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

**+ CO.PET. 437/2014**

**IN THE MATTER OF**

**TOOBA BUILDTECH PVT. LTD. & OTHERS ...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 the  
Official Liquidator.

**CORAM:**

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

**ORDER**

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**28.11.2014**

**SANJEEV SACHDEVA, J (ORAL)**

1. This second motion joint petition has been filed under sections 391 & 394 of the Companies Act, 1956 ("Act") seeking sanction of the Scheme of Amalgamation ("Scheme") of Tooba Buildtech Private Limited (hereinafter referred to as Transferor Company No. 1) and Walias Multimedia Private Limited (hereinafter referred to as Transferor Company No. 2) with Surindra Metals Private Limited (hereinafter

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referred to as Transferee Company) (hereinafter collectively referred to as Petitioner Companies). A copy of the scheme has been enclosed with the petition.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Hon'ble 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 for the year ending 31<sup>st</sup> March 2013 of 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 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

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Companies Act, 1956 is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed CA (M) No. 109 of 2014 seeking directions of this Court for dispensation of meetings. Vide order dated 11.07.2014 this Court allowed the Application and dispensed with the requirement of convening meetings of Equity Shareholders and Unsecured Creditors of Petitioner Companies. Since there were no Secured Creditors in the Petitioner Companies, requirement of convening meeting of the Secured Creditors were dispensed with.
8. The Petitioner Companies has thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 21.07.2014, notice of the Petition was directed to be issued to the Official Liquidator, Registrar of Companies and The Central Government through Regional Director. Citations were also directed to be published in 'Business Standard' (English) and 'Business Standard' (Hindi). Affidavit of Service and Publication has been filed by the Petitioner Companies showing compliance regarding service of the Petition and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper

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cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

9. In response to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report dated 15.10.2014 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 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 notices issued, the Regional Director has filed its Affidavit dated 22.10.2014. Relying on Clause 5.1 of Part B of the Scheme amalgamation he has stated in Para No. 5 (i) that all the staff/employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services. Further, learned Regional Director submits that despite notice, Income

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Tax Authorities has not raised any observation with respect to the Scheme.

11. Further, the learned Regional Director in Para No. 5 (v) of his Affidavit has observed that the Petitioner Companies are primarily engaged in the business of making investments and/or granting loans and advances where there no mention as to whether these companies are registered with RBI as NBFC, if so, whether they have obtained no objection from the RBI with regard to the proposed Scheme of Amalgamation.
12. In response to the above said observation, the Petitioners have filed an Affidavit dated 20.11.2014 giving undertaking that the Petitioner Companies are not required to be registered with RBI as NBFC. Therefore, “No Objection” from RBI is not required to be obtained.
13. Further, the learned Regional Director in Para No. 5 (vi) of his Affidavit has observed that the Board of Directors of the Transferor Company has approved the proposed Scheme of Amalgamation in their Board Meeting held on 16.04.2014. Accordingly, in terms of the provisions of section 117(3) read with section

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179(3) of the Companies Act, 2013, the Company is required to file such resolution with Registrar of Companies within thirty days of passing of resolution, whereas none of the Petitioner Company has filed such resolution so far thereby prima facie violated the provisions of section 117(3) of the Companies Act, 2013 and therefore, the company(s) may kindly be directed to comply with the provisions of the section 117 (3) of the Companies Act, 2013.

14. In response to the above said observation, the Petitioners have filed an Affidavit dated 01.11.2014 stating that the Board of Directors of Transferor Company No. 2 and Transferee Company have approved the Scheme of Amalgamation on 29.03.2014 i.e. prior to April 1, 2014 therefore, section 117(3) read with section 179(3) of the Companies Act, 2013 is not applicable to Transferor Company No. 2 and Transferee Company. The Board of Directors of the Transferor Company No. 1 has approved the Scheme of Amalgamation on 16.04.2014 which is governed by the applicable provisions of the Companies Act, 2013. Therefore, the Transferor Company No. 1 has filed the Board Resolution with the Registrar of Companies on

29.10.2014. Copy of the acknowledgement issued by Registrar of Companies in this regard has been placed on record.

15. It is clarified that in case it is found that Transferor Companies has violated any provision of the Reserve Bank of India Act, then the Directors of the Transferor and Transferee Companies guilty of breaching the provisions of the Reserve Bank of India Act shall continue to be liable irrespective of the sanction of the Scheme.
16. In view of the abovesaid and the clarification given by the Petitioners, the concern raised by the Learned Regional Director has been duly addressed.
17. No objection has been received to the Scheme from any other party. Mr. Khem Singh, Authorized Signatory of the Petitioner Companies, has filed an Affidavit dated 27.10.2014, confirming that neither the Petitioner Companies nor its Counsel has received any objection pursuant to citations published in the newspapers.
18. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies, representation/affidavit/report filed by the Regional

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Director, Northern Region and Official Liquidator attached with this Court to the proposed scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

19. Certified copy of the order will 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 Act, and in terms of the Scheme the whole of the undertaking, the properties, 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 Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Companies shall stand dissolved without following the process of winding up.

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20. 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.
21. Learned Counsel for the Petitioner states that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs. 50,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.
22. The Petition is allowed in the above terms.

Order Dasti.

**SANJEEV SACHDEVA, J**

**NOVEMBER 28, 2014**

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