

S-42

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**CO.PET. 309/2014**

**IN THE MATTER OF**

**PM BUILDCON PRIVATE LIMITED AND ORS.**

.....Petitioners

Through: Mr. Rakesh Kumar, Advocate for  
the Petitioners.

Mr. Atma Sah, Assistant Registrar of  
Companies for the Regional  
Director.

Mr. Rajiv Behl, Advocate for ~~For Private Use~~  
Official Liquidator.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**ORDER**

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27.11.2014

**SANJEEV SACHDEVA, J (ORAL)**

1. This second motion joint petition has been filed under sections 391 to 394 of the 'Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of PM Buildcon Private Limited (hereinafter referred to as Transferor Company No. 1), Cadillac Techno Build Private Limited (hereinafter referred to as Transferor Company No. 2),

CO.PET. 309/2014

1

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SHV Buildwell Private Limited (hereinafter referred to as Transferor Company No. 3) and Pragma Enterprises Private Limited (hereinafter referred to as Transferor Company No. 4) (hereinafter referred to as the Transferor Companies) with KLJ Developers Private Limited (hereinafter referred to as the Transferee Company) (hereinafter collectively all companies are referred to as Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.

2. The registered office of the Petitioner Companies is situated at New Delhi, within the jurisdiction of this Court.
3. Details with regard to the date of incorporation of the Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.
4. Copies of the Memorandum and Articles of Association as well as the latest audited Accounts as at 31<sup>st</sup> March 2013 of the Petitioner Companies have also been enclosed with the Petition.
5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the

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CO.PET. 309/2014

2

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Scheme of Amalgamation have also been placed on record.

6. Learned Counsel for the Petitioner Companies submits that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.
7. The Petitioner Companies had earlier filed C.A (M) 63 of 2014 seeking directions of this Court for dispensation/convening of meetings. Vide Order dated 21<sup>st</sup> April 2014, this Court allowed the Application and requirement of convening all the meetings of Shareholders and Un-secured Creditors of the Transferor Companies and Transferee Company were dispensed with. In view of there being one Secured Creditor of the Transferee Company whose debt was small in proportion to the Net Worth of the Transferee Company, the requirement to convene a meeting was dispensed with the direction to serve an advance notice of the second motion petition along with copy of the said petition and the order dated 21.04.2014. The Petitioners have filed the proof of delivery of advance notice to the secured creditor along with the Petition.

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CO.PET. 309/2014

3

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8. The Petitioner Companies had thereafter filed the present Petition seeking sanction of the Scheme. By an order dated 13<sup>th</sup> May 2014, notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator attached with this Court. Citations were also directed to be published in "Financial Express" (English) and "Jansatta" (Hindi). An affidavit of service and publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

9. In response to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his Report dated 12<sup>th</sup> August 2014, wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Companies do not

CO.PET. 309/2014

4

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appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per the 2<sup>nd</sup> proviso of section 394(1) of the Act.

10. In response to the notice issued in the Petition, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 12<sup>th</sup> August, 2014. Relying on the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme, all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services.
11. The learned Regional Director in his Affidavit has observed that the Petitioner Companies may be asked to comply with the Accounting Treatment as prescribed under Accounting Standard 14 issued by the Institute of Chartered Accountants of India and the provisions of section 2(43) of the Companies Act, 2013.
12. In response to the aforesaid observation, the Petitioner Companies have filed their Affidavit dated 23<sup>rd</sup> September 2014 wherein they have undertaken to

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CO.PET. 309/2014

5

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comply with Accounting Standard 14 issued by the Institute of Chartered Accountants of India and the provisions of section 2(43) of the Companies Act, 2013.

13. Further, the learned Regional Director in his Affidavit has observed that Transferor Company No. 3 in its Annual Return has not disclosed the complete shareholding pattern.
14. In response to the aforesaid observation, the Petitioner Companies have filed their Affidavit, wherein it is submitted that Transferor Company No. 3 has duly filed revised e- FORM 20B (Annual Return).
15. Further, learned Regional Director in his Affidavit has observed that comments from Income Tax Authorities with respect to the Scheme may be called. In respect to this observation, the Income Tax Authorities were put to notice and were directed to file their comments through an Affidavit as per order dated 12.11.2014.
16. Learned standing counsel for the Income Tax Department submits that the affidavit on behalf of the Income Tax is ready and shall be filed during the course of the day.

CO.PET. 309/2014

6

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Evidence Act

17. Further, learned counsel for the Petitioners submits that since last date for filing return with the Income Tax is 30.11.2014 and prays that matter be taken up today. He submits that affidavit of the petitioner in response to affidavit of the Income Tax is ready and shall be filed during the course of the day.
18. The Affidavit on behalf of the Income Tax as well as the Affidavit on behalf of the Petitioners has been produced in Court. The Originals are taken on record.
19. In compliance with the Order dated 12.11.2014, the Income Tax Authorities has filed an Affidavit dated 27<sup>th</sup> November 2014 stating that the Transferor Companies and Transferee Company may be directed to pay the taxes which otherwise would have been payable but for the sanction of the scheme. Further it submits that Petitioners be directed to give undertaking to the effect that Scheme will not affect the right of the Income Tax Department to recover the dues of the Transferor Companies or the Transferee Company irrespective of the sanction of the Scheme. It also submits that the said Scheme shall not defeat the right of the Income Tax departments to take appropriate recourse for recovering the existing or previous

CO.PET. 309/2014

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Indian Evidence Act

liability of the Transferor Companies from Transferee Company and the transferee company will not raise any issue regarding the maintainability of such proceedings.

20. In response of the said observation, the Petitioner Companies have filed their Affidavits dated 27.11.2014, wherein it is undertaken that Petitioner Companies shall comply with the directions issued by the Income Tax Authorities and the transferee shall pay all the dues of the income tax department and other departments. It has been undertaken that the Petitioner companies shall not object to any assessment carried out by the income tax department at any point of time either pertaining to prior to merger or post merger.
21. It is clarified that the Income Tax Department shall have the right to recovery of any existing or future tax liabilities of the Transferor Companies or the Transferee Company, in respect of the assets sought to be transferred under the proposed Scheme irrespective of the sanction of the scheme. The sanction of the Scheme would not affect the powers of the Income Tax Department for recovery, including imposition of penalties, etc, as permissible under law.

CO.PET. 309/2014

8

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22. Further, it is clarified that the Income Tax Authorities shall be entitled to carry out the assessment of the Transferor Companies for the period prior to the appointed date irrespective of the sanction of the Scheme and in case of any tax liability or penalty etc. on the transferor companies, the transferee company shall be liable to settle the same.
23. In view of the aforesaid clarification and undertaking and the concerns of the Regional Director and Income Tax Authorities have been duly addressed.
24. No objection has been received to the Scheme from any other party. Learned Counsel for the Petitioner Companies submits that neither she nor her clients have received any objection pursuant to the citations published in the newspapers.
25. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation.

CO.PET. 309/2014

9

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Consequently, sanction is hereby granted to the Scheme of Amalgamation under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

26. Certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, and in terms of the Scheme, the whole or part of the undertaking, the property, rights and powers of the Transferor Companies be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Companies be transferred to the Transferee Company without any further act or deed.
27. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other department which may be specifically required under any law.

28. Learned Counsel for the Petitioners states that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

29. The Petition is allowed in the above terms.

Order Dasti.

**SANJEEV SACHDEVA, J**

**NOVEMBER 27, 2014**

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CO.PET. 309/2014

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Name of Applicant Rakesh Kr.

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Administrative Officer (In Charge)

(Original)

High Court of Delhi

New Delhi



25/2/15