

Dast

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

No.....7825/1.....DHC

Dated...16/04/13.....

From:  
The Registrar  
Delhi High Court  
New Delhi.

To:  
Mr. Kunal Sabharwal (Advocate for the Petitioner )

Sub. : **CO. Pet 596/2012**

In the Matter of :  
Perfect Radiators and Oil Coolers Pvt. Ltd.                      ...PETITIONER

Sir,  
I am directed to forward herewith for information and necessary compliance a copy of order dated 8.04.2013 passed by Hon'ble Mr. Justice S. MURALIDHAR of this Court.

Yours faithfully,  
*Renu*  
*for* Admn. Officer (J) (CO. Br.)  
for Registrar General  
DV

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 596 of 2012

IN THE MATTER OF:  
PERFECT RADIATORS AND OIL COOLERS  
PVT. LTD.

.....Petitioner

Through: Mr. Kunal Sabharwal, Advocate  
Mr. K.S. Pradhan, Dy. ROC

CORAM: JUSTICE S. MURALIDHAR

**ORDER**  
08.04.2013

%

1. This is a second motion petition filed under Sections 391 and 394 of the Companies Act, 1956 ('Act'), in connection with the Scheme of Amalgamation ('Scheme') of Perfect Radiators Oil Coolers Pvt. Ltd. (hereafter referred to as Transferor company) with Lloyd Electric and Engineering Limited (hereafter referred to as Transferee company). A copy of the Scheme is filed along with the petition as Annexure-A.

2. The registered office of the Transferor company is situated within the National Capital Territory of Delhi and within the jurisdiction of this Court.

3. Learned counsel for the Transferor company submits that the registered office of the Transferee company is situated at Bhiwari, Alwar District, Rajasthan. By an order dated 11<sup>th</sup> October 2012, passed by the High Court of Rajasthan, Jaipur Bench, the Transferee company's first motion

application viz. S.B. Company Application No. 50 of 2012 was disposed of, thereby directing the Transferee company to convene the meetings of the shareholders, secured creditors and unsecured creditors of the Transferee company at its registered office on 24<sup>th</sup> November 2012.

4. The details of the dates of incorporation of the Transferor company and the Transferee company, their authorized, issued, subscribed and paid-up capital have been set out in the petition.

5. The copies of the Memorandum and Articles of Association as well as the audited balance sheet as on 31<sup>st</sup> March 2011 of the Transferor and the Transferee companies have been placed on record.

6. The Scheme has been filed alongwith the company petition. The salient features of the Scheme are detailed out in the company petition and in the accompanying affidavit. It is submitted that the Transferor company and the Transferee company are part of the same group of companies and are engaged in similar type of businesses. The restructuring embodied in the Scheme is intended to provide greater business focus both in the Transferor Company and the Transferee company. The demerger of the '**Heat Exchanger Business**', as defined under the Scheme annexed as Annexure

A hereto, into the Transferee company would be in line with its existing heat exchanger business and would add significant value by integrating and consolidating the heat exchanger business globally thereby providing more product range to its existing and new customers. The proposed demerger and the vesting of the 'Heat Exchanger Business' of the Transferor company into the Transferee company would also enable the Transferor company and the Transferee company to focus on their respective line of businesses thereby increasing the shareholders' value. Further, the demerger will be beneficial to the shareholders, creditors, and employees of both the Transferor company and the Transferee company, since the demerger is expected to enable the Transferor company and the Transferee company to achieve and fulfill their objective more efficiently and economically.

7. So far as the exchange ratio is concerned, the Scheme provides that upon the Scheme coming into effect and in consideration thereof, the Transferee company shall, without any application or deed, issue and allot to every member of the Transferor company holding fully paid-up equity shares in the Transferor company and whose names appear in the register of members of the Transferor company on such date ('record date') as the board of directors (BoDs) of the Transferee company will determine, 54

fully paid-up equity share of Rs.10 (Rupees Ten) each of the Transferee company with rights attached thereto as hereinafter mentioned, in respect of every 100 (One Hundred) fully paid-up equity shares of the face value of Rs.10 (Rupees Ten) each held by such member in the capital of the Transferor company as on the record date. It is further submitted that the Scheme will be beneficial to the Transferor company and the Transferee company, the respective shareholders and creditors of both the companies.

8. Copies of the resolutions dated 29<sup>th</sup> March 2012 and 21<sup>st</sup> September 2012 and 29<sup>th</sup> March 2012 and 26<sup>th</sup> September 2012 passed by the BoDs of the Transferor company and the Transferee company approving and adopting the Scheme have been placed on record.

9. The Transferor company had earlier filed Company Application (M) No. 166 of 2012 seeking directions from the Court to dispense with the requirement of holding the meetings of the shareholders and the creditors (secured and unsecured) of the Petitioner company, which are statutorily required for sanctioning of the Scheme. By an order dated 3<sup>rd</sup> December 2012, the Court allowed the Company Application No. 166 of 2012 and dispensed with the requirement of convening and holding the meetings of

the equity shareholders and the secured and unsecured creditors of the Transferor company.

10. The Transferor company thereafter filed the present petition seeking sanction of the Scheme. By an order dated 21<sup>st</sup> December 2012, notices of the petition were directed to be issued to the Regional Director ('RD'), Northern Region, Ministry of Corporate Affairs. Citations were also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi). An affidavit of service has been filed by the Transferor company showing compliance regarding service of the petition on the RD and also publication of citations in the abovesaid news papers on 6<sup>th</sup> February 2013. Copies of the newspaper cuttings containing the publications have been filed alongwith the affidavit of service.

11. Pursuant to the notice issued to the RD, the RD sought certain information from the Transferor company. Upon examination of the Scheme and documents filed before it, the RD filed his affidavit dated 21<sup>st</sup> March 2013. Relying on Clause 6.1 of the Scheme, he has stated that all the employees of the 'Heat Exchangers Business' of the Transferor company shall become employees of the Transferee company without any break or interruption in their services upon sanctioning of the Scheme.

12. The RD further submitted that the Transferor company by its letter dated 8<sup>th</sup> February 2013 has intimated that certain charges are proposed to be transferred from the Transferor company to the Transferee company. The RD informed the Court in the affidavit that that name of a company cannot be substituted in the charge documents as such for satisfaction of charge, the company is required to file Form No.17. Therefore, the Transferor company may be asked to comply with the relevant provisions of the Act for satisfaction and creation of charge in Transferor company and the Transferee company respectively. To this, the Transferor company in its affidavit of compliance dated 3<sup>rd</sup> April 2013 has submitted that it shall take such steps as are required for satisfaction of charge and creation of charge on the demerged assets upon sanctioning of the Scheme by the Court.

13. The RD also submitted that the Registrar of Companies ('ROC'), Delhi has reported that the Transferor company has not filed its balance sheet as at 31<sup>st</sup> March 2012. Thus, there is a contravention of the provisions of Section 220 of the Act. To this, the Transferor company in its affidavit has stated that the annual filing for financial year ending on 31<sup>st</sup> March 2013 has been done and a duly approved Form 23AC has been placed on record.

14. The RD further submitted that para 16.1 of the Scheme provides that if the Scheme cannot be made effective on or before 30<sup>th</sup> September 2012, the Scheme shall become null and void and be of no effect. He has further submitted that it is not known as to whether BoD of the Transferor company has passed any resolution to extend the validity date or the Transferor company has moved any amendment application before this Court for this purpose.

15. In this regard, the Transferor company in its affidavit stated that the validity of the Scheme was extended by its BoD by a resolution dated 21<sup>st</sup> September 2012 until the Scheme is sanctioned by the Court. Further, a Committee of the BoD of the Transferee company also extended the validity of the Scheme by passing a resolution dated 26<sup>th</sup> September 2012 until the Scheme is sanctioned by the Court. The copies of both the resolutions have been placed on record.

16. The RD also submitted that the Shares of the Transferee company are listed at Bombay Stock Exchange ('BSE') and National Stock Exchange. The BSE by letter dated 1<sup>st</sup> June 2012 has given its 'No Objection' to the proposed Scheme and stated that "The company by its letter dated 4<sup>th</sup> April 2012, has undertaken to lock-in 25% of new equity shares i.e. 10,80,000



equity shares for a period of three years from the date of listing of the new equity shares at BSE". Learned counsel for the Transferor company has submitted that the issuance of the equity shares upon the Scheme becoming effective will be subject to the provisions of the Securities Exchange Board of India Act and the rules and regulations framed thereunder, which itself mandates and prescribes the lock-in requirement and all the requirements as per the applicable laws shall be complied with.

17. No objection has been received to the Scheme from any other party.

18. In view of the approval accorded by the equity shareholders, secured and unsecured creditors of the Petitioner company to the proposed Scheme and there being no surviving objection to the same by the RD, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme of amalgamation of the Transferor company with the Transferee company under Sections 391 and 394 of the Act. Since, the registered office of the Transferor company is in the State of Rajasthan, the second motion Company Petition No. 35 of 2012 is pending adjudication before the Jaipur Bench of

Rajasthan High Court. The Scheme shall come into operation only after the same is also sanctioned by the Jaipur Bench of Rajasthan High Court.

19. The Petitioner company will comply with the statutory requirements in accordance with law. Upon sanctioning of the Scheme by the Jaipur Bench of Rajasthan High Court, a certified copy of this order be filed with the ROC within a period of five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance to law. Upon sanction becoming effective from the appointed date, i.e., 1<sup>st</sup> April 2011, the 'Heat Exchangers Business (as defined in the Scheme)' of the Transferor company shall stand transferred to the Transferee company.

20. It is stated by the Petitioner company that it shall voluntarily deposit a sum of Rs. 50,000 in the Common Pool Fund of the Official Liquidator within a period of six weeks from today. The said statement is taken on record.

21. The petition is allowed in the above terms.

22. A copy of this order be given *dasti*.

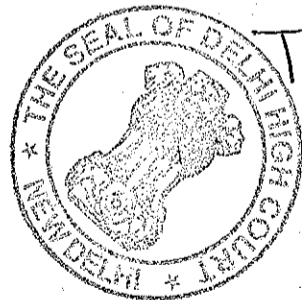
-Sd/-

S. MURALIDHAR J.

APRIL 08, 2013

Co. Pet. 596 of 2012

Page 9 of 9



True Copy  
Raghu