

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

**Judgment reserved on: 05.12.2016**  
**Judgment pronounced on: 30.01.2017**

**CO.PET. 479/2016**

**IN THE MATTER OF:-**

**RRJ INFRASTRUCTURE COMPANY PRIVATE LIMITED**

.... Petitioner /Transferor Company No. 1

**AND**

**FOUNTAIN BEVERAGES PRIVATE LIMITED**

.... Petitioner/Transferor Company No.2

**WITH**

**PEARL DRINKS LIMITED**

..... Petitioner /Transferee Company

Through: Mr. Mukesh Sukhija, Advocate for the  
Petitioners, Mr. Rajiv Bahl, Advocate  
for the OL, Ms. Aparna Mudiam,  
Assistant ROC for the Regional  
Director.

**CORAM:**

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

**J U D G M E N T**

**SIDDHARTH MRIDUL, J.**

1. The present petition has been filed jointly, under sections 391 and 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by RRJ

Infrastructure Company Private Limited (hereinafter referred to as 'Transferor Company No. 1'), Fountain Beverages Private Limited (hereinafter referred to as 'Transferor Company No. 2') and Pearl Drinks Limited (hereinafter referred to as 'Transferee Company') seeking sanction of the Scheme of Amalgamation (hereinafter referred to as 'scheme') of Transferor Company No.1 and Transferor Company No.2 with the Transferee Company.

2. Transferor Company No.1, Transferor Company No.2 and the Transferee Company are hereinafter collectively referred to as 'Petitioner Companies'.

3. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

4. Transferor Company No.1 was originally incorporated under the Act on 24.06.2004, under the name and style of 'RRJ Electrical Company Private Limited' with the Assistant Registrar of Companies, NCT of Delhi & Haryana at New Delhi. Subsequently, the company changed its name to 'RRJ Infrastructure Company Private Limited' and obtained the fresh certificate of incorporation on 01.06.2007 issued by the Registrar of Companies, NCT of Delhi and Haryana.

5. Transferor Company No.2 was originally incorporated under the Act on 23.12.1988, under the name and style of 'Deepak and Company Private

Limited' with the Assistant Registrar of Companies, NCT of Delhi & Haryana at New Delhi. Subsequently, the company changed its name to Fountain Beverages Private Limited and obtained the fresh certificate of incorporation on 29.05.2000 from the Deputy Registrar of Companies, NCT of Delhi and Haryana.

6. The Transferee Company was incorporated under the Act on 10.11.1982 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi. Thereafter, the company converted from private limited company to a Limited Company and its name was subsequently changed to Pearl Drinks Limited w.e.f. 01.07.1994.

7. The authorized share capital of Transferor Company No.1, as on 31.03.2015 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 as on 31.03.2015 is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

8. The authorized share capital of Transferor Company No.2, as on 31.03.2015 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 as on 31.03.2015 is Rs.7,00,000/- divided into 7,000 equity shares of Rs.100/- each.

9. The authorized share capital of the transferee company, as on 31.03.2015 is Rs.71,00,00,000/- divided into 21,50,000 equity shares of

Rs.10/- each, aggregating to 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 as on 31.03.2015 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/-

**10.** Copies of Memorandum of Association and Articles of Association of the Petitioner Companies came to be filed alongwith Company Application (Main) 46 of 2016, which was earlier filed by the Petitioner Companies. The audited balance sheets, as on 31.03.2015, of the Petitioner Companies, along with the reports of the auditors, also came to be filed alongwith Company Application (Main) 46 of 2016 and the same are on record.

**11.** A copy of the Scheme has been placed on record and the salient features of the Scheme have been incorporated and set out in detail in the Petition. It has been stated on behalf of the Petitioner Companies 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 has further been stated that the proposed amalgamation will *inter alia* 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; and 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.

**12.** 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 shall stand cancelled and no shares shall be issued or allotted to the shareholders of the Transferor Companies.

**13.** It has been stated on behalf of the Petitioner Companies that no proceedings under Sections 235 to 251 of the Act (or under the corresponding provisions of the Companies Act, 2013) are pending against any of the Petitioner Companies.

**14.** The Board of Directors of the Petitioner Companies in their separate meetings held on 10.02.2016 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of Petitioner Companies have been placed on record.

**15.** The Petitioner Companies in Company Application (Main) 46 of 2016 sought directions of this court to dispense with the requirement of the convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors. By way of order dated 16.05.2016, this court allowed the application and dispensed with the requirement of convening the meetings of equity shareholders and unsecured creditors of Transferor Company No.1 and equity shareholders of Transferor Company No.2 and equity shareholders, preference shareholders, secured and unsecured creditors of the Transferee Company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme. There are no secured creditors in the Transferor Companies and no unsecured creditors in Transferor Company No. 2.

**16.** The Petitioner Companies have thereafter filed the present Petition seeking sanction to the proposed scheme. Vide order dated 27.05.2016, notice in the Petition was issued to the Regional Director, Northern Region and the Official Liquidator. Citations were directed to be published in the Delhi Editions of the newspapers, 'Business Standard' (English) and 'Business Standard' (Hindi). An affidavit dated 06.09.2016 has been filed by the Petitioner Companies showing compliance regarding publication of citations on 25.06.2016 in the aforesaid newspapers.

**17.** Pursuant to the notices issued in the present Petition, the Official Liquidator has filed a report dated 05.09.2016 wherein it has been stated that no complaint against the proposed scheme from any person/party interested in the proposed scheme has been received and that the affairs of the Petitioner 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 second proviso of Section 394(1) of the Act.

**18.** Therefore, no objection has been raised on behalf of the Official Liquidator to the grant of sanction to the proposed scheme.

**19.** In response to the notice issued in the present Petition, Regional Director, Northern Region, Ministry of Corporate Affairs has filed an affidavit dated 14.09.2016 stating that the Regional Director has no objections to the grant of sanction to the proposed scheme.

**20.** The Petitioner Companies, by way of affidavit dated 09.09.2016, have submitted that neither the Petitioner Companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 25.06.2016.

**21.** In view of the approval accorded by the shareholders and creditors of the Petitioner Companies to the proposed scheme; the report filed by the Official Liquidator not raising any objection to the proposed scheme and the

affidavit filed by the Regional Director, Northern Region, not raising any objection to the proposed scheme; there appears to be no impediment to the grant of sanction to the proposed scheme. Hence, sanction is hereby granted to the proposed scheme under sections 391 and 394 of the Companies Act, 1956.

**22.** Resultantly, it is hereby directed that the Petitioner Companies will comply with all the provisions of the proposed scheme and, in particular, those which are referred to hereinabove. The petitioners shall also comply with the statutory requirements in accordance with law.

**23.** It is also made clear, that any concerned Statutory Authority will be entitled to proceed against the Transferee Companies qua any liability which it would have fastened onto the Transferor Companies for the relevant period, and that, which may arise on account of the proposed scheme being sanctioned.

**24.** Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Court to the proposed scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the Transferor Companies and the Transferee Company.

- 25.** The Transferor Companies shall stand dissolved without being wound up.
- 26.** It is made clear, that this order shall not be construed as an order granting exemption, inter alia, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.
- 27.** A certified copy of this order, sanctioning the proposed scheme, be filed with the ROC, within thirty (30) days of its receipt.
- 28.** The Petitioner Companies are directed to deposit a sum of Rs.2,00,000/- by way of costs, in the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi, within a period of two weeks from today.
- 29.** The Petition is allowed in above terms and is accordingly disposed of.

**JANUARY 30, 2017**  
sb/mk

**SIDDHARTH MRIDUL, J**