IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 161/2015

Reserved on 12th October, 2015
Date of pronouncement: 6th November, 2015

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

And

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

Scheme of Amalgamation of:

Lettuce Entertain You Limited
Applicant/Transferor Company No. 1

PVR Leisure Limited
Applicant/Transferor Company No. 2

WITH

PVR Limited
Non-Applicant/Transferee Company

Through Mr. Deepak Diwan, Advocate for the applicants

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Sections 391 to 394 of the Companies Act, 1956 by the applicant/transferor companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Lettuce Entertain You Limited (hereinafter referred to as the applicant/transferor company no. 1) and PVR Leisure Limited (hereinafter referred to as the

applicant/transferor company no.2) with PVR Limited (hereinafter referred to as the transferee company) and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of Scheme of Amalgamation.

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

3. The applicant/transferor company no. 1 was originally incorporated under the Companies Act, 1956 on 21st November, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of K M Multiplexes and Fun Management Limited. The company changed its name to Lettuce Entertain You Limited and obtained the fresh certificate of incorporation on 28th February, 2013.

4. The applicant/transferor company no. 2 was incorporated under the Companies Act, 1956 on 30th July, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

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

share capital of the company is Rs.9,55,00,000/- divided into 95,50,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the applicant/transferor company no. 2 is Rs.25,14,96,800/- divided into 50,00,000 equity shares of Rs.10/- each aggregating to Rs.5,00,00,000/-; 5,90,000 0.001% non-cumulative convertible preference shares of Rs.341.52/- each aggregating to Rs.20,14,96,800/-. The present issued, subscribed and paid-up share capital of the company is Rs.21,93,58,514/- divided into 19,00,000 equity shares of Rs.10/- each aggregating to Rs.1,90,00,000/-; 5,86,667 0.001% non-cumulative convertible preference shares of Rs.341.52/- each aggregating to Rs.20,03,58,514/-.

7. Copies of the Memorandum and Articles of Association of the applicant/transferor companies and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2015, of applicant/transferor companies and the transferee company, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is claimed by the applicants that the proposed amalgamation will provide

operational synergies, which in turn will eliminate inefficiencies and streamline corporate structures and cash flow. It is further claimed that the proposed amalgamation will rationalize and optimize the group legal entity structure to ensure greater alignment with the businesses by reducing the number of legal entities.

9. So far as the share exchange ratio is concerned, the Scheme provides that the entire paid-up equity and non-cumulative convertible preference share capital of the transferor company no. 2 is directly held by the transferee company and the entire paid-up equity share capital of the transferor company no. 1 is held by the transferee company through its wholly owned subsidiary viz. transferor company no. 2. Therefore, upon this Scheme becoming effective, the entire share capital of the transferor companies shall stand cancelled and no shares of the transferee company shall be allotted to the transferor companies in consideration for amalgamation.

10. It has been submitted by the applicants that no proceedings under Sections 237, 243, 250, 250A and 251 of the Companies Act, 1956 or under Sections 210, 214, 215, 216(1), (3) & (4), 217, 219, 220, 223, 224(1), (3) & (4) and 225 of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the applicant/transferor companies and the Board of Directors of the transferee company in their separate meetings held on 21st July, 2015 and 22nd July, 2015 respectively have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The applicant/transferor company no. 1 has 07 equity shareholders and 64 unsecured creditors. All the equity shareholders and 51 out of 64 unsecured creditors, being 79.69% in number and 99.68% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the applicant/transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the applicant/transferor company no. 1, as on 31st August, 2015.

13. The applicant/transferor company no. 2 has 07 equity shareholders and 01 preference shareholder. All the equity shareholders and the sole preference shareholder have given their consents/no objections in writing

to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and preference shareholder of the applicant/transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured or unsecured creditor of the applicant/transferor company no. 2, as on 31st August, 2015.

14. The applicant also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders since the transferor companies are wholly owned subsidiaries of the transferee company; no new shares will be issued by the transferee company in lieu of the shares of the transferor companies; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. Learned counsel for the applicants has submitted that the present Scheme does not envisage any compromise or arrangement by the transferee company with their

creditors and that the assets of both the companies are more than sufficient to meet their respective and combined aggregate liabilities towards their respective creditors, therefore, the rights of the creditors of the transferee company will not be adversely affected. Learned counsel has also placed on record the certificate issued by Narender Singh & Co., Chartered Accountants, showing the pre and post amalgamation net worth of the transferee company accordingly to which there will be no change in the net worth of the transferee company, post amalgamation.

15. In support of his submissions, learned counsel placed reliance on the judgments of several High Courts, including this Court, in many cases such as **Sharat Hardware Industries Pvt. Ltd.** (1978), 48 Com. Cas 23 (Delhi); **Mahaamba Investments Ltd. V. IDI Limited** (2001) 105 Com Cas. 16 (Bom.); **eMeter India Pvt. Ltd.** (CA(M) 179/2012); **Century Seeds Private Ltd.** (CA(M) 36/2015); and **Jaisingh Wires Private Limited** (CA(M) 138/2015), wherein it has been held that there is no requirement to file a separate or joint application on behalf of the transferee company for sanction of the Scheme.

16. I have carefully considered the aforesaid case laws cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of this settled legal

position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

17. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

November 06, 2015