

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 26.10.2016

Order delivered on:20.01.2017

CO. APPL. (M) 149/2016

IN THE MATTER OF:

VERMA HOMES PVT. LTD. ...Applicant/Transferor Company no.1

AND

VERMA DEVELOPERS PVT. LTD. ...Applicant/Transferor Company no.2

AND

VERMA PROPTECH PVT. LTD. ...Applicant/Transferor Company no.3

AND

RAMDOOT DESIGNS PVT. LTD. ...Applicant/Transferor Company no.4

AND

RIA EXPORTS PVT. LTD. ...Applicant/Transferor Company no.5

AND

JK JEET CLOTHES PVT. LTD ...Applicant/Transferor Company no.6

AND

JSR EXPORTS PVT. LTD. ...Applicant/Transferor Company no.7

AND

NIJHAWAN CREATIONS PVT. LTD.

...Applicant/Transferor Company no.8

AND

MAHABALI PARKS PVT. LTD.

...Applicant/Transferor Company no.9

AND

SFI CONSULTING PVT. LTD.

...Applicant/Transferor Company no.10

AND

ROYAL IT PARKS DEVELOPERS PVT. LTD.

...Applicant/Transferor Company no.11

WITH
NIMIT BUILDERS PVT. LTD.

...Applicant Company no.12/Transferee Company

Through: Ms. Gurkamal Hora Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. This joint application has been filed under Sections 391 to 394 of the provisions of the Companies Act, 1956 (hereinafter referred to as 'the Act') read with rule 79 of the Companies (Court) Rules, 1959, by Verma Homes Private Limited (hereinafter referred to as 'Transferor Company no.1'), Verma Developers Private Limited (hereinafter referred to as 'Transferor Company no.2'), Verma Proptech Private Limited (hereinafter referred to as 'Transferor Company no.3'), Ramdoot Designs Private Limited (hereinafter referred to as 'Transferor Company no.4'), Ria Exports Private Limited (hereinafter referred to as 'Transferor Company no.5'), JK Jeet Clothes Private Limited (hereinafter referred to as 'Transferor Company no.6'), JSR Exports Private Limited (hereinafter referred to as 'Transferor Company no.7'), Nijhawan Creations

Private Limited (hereinafter referred to as 'Transferor Company no.8'), Mahabali Parks Private Limited (hereinafter referred to as 'Transferor Company no.9'), SFI Consulting Private Limited (hereinafter referred to as 'Transferor Company no.10'), Royal IT Parks Developers Private Limited (hereinafter referred to as 'Transferor Company no.11') and Nimit Builders Private Limited (hereinafter referred to as 'Transferee Company'), in connection with the proposed scheme of Amalgamation (hereinafter referred to as 'proposed scheme') between the Transferor Company nos.1 to 11 and the Transferee Company.

2. The Transferor Companies and the Transferee Company are hereinafter collectively referred to as 'Applicant Companies'.

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

4. The Transferor Company no.1 was incorporated under the provisions of the Act, on 12.11.2010, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

5. The Transferor Company no.2 was incorporated under the provisions of the Act, on 12.11.2010, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

6. The Transferor Company no.3 was incorporated under the provisions of the Act, on 04.12.2012, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.
7. The Transferor Company no.4 was incorporated under the provisions of the Act, on 08.08.2007, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.
8. The Transferor Company no.5 was incorporated under the provisions of the Act, on 21.06.2007, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.
9. The Transferor Company no.6 was incorporated under the provisions of the Act, on 15.01.2007, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.
10. The Transferor Company no.7 was incorporated under the provisions of the Act, on 15.06.2007, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.
11. The Transferor Company no.8 was incorporated under the provisions of the Act, on 08.08.2007, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

12. The Transferor Company no.9 was incorporated under the provisions of the Act, on 07.07.2008, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

13. The Transferor Company no.10 was incorporated under the provisions of the Act, on 24.07.2009, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

14. The Transferor Company no.11 was incorporated under the provisions of the Act, on 21.03.2005, with the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

15. The Transferee Company was incorporated under the provisions of the Act, on 13.05.2006, with the Registrar of Companies, N.C.T. of Delhi and Haryana at New Delhi.

16. The authorized share capital of the Transferor Company no.1, as on 31.03.2016, is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital, as on 31.03.2016, is Rs.1,31,93,750/- divided into 13,19,375 equity shares of Rs.10/- each.

17. The authorized share capital of the Transferor Company no.2, as on 31.03.2016, is Rs.4,00,00,000/- divided into 40,00,000 equity shares of Rs.10/- each. The issued share capital, as on 31.03.2016, is Rs.1,97,65,000/- divided into 19,76,500 equity shares of Rs.10/- each fully paid up. The subscribed and

fully paid up share capital, as on 31.03.2016, is Rs.1,89,25,000/- divided into 18,92,500 equity shares of Rs.10/- each. The subscribed but not fully paid up share capital, as on 31.03.2016, is Rs.4,20,000/- divided into 84,000 equity shares of Rs.10/- each, partly paid Rs.5/- each.

18. The authorized share capital of the Transferor Company no.3, as on 31.03.2016, 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, as on 31.03.2016, is Rs.2,87,83,000/- divided into 28,78,300 equity shares of Rs.10/- each fully paid up.

19. The authorized share capital of the Transferor Company no.4, as on 31.03.2016, is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital, as on 31.03.2016, is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

20. The authorized share capital of the Transferor Company no.5, as on 31.03.2016, is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital, as on 31.03.2016, is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

21. The authorized share capital of the Transferor Company no.6, as on 31.03.2016, is Rs.4,00,00,000/- divided into 40,00,000 equity shares of Rs.10/- each. The issued share capital, as on 31.03.2016, is Rs.56,95,000/- divided into

5,69,500 equity shares of Rs.10/- each fully paid up. The subscribed and fully paid up share capital, as on 31.03.2016, is Rs.47,95,000/- divided into 4,79,500 equity shares of Rs.10/- each. The subscribed but not fully paid up share capital, as on 31.03.2016, is Rs.58,37,500/- divided into 11,67,500 equity shares of Rs.10/- each, partly paid Rs.5/- each.

22. The authorized share capital of the Transferor Company no.7, as on 31.03.2016, is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital, as on 31.03.2016, is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

23. The authorized share capital of the Transferor Company no.8, as on 31.03.2016, is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital, as on 31.03.2016, is Rs.5,80,000/- divided into 58,000 equity shares of Rs.10/- each fully paid up.

24. The authorized share capital of the Transferor Company no.9, as on 31.03.2016, is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital, as on 31.03.2016, is Rs.4,00,000/- divided into 40,000 equity shares of Rs.10/- each.

25. The authorized share capital of the Transferor Company no.10, as on 31.03.2016, is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/-

each. The issued, subscribed and paid-up share capital, as on 31.03.2016, is Rs.51,50,000/- divided into 5,15,000 equity shares of Rs.10/- each.

26. The authorized share capital of the Transferor Company no.11, as on 31.03.2016, is Rs.2,95,00,000/- divided into 29,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital, as on 31.03.2016, is Rs.2,93,30,000/- divided into 29,33,000 equity shares of Rs.10/- each fully paid up.

27. The authorized share capital of the Transferee Company, as on 31.03.2016, is Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each. The issued share capital, as on 31.03.2016 is Rs.6,06,89,000/- divided into 60,68,900 equity shares of Rs.10/- each. The subscribed and fully paid-up share capital, as on 31.03.2016, is Rs.1,36,33,000/- divided into 1,36,33,000 equity shares of Rs.10/- each fully paid up. The subscribed but not fully up share capital, as on 31.03.2016, is Rs.2,36,18,000/- divided into 47,23,600 equity shares of Rs.10/- each, partly paid Rs.5/- each.

28. Copies of the Memorandum and Articles of Association of the Applicant Companies have been filed on record. The audited Balance Sheets, as on 31st March, 2016, of the Applicant Companies, along with the reports of the auditors, have also been filed.

29. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and detailed in the present application and the accompanying affidavits.

30. It has been averred by the Applicant Companies that no proceedings under Sections 210, 212(1) to (7) & (11) to (17), 214, 215, 216(1) & (3), 217, 219, 220, 223, 224(1), (3) and (4) and 225 or any other applicable provisions of the Companies Act, 2013; or the Companies Act, 1956, are pending against either of the Applicant Companies.

31. The Board of Directors of the Applicant Companies in their separate meetings held on 31.08.2016, have unanimously approved the proposed scheme. Copies of the Resolutions passed at the meetings of the Board of Directors of the Applicant Companies have been placed on record.

32. A prayer has been sought in the present application seeking dispensation with the requirement of convening and holding the meetings of equity shareholders and unsecured creditors of the Applicant Companies, to consider and if thought fit, approve, with or without modification, the proposed scheme.

33. The Transferor Company no.1 has 8 equity shareholders. All the equity shareholders have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order.

34. The Transferor Company no.1 has four unsecured creditors. All the unsecured creditors have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order. The Transferor Company no.1 does not have any secured creditors.

35. The Transferor Company no.2 has ten equity shareholders. Nine out of ten equity shareholders representing 99.24% in value of the total shareholding have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order.

36. The Transferor Company no.2 has five unsecured creditors. Four out of five of the unsecured creditors representing 97.99% in value of the total debt due to the unsecured creditors, have given their written consents/NOC's to the proposed scheme. The written consents/NOC's have been placed on record. They have been examined and found in order. The Transferor Company no.2 does not have any secured creditors.

37. The Transferor Company no.3 has fourteen equity shareholders. Thirteen out of fourteen equity shareholders representing 98.82% in value of the total shareholding have given their written consents/NOC's to the proposed scheme.

Their written consents/NOC's have been placed on record. They have been examined and found in order.

38. The Transferor Company no.3 has three unsecured creditors. All the unsecured creditors have given their written consents/NOC's to the proposed scheme. The written consents/NOC's have been placed on record. They have been examined and found in order. The Transferor Company no.3 does not have any secured creditors.

39. The Transferor Company no.4 has two equity shareholders. Both the equity shareholders representing 100% of the shareholding have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order.

40. The Transferor Company no.4 has one unsecured creditor, who has given its written consent/NOC to the proposed scheme. The written consent/NOC has been placed on record. It has been examined and found in order. The Transferor Company no.4 does not have any secured creditors.

41. The Transferor Company no.5 has three equity shareholders. All the equity shareholders have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order.

42. The Transferor Company no.5 has two unsecured creditors. All the unsecured creditors have given their written consents/NOC's to the proposed scheme. The written consents/NOC's have been placed on record. They have been examined and found in order. The Transferor Company no.5 does not have any secured creditors.

43. The Transferor Company no.6 has fifteen equity shareholders. All the equity shareholders have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order.

44. The Transferor Company no.6 has four unsecured creditors. Three out of four unsecured creditors representing 95.07% in value of the total debt due to the unsecured creditors, have given their written consents/NOC's to the proposed scheme. The written consents/NOC's have been placed on record. They have been examined and found in order. The Transferor Company no.6 does not have any secured creditors.

45. The Transferor Company no.7 has two equity shareholders. Both the equity shareholders have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order.

46. The Transferor Company no.7 has one unsecured creditor, who has given its written consent/NOC to the proposed scheme. The written consent/NOC has been placed on record. It has been examined and found in order. The Transferor Company no.7 does not have any secured creditors.

47. The Transferor Company no.8 has two equity shareholders. Both the equity shareholders have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order.

48. The Transferor Company no.8 has one unsecured creditor, who has given its written consent/NOC to the proposed scheme. The written consent/NOC has been placed on record. It has been examined and found in order. The Transferor Company no.8 does not have any secured creditors.

49. The Transferor Company no.9 has two equity shareholders. Both the equity shareholders have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order. The Transferor Company no.9 does not have any secured and unsecured creditors.

50. The Transferor Company no.10 has three equity shareholders. All the equity shareholders have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have

been examined and found in order. The Transferor Company no.10 does not have any secured and unsecured creditors.

51. The Transferor Company no.11 has 7 equity shareholders. All the equity shareholders have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order. The Transferor Company no.11 does not have any secured and unsecured creditors.

52. The Transferee Company has 15 equity shareholders. Thirteen out of fifteen equity shareholders representing 92.55% in value of the total shareholding have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order.

53. The Transferee Company has fourteen unsecured creditors. Twelve out of fourteen unsecured creditors representing 97.87% in value of the total debt due to the unsecured creditors, have given their written consents/NOC's to the proposed scheme. Their written consents/NOC's have been placed on record. They have been examined and found in order. The Transferee Company does not have any secured creditors.

54. It is needless to state that, in the event written consent/NOC to the proposed scheme has been given by the requisite majority of members and/or

creditors of the Applicant Companies, outside a meeting, the Court has the power to dispense with the requirement of convening meetings of such members and/or creditors. {Ref: Decision of this Court in Company Application (M) 150 of 2016, titled 'Adobe Properties Private Limited with AMP Motors Private Limited', rendered on 16.01.2017}

55. In view of the foregoing, and in view of the written consent/NOC obtained by the requisite majority of equity shareholders and unsecured creditors of the Applicant Companies, the requirement of convening and holding the meetings of equity shareholders and unsecured creditors of the Applicant Companies to consider and, if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

56. Further, a prayer has also been sought in the present application, seeking dispensation of the requirement of publishing notices of the meetings of shareholders and creditors of the Applicant Companies, in newspapers.

57. In view of the circumstance that the requirement of convening meetings of equity shareholders and unsecured creditors of the Applicant Companies has been dispensed with, the requirement of publishing notices for the said meetings in newspapers is also dispensed with.

58. Directed accordingly.

59. The application stands allowed in the aforesaid terms and is accordingly disposed of.

SIDDHARTH MRIDUL, J

JANUARY 20, 2017

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