000/- divided into 40,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,87,20,000/- divided into 28,72,000 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.3,52,40,000/- divided into 35,24,000 equity shares of Rs.10/- each.

11. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 164/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

12. A copy of the Scheme of Amalgamation and Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is claimed by the petitioners that the proposed Scheme will facilitate greater integration and provide greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value, and improve the competitive position of the combined entity. It is further claimed that the Scheme will result in greater efficiency in cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business, which can be deployed

more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value.

13. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor companies in the following ratio:-

> "20 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 1."
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> "19 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 2."
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> "41 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.10/- each held in the transferor company no. 3."

14. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

15. The Board of Directors of the transferor companies and the transferee company in their separate meetings held on 14th October, 2014 and 15th October, 2015 respectively have unanimously approved the proposed Scheme of Amalgamation and Arrangement. Copies of the

Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

16. The petitioner companies had earlier filed CA (M) No. 164/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation and Arrangement. Vide order dated 16th December, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferor and transferee companies, there being no secured creditors of the transferor companies no. 1 to 3, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation and Arrangement. Since the 'no objection' issued by the secured creditor of the transferee company was not supported by any Board Resolution or Power of Attorney in favour of the person who had signed the 'no objection, learned counsel for the petitioners had undertaken to issue advance notice to said secured creditor, viz. HDFC Bank, prior to filing of the second motion calling for their objection, if any, to the Scheme of Amalgamation and Arrangement. The petitioner companies were directed to file proof of service of the said advance notice along with the second motion petition.

17. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation and Arrangement. Vide order dated 14th January, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and (Hindi) Delhi editions. Affidavit of Service has been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 18th March, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit. The petitioners have also placed on record a copy of the notice served to HDFC Bank, in terms of order dated 16th December, 2014, calling for their objections, if any, to the Scheme of Amalgamation and Arrangement.

18. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 13th April, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation and Arrangement 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 their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

19. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 6^{th} May, 2015. Relying on Clause 4.4.1 of Part-IV of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation and Arrangement, all the employees of the transferor companies shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 2.3.1 (a) of Part-II of the Scheme, it has been stated that the transferee company shall record the assets and liabilities in the Undertakings transferred to and vested in it pursuant to the Scheme, at the same value as that appearing in the books of the transferor companies on the close of business in India on 31.03.2014 in accordance with the pooling of interest method provided in Accounting Standard-14 (Accounting for Amalgamation) issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 5.2.1 of Part-V of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies no. 1 to 3 shall stand dissolved without the process of winding up.

20. No objection has been received to the Scheme of Amalgamation and Arrangement from any other party. The petitioner companies, in the affidavits dated 7th May, 2015 of Mr. Mahesh Gupta, authorized representative of the transferor companies and Mr. Pyare Lal Gupta, authorized representative of the transferee company, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 18th March, 2015.

21. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and Arrangement and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation and Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation and Arrangement. Consequently, sanction is hereby granted to the Scheme of Amalgamation and Arrangement under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the

appointed date of Amalgamation, i.e. 1st April, 2014, the transferor companies no. 1 to 3 shall stand dissolved without undergoing the process of winding up.

22. Learned counsel for the Official Liquidator prays that costs may also be imposed keeping in view the fact that the matter has involved examination of extensive records and prioritized hearings. He submits that at least costs of Rs.1,00,000/- should be paid by the petitioners. Learned counsel for the petitioners states that the same is acceptable to him. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs in the Common Pool Fund of the Official Liquidator, within three weeks.

23. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

September 21, 2015