IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 46/2016

Reserved on 19th April, 2016
Date of pronouncement: 16th May, 2016

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

And

Application under Sections 391(1) of the Companies Act, 1956

Scheme of Amalgamation of:

RRJ Infrastructure Company Private Limited
Applicant/Transferor Company No. 1

Fountain Beverages Private Limited
Applicant/Transferor Company No. 2

WITH

Pearl Drinks Limited
Applicant/Transferee Company

Through Mr. Mukesh Sukhija, Advocate for the applicants

SUDERSHAN KUMAR MISRA, J.

1. This joint Application has been filed under Section 391(1) of the Companies Act, 1956, by the applicant 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 RRJ Infrastructure Company Private Limited (hereinafter referred to as the transferor company No. 1)

and Fountain Beverages Private Limited (hereinafter referred to as the transferor company No. 2) with Pearl Drinks 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 originally incorporated under the Companies Act, 1956 on 24th June, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of RRJ Electrical Company Private Limited. The company changed its name to RRJ Infrastructure Company Private Limited and obtained the fresh certificate of incorporation on 1st June, 2007.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 23rd December, 1988 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Deepak and Company Private Limited. The company changed its name to Fountain Beverages Private Limited and obtained the fresh certificate of incorporation on 29th May, 2000.

5. The transferee company was incorporated under the Companies Act, 1956 on 10th November, 1982 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

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

7. The present authorized share capital of the transferor company no.2 is Rs.25,00,000/- divided into 25,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.7,00,000/- divided into 7,000 equity shares of Rs.100/- each.

8. The present authorized share capital of the transferee company is Rs.71,00,00,000/- divided into 21,50,000 equity shares of Rs.10/- each aggregating Rs.2,15,00,000/- and 6,88,50,000 redeemable preference shares of Rs.10/- each aggregating Rs.68,85,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.2,16,80,700/- divided into 3,40,000 equity shares of Rs.10/- each aggregating Rs.34,00,000/- and 18,28,070 redeemable preference shares of Rs.10/- each aggregating Rs.1,82,80,700/-.

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

10. 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 submitted by the applicants that the transferor companies are wholly owned subsidiaries of the transferee company and the proposed amalgamation would result in business synergy and consolidation of these companies into one large company with a stronger asset base. It is further claimed that the proposed amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

11. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, since the

transferor companies are wholly owned subsidiaries of the transferee company, the investment in the shares of the transferor companies by the transferee company stall stand cancelled and no shares shall be issued or allotted to the shareholders of the transferor companies.

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

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 10th February, 2016 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.

14. The transferor company no. 1 has 02 equity shareholders and 04 unsecured creditors. Both the equity shareholders and 03 out of 04 unsecured creditors, being 75% in number and 98.06% 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 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 transferor company no. 1, as on 10th February, 2016.

15. The transferor company no. 2 has 02 equity shareholders. Both the equity shareholders 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 meeting of the equity shareholders of the 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 transferor company no. 2, as on 10th February, 2016.

16. The transferee company has 08 equity shareholders, 01 preference shareholder, 06 secured creditors and 13 unsecured creditors but their consents are not placed on record. Learned counsel for the applicants has submitted that since the transferor companies are wholly owned subsidiaries of the transferee company; the applicant companies are not proposing any arrangement with their shareholders and creditors; and no new shares will be issued on amalgamation, therefore, the rights of the shareholders and creditors of the transferee company will not be affected. Hence, their consents/NOC are not required to be obtained for

the proposed amalgamation. It is further submitted by learned counsel for the applicants that, post amalgamation, the transferee company shall continue to exist and carry on its commercial activities and since it is consistently a profit making company having huge reserve of Rs.79,89,36,494/- and cash reserves of Rs.57,22,801/-, as on 31st March, 2015, it will continue to pay its creditors and other liabilities in the normal course of its business.

17. In support of his submissions, learned counsel placed reliance on the judgments of various High Courts in the matters of **Liberty Retail Revolutions Limited & Anr.** [CP 153/2013, Punjab & Haryana High Court], **Punjab Chemicals and Crop Protection Ltd.** (2008), 84 CLA 33 (P&H) and **Sava Health Care Limited** (CP Nos. 63, 64 & 65/2014, Gujarat High Court), wherein the courts, under similar circumstances, had dispensed with the requirement of convening the meetings of the shareholders and creditors of the transferee company.

18. I have carefully considered the aforesaid case laws cited at the Bar. In view of the submissions made at the bar, the settled law on the subject, and considering the Scheme of Amalgamation, the requirement of convening and holding the meetings of the equity shareholder, preference shareholder, secured and unsecured creditors of the transferee company, to consider and if thought fit, approve, with or

without modification, the proposed Scheme of Amalgamation, is dispensed with.

19. The Application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

May 16, 2016