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

+ **COMPANY APPLICATION (M) NO. 201/2010**

Date of decision: 15th November, 2010

VIBGYOR INTERNATIONAL PRIVATE LIMITED

..... Transferor Company.

WITH

VIBGYOR TECHNO PLUS PRIVATE LIMITED

Transferee Company.

Through Ms. Ranjana Roy Gawai & Ms.
Vasudha Sen, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER (ORAL)

1. This first motion under Sections 391 and 394 of the Companies Act, 1956 (Act, for short) has been filed by Vibgyor International Private Limited (hereinafter referred to as the transferor company) and Vibgyor Techno Plus Private Limited (hereinafter referred to as the transferee company) in respect of the scheme for de-merger enclosed as Annexure F to this application. The scheme envisages de-merger of the manufacturing division of the transferor company and merger of the said manufacturing division with the transferee company.

2. The applicants have filed copy of the last audited balance sheet of the transferor and the transferee company for the year ending 31st March, 2010. The auditors have bifurcated and divided assets and liabilities of the manufacturing units of the transferor company, which is sought to be de-merged from the transferor company and merged with the transferee company.

3. Both the transferor company and the transferee company are profit making companies. Board of Directors of the transferor company and the transferee company have passed Resolutions approving the proposed scheme of de-merger. It is stated in the application that no proceedings

under Sections 235 and 251 of the Act are pending against the transferor company and the transferee company.

4. It is stated that the transfer of the manufacturing division of the transferor company with the transferee company will facilitate synergies of expertise, size and financial leveraging in managing and operating of manufacturing division, which is presently being undertaken by the transferor company. The transferor company will continue to do business through its trading unit/division.

5. The transferor company has nine shareholders as per the list enclosed as Annexure I. The said shareholders have given their no objection certificates /consents to the proposed scheme of de-merger, which have been enclosed with the application. The transferee company has three shareholders, who have given their no objection certificates/consents to the proposed scheme of de-merger.

6. The transferor company has one secured creditor, viz., Bank of Baroda. The applicant has enclosed no objection certificate/consent of Bank of Baroda dated 18th October, 2010 with the application. The transferor company has also enclosed list of unsecured creditors at pages 188 and 189, to whom Rs.90,20,980.20 is due and payable. The said creditors are 100 in number. Meeting of the unsecured creditors of the transferor company is required to be held to consider the scheme of de-merger. Out of the 100 creditors, 39 creditors are those to whom Rs.10,000/- or less is payable. In value terms Rs.1,21,456.45 is payable to these 39 creditors. Keeping in view the total quantum of debt due and payable by the transferor company and the amount which is due and payable to creditors to whom Rs.10,000/- or more is payable, I dispense with the need and requirement to issue individual notices to creditors to whom less than Rs.10,000/- is payable. However, it will be open to the said creditors to attend and vote in the said meeting pursuant to publication of notices in the newspapers.

7. The list of unsecured creditors of the transferor company has been certified by the management of the transferor company. Statutory auditors

of the transferor company will also certify the said list and file the list in the Court along with an affidavit within ten days.

8. Meeting of the unsecured creditors of the transferor company will be held on 9th January, 2011 at 11 a.m. at the registered office of the transferor company at 904, Pragati Tower, 26, Rajendra Place, New Delhi-110008.

9. Ms. Anju Bhushan Gupta, Advocate (253, Lawyers Chambers, Delhi High Court, Mobile No. 9810298766) and Mr. Parminder Singh Bhullar, Advocate (441, Lawyers Chambers, Delhi High Court, Mobile No. 9810308984), who are present in the Court are appointed as Chairperson and Alternate Chairperson respectively for the said meeting. They shall ensure that the notices to the unsecured creditors are sent under UPC in their presence or in the presence of their authorized representative. They shall also ensure that the notices are sent to the unsecured creditors to whom Rs.10,000/- or more is payable as per the certified list, which will be furnished by the statutory auditors. The coram for the meeting of the unsecured creditors will be 10 in number representing at least 35% of the total unsecured debt due and payable by the respondent company including the debt due and payable to creditors to whom Rs.10,000/- or less is payable. The Chairperson and the Alternate Chairperson will be paid Rs.35,000/- and Rs.25,000/- respectively. Report will be filed in this Court within twenty days after holding of the said meeting.

10. Notices will be published in the newspapers 'The Statesman' (English) and 'Jansatta' (Hindi) at least three weeks before the date of meeting.

11. It is stated that the transferee company does not have any secured or unsecured creditors as the said company has not carried business and was incorporated only on 25th June, 2010. This statement made by the counsel for the transferee company is taken on record. The transferee company will file an affidavit of their statutory auditors affirming the said fact within 10 days. The said affidavit will be also enclosed with the second motion. In view of the aforesaid, requirement to hold meeting of the shareholders of the transferor and the transferee company is dispensed with. Meeting of the secured creditor of the

transferor company is also dispensed with in view of the no objection certificate furnished by Bank of Baroda. Meeting of the creditors of the transferee company is not required to be held as it does not have any secured or unsecured creditor. Meeting of the unsecured creditors of the transferor company is directed to be held.

The application is disposed of.

DASTI.

NOVEMBER 15, 2010
VKR

SANJIV KHANNA, J.