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HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2005:AHC:5344

Reserved

Company Petition No. 33 of 2004

Arising out of

Company Application No. 7 of 2004

(Under Section 391(1) read with Section 394 of the Companies Act, 1956)

And

In the matter of

M/s Bharat Explosives Limited, a Public Limited Company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 9 K.M., Lalitpur Jhansi Road, Lalitpur-284403 (U.P.)

..... Petitioner/Transferee Company

And

In the matter of

M/s Bulk Explosives Limited, duly incorporated under the provisions of Companies Act, 1956, having its Registered Office at House No. 45, Gali No.2, Amgedkar Vihar, Near Harijan Basti, Section-37, NOIDA

.....Transferor Company

Hon. S.P. Mehrotra, J.

The present Company Petition has been filed under Section 391(2) read with Section 394 of the Companies Act, 1956 by M/s Bharat Explosives Limited, a Public Limited Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 9 K.M., Lalitpur Jhansi Road, Lalitpur-284403 (U.P.)(hereinafter referred to as "the Transferee Company or "the Petitioner-Transferee Company").

It appears that a Scheme of Amalgamation is proposed for the amalgamation of M/s Bulk Explosives Limited, having its Registered Office at House No. 45, Gali No.2, Ambedkar Vihar, Near Harijan Basti, Sector-37, NOIDA (U.P.) (hereinafter referred to as "the Transferor Company") with the Transferee Company. Copy of the proposed Scheme of Amalgamation has been filed as Annexure-4 to the Company Petition, and appears at page 110 of the Paper Book of the Company Petition.

It is, interalia, prayed in the Company Petition that the proposed Scheme of Amalgamation be sanctioned by this Court to be binding with effect from the effective date on the Transferor Company (M/s Bulk Explosives Limited) and the Transferee Company (M/s Bharat Explosives Limited) and their Shareholders and all concerned.

It is, interalia, stated in the Company Petition that the Transferor Company was incorporated in Kolkata in the State of West Bengal on 9.7.1999 under the Companies Act, 1956 as a Private Limited Company; and that thereafter, the Registered Office of the Transferor Company was shifted from the State of West Bengal to the State of Uttar Pradesh; and that the change was duly confirmed by the Company Law Board, E.R. Bench, Kolkata on 25.7.2003 in C.P. No. 243(17) ERB/2003, and the same was duly filed with the Registrar of Companies, U.P. and Uttaranchal at Kanpur, pursuant to the provisions of Section 18(3) of the Companies Act, 1956.

It is, interalia, further stated in the Company Petition that the Transferee Company was originally incorporated on 21.8.1962 under the Companies Act, 1956 under the name Narendra Explosives Limited, which name was subsequently changed as Bharat Explosives Limited, by duly passing the special resolution on 30.9.1986 in terms of Section 21 of the Companies Act, 1956 and obtaining the necessary fresh Certificate of Incorporation on 7.10.1986, consequent upon the change of name, from the Registrar of Companies, U.P. at Kanpur.

It is, interalia, further stated in the Company Petition that the Registered Office of the Transferor Company is situate at House No. 45, Gali No. 2, Ambedkar Vihar, Near Harijan Basti, Sector-37, NOIDA (U.P.); and that the Authorized Share Capital of the Transferor Company is Rs. 50,00,000/- divided into Five Lakhs Equity Shares of Rs. 10 each; and that the Issued, Subscribed and Paid Up Share Capital of the Transferor Company as on 31.3.2003 is Rs. 50 lakhs divided into Five Lakhs Equity Shares of Rs. 10/- each fully paid up; and that as on 20.11.2003, the entire Share Capital of the Transferor Company is held by the Transferee Company together and jointly with six individual nominees of the Transferee Company , and they together and jointly hold total Five Lakhs Shares of Rs. 10/- each.

It is, inter-alia, further stated in the Company Petition that consequent upon the entire Share Capital of the Transferor Company being held by the Transferee Company with effect from 20.11.2003, by virtue of Section 3(1)(iv) of the Companies Act, 1956, the Transferor Company has become a Public Limited Company; and that accordingly, the

Transferor Company has taken all necessary steps to change the name of the company by removing the word "Private" from its name, and the Registrar of Companies, U.P. and Uttaranchal has, by fresh Certificate of Incorporation dated 22.1.2004, sanctioned the change of name by deleting the word "Private" from its name. Copy of the fresh Certificate of Incorporation has been filed as Annexure-1 to the Company Petition, and appears at page 30 of the Paper Book of the Company Petition.

It is, inter-alia, further stated in the Company Petition that the Objects of the Transferor Company are set-out in its Memorandum of Association. Copy of the Memorandum and Articles of Association of the Transferor Company has been filed as Annexure-2 to the Company Petition, and appears at page 32 of the Paper Book of the Company Petition. The main objects of the Transferor Company are stated in brief in Paragraph 7 of the Company Petition.

It is, inter-alia, further stated in the Company Petition that the Objects of the Transferee Company are set-out in its Memorandum of Association. Copy of the Memorandum and Articles of Association of the Transferee Company has been filed as Annexure-3 to the Company Petition, and appears at page 58 of the Paper Book of the Company Petition. The main objects of the Transferee Company are stated in brief in Paragraph 8 of the Company Petition.

It is, inter-alia, further stated in the Company Petition that the Authorized Capital of the Transferee Company is Rs. 20,00,00,000/- (Rupees Twenty Crores only) divided into 1,80,00,000 Equity Shares of Rs. 10/- (Rupees Ten only) each, and 2,00,000 Cumulative Preference Shares of Rs. 100/- each; and that the Issued, Subscribed, Called and Paid up Share Capital of the Transferee Company, as on 31.3.2003 is Rs. 1,171.50 Lakhs divided into 1,17,15,000 Equity Shares of Rs. 10/- each fully paid up.

It is, inter-alia, further stated in the Company Petition that the Company Petition has been filed seeking sanction of this Court in respect of the proposed Scheme of Amalgamation for the amalgamation of the Transferor Company with the Transferee Company. Copy of the proposed Scheme of Amalgamation, as mentioned above, has been filed as Annexure-4 to the Company Petition.

The objects sought to be achieved by the proposed merger/ amalgamation have been stated in brief in Paragraph 13 of the Company Petition.

It is, inter-alia, further stated in the Company Petition that the merger/amalgamation would be in the best interests of both the Transferor Company and the Transferee Company and all their shareholders and creditors.

It is, inter-alia, further stated in the Company Petition that Clause III (C) (19) of the Objects of the Transferor Company permits the amalgamation of the Transferor Company; and that Clause III (54) of the Objects of the Transferee Company permits the amalgamation of the Transferee Company.

It is, inter-alia, stated in paragraph 17 of the Company Petition that the proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company has been approved by the Board of Directors of the Transferor Company in its meeting held on 3.1.2004 as well as by the Board of Directors of the Transferee Company in its meeting held on 31.12.2003. Copies of the Resolution passed in this behalf by the Board of Directors of the Transferor Company and the Resolution passed in this behalf by the Board of Directors of the Transferee Company have been filed as Annexures -5 and 6, respectively to the Company Petition, and appear at pages 117 and 119, respectively of the Paper Book of the Company Petition.

It is, inter-alia, stated in paragraph 20 of the Company Petition that the proposed Scheme of Amalgamation is not intended in any manner to have any beneficial effect on the material interest, if any, of the Directors of the Transferor Company and the Transferee Company, and none of the Shares of the Transferor Company is held by any Director.

It is, inter-alia, further stated in the Company Petition that the shares of the Transferor Company are not listed on any Stock Exchange; and that the Equity Shares of the Transferee Company are listed on the Stock Exchanges at Uttar Pradesh and New Delhi; and that pursuant to the listing Agreement entered into with the aforementioned Stock Exchanges by the Transferee Company, the Stock Exchanges had been duly informed of the proposed Scheme of Amalgamation and their approval have been received. Copies of the approval of the Stock Exchanges of Uttar Pradesh and Delhi have been collectively filed as Annexure-7 to the Company Petition, and appear at pages 123 and 122, respectively of the Paper Book of the Company Petition.

It is, inter-alia, stated in paragraph 25 of the Company Petition that no investigation proceedings have been initiated or are pending in relation to the Transferee Company or the Transferor Company under Section 235 or Section 251 or the like of the Companies Act, 1956.

It is, inter-alia, stated in paragraph 19 of the Company Petition that in terms of Clause 3.1 of the Scheme of Amalgamation, the investment of the Transferee Company in the fully paid -up Equity Shares of the Transferor Company shall on the date of the scheme becoming effective stand cancelled and extinguished against the Share Capital of the Transferor Company; and that consequently, there will be no increase in the Share Capital of the amalgamated company; and that as the proposed Scheme of Amalgamation does not envisage a further allotment of fresh Shares, no Share Valuation Report is necessary.

The financial position of the Transferor Company as on 31.3.2003 has been stated in brief in Paragraph 21 of the

Company Petition. Copy of the audited Balance-sheet and Profit and Loss Account of the Transferor Company for the financial year ending 31.3.2003 has been filed as Annexure-8 to the Company Petition, and appears at page 124 of the Paper Book of the Company Petition.

The financial position of the Transferee Company as on 31.3.2003 has been stated in brief in Paragraph 22 of the Company Petition. Copy of the audited Balance-sheet and Profit and Loss Account of the Transferee Company for the financial year ending 31.3.2003 has been filed as Annexure-9 to the Company Petition, and appears at page 155 of the Paper Book of the Company Petition.

Making the aforesaid averments, the Transferee Company filed Company Application No. 7 of 2004, interalia, praying that convening of the meeting of the Secured Creditors of the Transferee Company, the meeting of the Shareholders/Members of the Transferee Company, and the meeting of the Unsecured Creditors of the Transferee Company be dispensed with.

The Court passed the Order dated 6.4.2004 on the aforementioned Company Application.

By the said Order dated 6.4.2004, the Court, interalia, dispensed with the requirement for holding the meeting of the Secured Creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation, as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956.

While dispensing with the requirement for holding the meeting of the Secured Creditors, the Court observed as follows in the said Order dated 6.4.2004:

"In Paragraph 27 of the Company Application, it is, interalia, stated that the following are the Secured Creditors of the Transferee Company:

- (a) The Laxmi Vilas Bank Limited.
- (b) S.B.I. Factors & Commercial Services Private Limited.
- (c) State Bank of Mysore.
- (d) Madhya Pradesh State Industrial Development Corporation.

It is, interalia, further stated in paragraph 27 of the Company Application that the aforesaid Secured Creditors have given Letters of Consent indicating therein that they have no objections to the proposed Scheme of Amalgamation; and that the aforesaid Secured Creditors have also submitted Notarized Affidavits indicating that they have no objections to the Scheme and further stating that the meeting of the Creditors as required under the provision of Section 391(2) of the Companies Act, 1956 be dispensed with....."

"A perusal of the Letters of Consent given by the aforesaid four secured creditors shows that each of the four secured creditors has given its consent to the proposed Scheme of Amalgamation subject to certain conditions mentioned in the said Letters of Consent....."

"Besides the aforesaid Letters of Consent, each of the Secured Creditors has also submitted an affidavit, interalia, stating that it has, in principle, no objection in the event of amalgamation of the Transferor Company with the Transferee Company pursuant to the draft Scheme of Amalgamation, subject to the condition that the charge in favour of such secured creditor is continued with the company, which is to be created upon amalgamation; and that it (secured creditor) shall have no objection if the meeting of the secured creditors is waived by this Court....."

"It is, thus, evident that each of the four secured creditors of the Transferee Company has given its no objection to the proposed Scheme of Amalgamation and to dispensing with the requirement of holding meeting of the secured creditors of the Transferee Company. However, the said no-objection is subject to the conditions mentioned in each of the Letters of consent and in each of the affidavits submitted by the aforesaid four secured creditors, mainly, regarding the continuance of the charge in favour of each of such secured creditors with the company to be created upon amalgamation"

"Hence, in my opinion, it is necessary that express provision(s) be incorporated in the proposed Scheme of Amalgamation ensuring fulfilment of the conditions mentioned by the above four secured creditors in their aforementioned Letters of consent and affidavits (Annexure 10 to the Company Application). It is further necessary that affidavit(s) be filed by/on behalf of the Transferee Company/Applicant making averments ensuring fulfilment of the said conditions mentioned by the above four secured creditors".

"Accordingly, it is directed that while filing Petition for confirmation of the proposed Scheme of Amalgamation on behalf of the Transferee Company/Applicant, express provision(s), as mentioned above, will be incorporated in the proposed Scheme of Amalgamation, and further, affidavit(s) making averments, mentioned above, will also be filed".

As regards convening of the meeting of the Shareholders/Members of the Transferee Company and the meeting of the Unsecured Creditors of the Transferee Company, the Court in this said Order dated 6.4.2004 concluded as follows:

"....."

(2) It is necessary to hold the meeting of the shareholders/members of the Transferee Company for consideration of the proposed Scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956.

(3) It is necessary to hold the meeting of the unsecured creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956."

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Accordingly, directions were given in the said Order dated 6.4.2004 for holding separate meetings of the Shareholders/Members and the Unsecured Creditors of the Transferee Company on 15.5.2004 at the time and place indicated in the said Order dated 6.4.2004.

It further appears that pursuant to the directions given in the said Order dated 6.4.2004, separate meetings of the Shareholders/Members of the Transferee Company and the Unsecured Creditors of the Transferee Company were held on 15.5.2004.

It further appears that Shri Ajay Bahnot, Advocate, Chairman of the aforesaid meetings filed an affidavit (Paper No. A-6), as per the requirements of Rule 76 of the Companies (Court) Rules, 1959.

It is, inter alia, stated in the said affidavit that the advertisements convening the separate meetings of the Shareholders of the Transferee Company and the Unsecured Creditors of the Transferee Company were published in the Newspaper "Dainik Jagran" dated 22.4.2004 and in the Newspaper "Financial Express" dated 23.4.2004. Copies of the relevant extracts of the said Newspapers have been filed as Annexure-1 and Annexure-2, respectively to the said affidavit of Shri Ajay Bahnot (Paper No.A-6).

It is, inter alia, further stated in the said affidavit of Shri Ajay Bahnot that the notices convening the meeting of the Shareholders of the Transferee Company alongwith copies of the proposed Scheme of Amalgamation, Statement required to be sent under Section 393 of the Companies Act, 1956, and the prescribed form of proxy, have been dispatched on 20.4.2004 under Certificate of Posting addressed to all the Equity Shareholders of the Transferee Company, in terms of the said Order dated 6.4.2004. One set of notice so dispatched has been filed as Annexure-3 to the said affidavit of Shri Ajay Bahnot (Paper No. A-6).

It is, inter alia, further stated in the said affidavit of Shri Ajay Bahnot that notices convening the meeting of the Unsecured Creditors of the Transferee Company alongwith copies of the proposed Scheme of Amalgamation, Statement required to be sent under Section 393 of the Companies Act, 1956 and the prescribed form of proxy, have been dispatched on 20.4.2004 under Certificate of Posting to all the Unsecured Creditors in terms of the said Order dated 6.4.2004. One set of notice so dispatched has been filed as Annexure-4 to the said affidavit of Shri Ajay Bahnot (Paper No.A-6).

A Certificate dated 25.4.2004 signed by the Company Secretary of the Transferee Company confirming the facts stated in the said affidavit of Shri Ajay Bahnot (Paper No. A-6) has been filed as Annexure-5 to the said affidavit of Shri Ajay Bahnot.

It further appears that Shri Ajay Bahnot, Advocate, Chairman of the said meetings filed an affidavit, sworn on 13.7.2004 (Paper No. A-7), as per the provisions of Rule 78 of the Companies (Court) Rules, 1959.

Alongwith the said affidavit (Paper No. A-7), Shri Ajay Bahnot has submitted his Report in regard to the meeting of the Shareholders of the Transferee Company as Annexure-1 to the said affidavit.

Copy of the proposed Scheme of Amalgamation placed before the said meeting of the Shareholders has been filed as Annexure-2 to the said affidavit.

Minutes of the said meeting of the Shareholders has been filed as Annexure-3 to the said affidavit.

It is, inter alia, stated in paragraph 3 of the said affidavit of Shri Ajay Bahnot that the said meeting of the Shareholders of the Transferee Company was attended by 31 Shareholders in person or by proxies representing 90.28% of the total paid-up value of the Equity Shares of the Transferee Company.

In paragraph 5 of the said affidavit of Shri Ajay Bahnot as also in the Minutes of the said meeting of the Shareholders (Annexure-3 to the said affidavit of Shri Ajay Bahnot), it is stated that the following Resolution was placed before the said meeting of the Shareholders:

"Resolved that the consent of the Shareholders of Bharat Explosives Limited, be and is hereby, granted for the approval of Draft Scheme of Merger/Amalgamation of M/s Bulk Explosives Limited with M/s Bharat Explosives Limited. Further Resolved that consent of the Shareholders of Bharat Explosives Limited, be and is hereby, given to the amendment made in the Draft Scheme of Merger/Amalgamation of M/s Bulk Explosives Limited with M/s Bharat Explosives Limited with respect to ensuring the interest of the secured creditors of M/s Bharat Explosives Limited in pursuance to the Order dated 06.04.2004 of Hon'ble High Court of Judicature at Allahabad. Further Resolved that approval of the Shareholders of Bharat Explosives Limited, be and is hereby, accorded for any other amendment/amendments with respect to the Draft Scheme of Merger/Amalgamation of M/s Bulk Explosives Limited with M/s Bharat Explosives Limited as may be directed by the Hon'ble High Court of Judicature at Allahabad. Further Resolved that the Company be and is hereby authorized to take all the action, deeds and steps as deemed necessary for carrying out the Scheme of Merger/Amalgamation of M/s Bulk Explosives Limited with M/s Bharat Explosives Limited as may be directed by the Hon'ble High Court of Judicature at Allahabad".

In paragraph 6 of the said affidavit of Shri Ajay Bahnot, it is, inter alia, stated that the said Resolution was passed unanimously at the said meeting of the Shareholders.

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Further, alongwith the said affidavit, Shri Ajay Bahnot has submitted his Report in regard to the meeting of the Unsecured Creditors of the Transferee Company as Annexure-4 to the said affidavit.

Minutes of the said meeting of the Unsecured Creditors has been filed as Annexure-5 to the said affidavit.

It is, interalia, stated in paragraph 12 of the said affidavit of Shri Ajay Bahnot that the said meeting of the Unsecured Creditors of the Transferee Company, represented by the Class of persons having made Fixed Deposits and Corporate entities having made Inter-Corporate Deposits, was attended by 26 number of Fixed Deposit Holders and 15 number of Authorised representatives of entities having made Inter-Corporate Deposits with the Transferee Company representing 78.31% of the total value of the Unsecured Creditors represented by the Class of Fixed Deposit Holders and the Persons/Entities having made Inter-Corporate Deposits with the Transferee Company.

In paragraph 14 of the said affidavit of Shri Ajay Bahnot as also in the Minutes of the said meeting of the Unsecured Creditors (Annexure-5 to the said affidavit of Shri Ajay Bahnot), it is stated that the following Resolution was placed before the said meeting of the Unsecured Creditors:

"Resolved that the consent of the Unsecured Creditors, represented by the class of persons having made Fixed Deposits with the Company and Corporate entities having made Inter-Corporate Deposits, be and is hereby, granted for the approval of Draft Scheme of Merger/Amalgamation of M/s Bulk Explosives Limited with M/s Bharat Explosives Limited.

Further Resolved that consent of the Unsecured Creditors, represented by the class of persons having made Fixed Deposits with the Company and Corporate entities having made Inter-Corporate Deposits, be and is hereby, given to the amendment made in the Draft Scheme of Merger/Amalgamation of M/s Bulk Explosives Limited with M/s Bharat Explosives Limited with respect to ensuring the interest of the secured creditors of M/s Bharat Explosives Limited in pursuance to the Order dated 06.04.2004 of Hon'ble High Court of Judicature at Allahabad.

Further Resolved that approval of the Unsecured Creditors, represented by the class of persons having made Fixed Deposits with the Company and Corporate entities having made Inter-Corporate Deposits, be and is hereby, accorded for any other amendment/amendments with respect to the Draft Scheme of Merger/Amalgamation of M/s Bulk Explosives Limited with M/s Bharat Explosives Limited as may be directed by the Hon'ble High Court of Judicature at Allahabad.

Further Resolved that the Company be and is hereby authorized to take all the action, deeds and steps as deemed necessary for carrying out the Scheme of Merger/Amalgamation of M/s Bulk Explosives Limited with M/s Bharat Explosives Limited as may be directed by the Hon'ble High Court of Judicature at Allahabad".

In paragraph 15 of the said affidavit of Shri Ajay Bahnot, it is, interalia, stated that the said Resolution was passed unanimously at the said meeting of the Unsecured Creditors.

Taking note of the aforesaid affidavits filed by Shri Ajay Bahnot, Chairman of the said meetings, the Court passed the following Order dated 14.7.2004 on the said Company Application No.7 of 2004, interalia, permitting the Transferee Company to file Petition for confirmation under Rule 79 of the Companies (Court) Rules, 1959 within two weeks from the date of the said Order dated 14.7.2004:

"By the order dated 6.4.2004, the meeting of the secured creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956 was dispensed with.

Further, by the said order dated 6.4.2004, the meeting of the shareholders/members of the Transferee Company for consideration of the proposed Scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956 was directed to be held in accordance with the directions given in the said order. Again, by the said order dated 6.4.2004, the meeting of the unsecured creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956 was directed to be held in accordance with the directions given in the said order. Sri Ajai Bahnot, Advocate was appointed as the Chairman, and Sri Rahul Sahai, Advocate was appointed as the alternate Chairman. for conducting the aforesaid meetings of the shareholders/members and the unsecured creditors of the Transferee Company.

Sri Ajai Bahnot, Advocate, Chairman of the aforesaid meetings, has filed an affidavit sworn on 13th July, 2004 under Rule 76 of the Companies (Court) Rules, 1959.

Sri Ajai Bahnot, Advocate, Chairman of the aforesaid meetings has also filed another affidavit sworn on 13th July, 2004 under Rule 78 of the Companies (Court) Rules, 1959.

Alongwith the said affidavit filed under Rule 78 of the Companies (Court) Rules, 1959, Sri Ajai Bahnot, Advocate, Chairman of the aforesaid meetings, has submitted his report in respect of the meeting of the equity share-holders / members of the Transferee Company as Annexure no. 1 to the said affidavit.

Minutes of the said meeting of the equity shareholders/members of the Transferee Company have been filed as Annexure no. 3 to the said affidavit filed under Rule 78 of the Companies (Court) Rules, 1959.

The report of Sri Ajai Bahnot, Advocate, Chairman in respect of the meeting of the unsecured creditors of the Transferee Company has been filed as Annexure no. 4 to the said affidavit filed under Rule- 78 of the Companies (Court) Rules, 1959.

Minutes of the meeting of the unsecured creditors of the Transferee Company have been filed as Annexure no. 5 to the

said affidavit filed under Rule 78 of the Companies (Court) Rules, 1959.

Having regard to the aforesaid circumstances, the Transferee Company is permitted to file Petition for confirmation under Rule 79 of the Companies (Court) Rules, 1959 within two weeks from today."

Pursuant to the said Order dated 14.7.2004, the Transferee Company filed the present Company Petition on 2.8.2004.

On 3.8.2004, the Court passed the following Order on the present Company Petition:

"On oral prayer made by the learned counsel for the Transferee Company/petitioner, he is permitted to make correction in the cause title by substituting the word "Application" by the word "Petition" in the main petition as well as in the annexures thereto.

After the above correction is made by the learned counsel for the Transferee Company/ petitioner, the Registry will give appropriate number to the Company Petition.

Issue notice fixing 25.10.2004 as the date for hearing of the petition.

Notice will be issued to the Regional Director, Northern Region, Ministry of Company Affairs, Govt. of India, 10/499B, Alenganj, Khalasi Line, Kanpur as per the provisions of Section 394A of the Companies Act, 1956.

Besides, notice of hearing of the petition will also be published in the same newspapers in which the notice of the meetings, as directed by the order dated 6.4.2004, was advertised.

The publication in the aforesaid newspapers will be made not less than 10 days before the aforesaid date fixed for hearing of the petition."

It further appears from the Ordersheet dated 25.10.2004 that notices, as directed by the said Order dated 3.8.2004, were issued to the aforementioned Regional Director, Kanpur as well as to the Official Liquidator.

It further appears that pursuant to the directions given in the said Order dated 3.8.2004, notice of hearing of the Company Petition was published in the Newspaper "Financial Express" dated 24.9.2004 and the Newspaper "Dainik Jagran" dated 24.9.2004, i.e., the same Newspapers in which advertisements convening the aforementioned meetings had been published.

An affidavit (Paper No. A-9), sworn by Pankaj Garg on 26.10.2004 was filed in this regard on behalf of the Transferee Company.

Taking note of the said affidavit (Paper No.A-9), the Court passed the following Order dated 10.3.2005:

" By the Order dated 3.8.2004, it was , interalia, directed that the notice of hearing of the petition would be published in the same Newspapers in which the notice of the meetings, as directed by the Order dated 6.4.2004,, had been advertised. An affidavit (Paper no. A-9), sworn by Pankaj Garg on 26.10.2004, has been filed on behalf of the Petitioner -Transferee Company. Along with the said affidavit, photocopies of the relevant extracts of the Newspapers have been filed indicating that the publication, as directed by the said Order dated 3.8.2004, had been made.

Sri Yashwant Verma, learned counsel for the Petitioner -Transferee Company prays for and is granted one week's time for filing copies of the said Newspapers in original.

Office is directed to submit report as to whether any Objection has been received pursuant to the petition having been advertised , as directed by the said Order dated 3.8.2004.

Requisite report will be submitted on the next date of listing. Sri S.K. Saxena, Official Liquidator has filed today Representation / Affidavit of Regional Director, Northern Region, Ministry of Company Affairs , Kanpur under Section 394-A of the Companies Act, 1956 .

Let the same be taken on record.

List this case on 24.3.2005. The case will be listed amongst the cases listed at the top of the cause list of the said date."

Subsequently, as mentioned in the above-quoted Order dated 10.3.2005, copies of the relevant extracts of the Newspapers, in original, were filed alongwith a Supplementary Affidavit (Paper No. A-12), sworn by Smt. Anita Thakur on 23.3.2005.

By the Order dated 24.3.2005, the said Supplementary Affidavit and the original copies of the relevant extracts of the Newspapers filed therewith, were directed to be taken on record.

The said Order dated 24.3.2005 is as follows:

"Pursuant to the Order dated 10.3.2005, the case is listed today.

Sri Yashwant Verma, learned counsel for the Petitioner-Transferee Company has filed today a Supplementary Affidavit, sworn by Smt. Anita Thakur on 23.3.2005, annexing thereto, original copies of the relevant extracts of the Newspapers, as mentioned in the Order dated 10.3.2005.

Let the Supplementary Affidavit and the original copies of the relevant extracts of the Newspapers filed therewith, be taken

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on record.

By the said Order dated 10.3.2005, office was directed to submit report as to whether any objection had been received pursuant to the petition having been advertised, as directed by the Order dated 3.8.2004.

Office has not submitted the requisite report.

Office is directed to submit report on the next date fixed in the matter.

List this case on 8.4.2005"

It further appears that in response to the notice issued pursuant to the said Order dated 3.8.2004, the aforementioned Regional Director, Kanpur filed his representation/affidavit (Paper No. A-11), sworn on 10.11.2004, under Section 394-A of the Companies Act, 1956. By the Order dated 10.3.2005, quoted above, the said representation/ affidavit was taken on record.

In reply to the said representation/affidavit filed by the aforementioned Regional Director, Kanpur, a counter affidavit (Paper No. A-10), sworn on 2.12.2004, was filed on behalf of the Transferee Company.

During the course of hearing of the present Company Petition, a Supplementary Affidavit (Paper No.A-13), sworn on 19.4.2005, was filed on behalf of the Transferee Company. Alongwith the said Supplementary Affidavit, the Annual Report for the financial year 2003-2004 in respect of the Transferee Company, interalia, containing the last audited Balance Sheet of the Transferee Company was filed as Annexure-SA-1 to the said Supplementary Affidavit (Paper No. A-13).

Before proceeding further, it is pertinent to note that in paragraph 37 of the Company Petition, it is, interalia, stated that the Court in its Order dated 6.4.2004 observed that the proposed Scheme of Amalgamation should make express provision (s) to the effect that the charges created by the Transferee Company on its assets would not be adversely affected on amalgamation under the proposed Scheme of Amalgamation; and that the said Order dated 6.4.2004 accordingly directed that express provision (s) be incorporated in the proposed Scheme of Amalgamation ensuring fulfillment of the said conditions, and that affidavits be filed by or on behalf of the Transferee Company making averments ensuring the fulfillment of the said conditions.

In paragraph 38 of the Company Petition, it is, interalia, stated that though the Shareholders as well as the Unsecured Creditors have vide their Resolutions expressed and accorded their approval to any amendment/amendments with respect to the Draft Scheme of Amalgamation as may be directed by this Court, the affidavit as required by the said Order dated 6.4.2004 is being filed as Annexure-13 to the Company Petition.

In paragraph 39 of the Company Petition, it is, interalia, stated that Clause 2.4 of the proposed Scheme of Amalgamation may accordingly be amended by insertion of the following proviso:

"Provided however that the proposed acquisition of liabilities of BEPL by BEL shall not however have any adverse effect on the charges of the existing secured creditors on the assets of BEL"

I have heard Shri Yashwant Verma, learned counsel for the Petitioner-Transferee Company and Shri S.K. Saxena, Official Liquidator, and perused the record.

From the narration of the facts given above, it is evident that the requirement for holding the meeting of the Secured Creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation, as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956, was dispensed with by this Court by its Order dated 6.4.2004 passed on the aforesaid Company Application No. 7 of 2004.

Further, the meeting of the Shareholders/Members of the Transferee Company, as per the directions given in the said Order dated 6.4.2004, was held on 15.5.2004 at the time and place mentioned in the said Order dated 6.4.2004.

Quorum for the said meeting of the Shareholders/Members of the Transferee Company, as fixed by this Court in the said Order dated 6.4.2004, was 30 by number and 60% by value of the Shareholders/Members of the Transferee Company present either personally or by proxy.

As is evident from a perusal of the Report submitted by Shri Ajay Bahnot, Chairman of the said meeting of the Shareholders/Members of the Transferee Company, the said meeting, held on 15.5.2004, was attended by 31 Shareholders in person or by proxies representing 90.28% of the total paid-up value of the Equity Shares of the Transferee Company. Further, the Resolution, as reproduced above, approving the proposed Scheme of Amalgamation was passed unanimously at the said meeting of the Shareholders/Members of the Transferee Company.

Further, the meeting of the Unsecured Creditors of the Transferee Company, as per the directions given in the said Order dated 6.4.2004, was held on 15.5.2004 at the time and place mentioned in the said Order dated 6.4.2004.

Quorum for the said meeting of the Unsecured Creditors of the Transferee Company, as fixed by this Court in the said Order dated 6.4.2004, was 20 by number and 55% by value of the Unsecured Creditors of the Transferee Company present either personally or by proxy.

As is evident from a perusal of the Report submitted by Shri Ajay Bahnot, Chairman of the said meeting of the Unsecured Creditors of the Transferee Company, the said meeting held on 15.5.2004, was attended by 26 number of Fixed Deposit

Holders and 15 number of Authorized Representatives of entities having made Inter-Corporate Deposits with the Transferee Company representing 78.31% of the total value of the Unsecured Creditors represented by the Class of Fixed Deposit Holders and the Persons/Entities having made Inter-Corporate Deposits with the Transferee Company.

Further, the Resolution, as reproduced above, approving the proposed Scheme of Amalgamation was passed unanimously at the said meeting of the Unsecured Creditors of the Transferee Company.

Let us now consider the representation/affidavit, sworn on 10.11.2004 (Paper No. A-11), filed by the aforementioned Regional Director, Kanpur under Section 394-A of the Companies Act, 1956.

It is, inter alia, stated in the said representation/ affidavit that as per Clause 2.10 (a) of Part-II of the proposed Scheme of Amalgamation, all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the proposed Scheme of Amalgamation by this Court.

The said representation/ affidavit of the aforementioned Regional Director, Kanpur further refers to Clause 4.6 of Part-IV of the proposed Scheme of Amalgamation, which is as follows:

"4.6. In the event of any of the approvals or conditions enumerated in Clause 4.5 are not being obtained or complied with on Order before 30.06.2004 or with such further period or periods as may be agreed upon by and between BEPL and BEL (through their respective Boards of Directors) the Scheme shall become null and void and in that event no rights or liabilities whatsoever shall accrue to or be incurred inter se between BEPL and BEL."

It may be mentioned that BEPL in the above Clause stands for Bulk Explosives Ltd (i.e., Transferor Company) while BEL in the above Clause stands for Bharat Explosives Ltd. (i.e., Transferee Company), as is evident from the Definition Clause of the proposed Scheme of Amalgamation appearing at page 111 of the Paper Book of the Company Petition.

It is, inter alia, stated in the said representation/ affidavit of the aforementioned Regional Director, Kanpur that the matter pertaining to the above-quoted Clause 4.6 of the proposed Scheme of Amalgamation was taken up with both the Transferee Company as well as the Transferor Company; and that the Transferee Company by its letter dated 27.9.2004 has intimated that the Board of Directors of the Transferor Company as well as the Board of Directors of the Transferee Company, in their respective Board Meetings held on 26.5.2004 and 23.6.2004 have passed necessary Resolutions extending the period for sanctioning the proposed Scheme of Amalgamation from 30.6.2004 till such period, the same is approved by the Court and other necessary formalities are complied with; and that it has also been clarified that no application has been moved before this Court to make amendment in Clause 4.6 of Part-IV of the proposed Scheme of Amalgamation.

In reply to the said representation/ affidavit of the aforementioned Regional Director, Kanpur, counter affidavit, sworn on 2.12.2004 (Paper No. A-10), has been filed on behalf of the Petitioner-Transferee Company.

In paragraph 4 of the said counter affidavit, it is, inter alia, stated that being conscious of the provisions of Clause 4.6 of the proposed Scheme of Amalgamation, the Board of Directors of the Petitioner-Transferee Company on 23.6.2004 passed a Resolution extending the period for obtaining all approvals from 30.6.2004 till such period as the same is approved by the Court and other necessary formalities are complied with. Certified copy of the said Resolution of the Board of Directors of the Petitioner-Transferee Company passed on 23.6.2004 has been filed as Annexure-CA-1 to the said counter affidavit.

It is submitted by Shri S.K. Saxena, Official Liquidator that as per Clause 4.6 of the proposed Scheme of Amalgamation, in the event of any of the approvals or conditions enumerated in Clause 4.5 of the proposed Scheme of Amalgamation are not being obtained or complied with on or before 30.6.2004, the proposed Scheme of Amalgamation would become null and void, and in that event, no rights or liabilities whatsoever would accrue to or be incurred inter se between BEPL, i.e., the Transferor Company and BEL, i.e., the Transferee Company. The proposed Scheme of Amalgamation, the submission proceeds, not having been sanctioned on or before 30.6.2004, the same became null and void in view of the provisions of Clause 4.6 of the proposed Scheme of Amalgamation.

As regards the Resolutions passed by the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company extending period, as mentioned in the said Clause 4.6 of the proposed Scheme of Amalgamation, it is submitted by Shri Saxena that such extension of period, as mentioned in the said Clause 4.6, amounted to amendment in the proposed Scheme of Amalgamation, and the same was permissible only with the consent of this Court as well as the Shareholders and the Creditors of the Transferor Company and the Transferee Company.

In reply, Shri Yashwant Verma, learned counsel for the Petitioner - Transferee Company refers to the above-quoted Clause 4.6 of the proposed Scheme of Amalgamation and submits that the said Clause itself contemplates extension of period beyond 30.6.2004 by agreement between BEPL, i.e., the Transferor Company and BEL, i.e., the Transferee Company "through their respective Boards of Directors".

Shri Verma submits that the Board of Directors of the Transferor Company as well as the Board of Directors of the Transferee Company at their respective meetings have passed Resolutions extending the period, mentioned in Clause 4.6 of the proposed Scheme of Amalgamation, beyond 30.6.2004, and the said extension was in accordance with the provisions of the said Clause 4.6 itself, and, therefore, objections raised in this regard on behalf of the aforementioned

Shri Verma further refers to Clause 4.2 of the proposed Scheme of Amalgamation, which is as follows:

"4.2. BEPL (by its Directors), and BEL (by its Directors) may, in their full and absolute discretion, assent to the any alteration or modification of this Scheme which the Court and/or other Competent Authority may deem fit to approve or impose and may give such directions as they may consider necessary to settle any question or difficulty arising under the Scheme or in regard to its implementation or in any matter connected therewith (including any question or difficulty arising in connection with any deceased or insolvent shareholder of the respective Companies). In the event that any conditions are imposed by any Competent Authority which BEPL or BEL find unacceptable for any reason whatsoever then BEPL or BEL shall be entitled to withdraw from the Scheme."

As noted above, BEPL in the above Clause stands for Bulk Explosives Ltd. (i.e., Transferor Company) and BEL in the above Clause stands for Bharat Explosives Ltd. (i.e., Transferee Company).

It is submitted that in view of Clause 4.2, BEPL (i.e., Transferor Company) "by its Directors", and BEL (i.e., Transferee Company) "by its Directors" may in their full and absolute discretion assent to any alteration or modification of the proposed Scheme of Amalgamation, which the Court and/or other Competent Authority may deem fit to approve or impose and " may give such directions as they may consider necessary to settle any question or difficulty arising under the Scheme or in regard to its implementation or in any matter connected therewith".

It is submitted by Shri Verma that in view of the above-quoted Clause 4.2 of the proposed Scheme of Amalgamation also, it is open to the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company to give such directions as they may consider necessary to settle any question or difficulty arising under the Scheme or in regard to its implementation or in any matter connected therewith.

In view of the wide language of the said Clause 4.2 of the proposed Scheme of Amalgamation, the submission proceeds, the Boards of Directors of the Transferor Company and the Transferee Company were fully empowered to extend the period mentioned in Clause 4.6 by passing Resolutions at their respective Board meetings.

As regards the question of consent of this Court and the question of consent of the Shareholders and the Creditors of the Transferor Company and the Transferee Company, it is submitted that extension of period mentioned in Clause 4.6 does not amount to any amendment in the proposed Scheme of Amalgamation, as such, and, therefore, there was no occasion to obtain consent of this Court or of the Shareholders and the Creditors of the Transferor Company and the Transferee Company. It is submitted that power of extension has been conferred on the respective Boards of Directors of the Transferor Company and the Transferee Company, as per Clause 4.6 of the proposed Scheme of Amalgamation itself. It is in the exercise of the said power given in Clause 4.6 of the proposed Scheme of Amalgamation itself that the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company have passed Resolutions at their respective meetings extending the period mentioned in the said Clause 4.6. Thus, this was merely an exercise of power conferred under the proposed Scheme of Amalgamation itself, and no amendment of the proposed Scheme of Amalgamation as such was involved requiring any consent, as contended by the Official Liquidator.

It is further emphasized by Shri Verma that the Shareholders as well as the Creditors having full knowledge of the contents of Clause 4.6 of the proposed Scheme of Amalgamation, approved the proposed Scheme of Amalgamation including its Clause 4.6, and as such, there was no occasion for referring the matter pertaining to extension of period, mentioned in Clause 4.6, by the respective Boards of Directors of the Transferor Company and the Transferee Company, for obtaining consent of the Shareholders and the Creditors of the Transferor Company and the Transferee Company.

I have considered the submissions made by Shri S.K. Saxena, Official Liquidator and Shri Yashwant Verma, learned counsel for the petitioner-Transferee Company.

A perusal of various provisions contained in Chapter V of Part-VI of the Companies Act, 1956, consisting of Section 390 to Section 396-A shows that the said Chapter V deals with "arbitration, compromises, arrangements and reconstructions". Rules 67 to 87 of the Companies (Court) Rules, 1959 have been framed with reference to the provisions of Sections 391 to 394 of the Companies Act, 1956.

A perusal of the provisions contained in Sections 391 to 394 of the Companies Act, 1956 and Rules 67 to 87 of the Companies (Court) Rules, 1959 shows that the said provisions, inter alia, provide for various aspects of the holding of the meeting of the Creditors or class of Creditors or of the Members or class of Members, as the case may be, of the Company (ies) in question.

Clause 4.6 of the proposed Scheme of Amalgamation, as noted above, provides that in the event of the approvals or conditions enumerated in Clause 4.5 not being obtained or complied with on or before 30.6.2004, the proposed Scheme of Amalgamation would become null and void, and in that event, no rights or liabilities whatsoever would accrue to or be incurred inter se between the Transferor Company (BEPL) and the Transferee Company (BEL). However, the said Clause 4.6 itself contemplates extension of period beyond 30.6.2004. For this, as per the provisions of the said Clause 4.6 itself, agreement between the Transferor Company and the Transferee Company "through their respective Boards of Directors" is required. The proposed Scheme of Amalgamation, as is evident from the narration of the facts above, has received consent of the Shareholders and the Creditors (Secured as well as Unsecured) of the Transferee Company. Further, as

will be apparent from a perusal of the record of Company Petition No. 32 of 2004 filed by the Transferor Company, the proposed Scheme of Amalgamation has received consent of the Shareholders and the Creditors (Secured as well as Unsecured) of the Transferor Company.

Hence, the proposed Scheme of Amalgamation including the said Clause 4.6 has received consent of the Shareholders and the Creditors of the Transferor Company as well as the Shareholders and the Creditors of the Transferee Company.

As noted above, the Board of Directors of the Transferee Company in its meeting held on 23.6.2004 has passed Resolution extending the period mentioned in the said Clause 4.6 beyond 30.6.2004. The said Resolution, as mentioned above, has been filed as Annexure-CA-1 to the counter affidavit (Paper No. A-10) filed on behalf of the Petitioner-Transferee Company.

Further, a perusal of the record of Company Petition No. 32 of 2004 filed by the Transferor Company, particularly, the counter affidavit (Paper No. A-9) filed on behalf of the Transferor Company in the said Company Petition No. 32 of 2004, shows that the Board of Directors of the Transferor Company in its meeting held on 26.5.2004 has approved the extension of the period mentioned in Clause 4.6 beyond 30.6.2004.

The said Resolution dated 26.5.2004 has been filed as Annexure-CA-1 to the said counter affidavit (Paper No. A-9) filed on behalf of the Transferor Company in the said Company Petition No. 32 of 2004.

It will, thus, be seen that the Board of Directors of the Transferee Company and the Board of Directors of the Transferor Company at their respective meetings have approved the extension of period mentioned in the said Clause 4.6 of the proposed Scheme of Amalgamation beyond 30.6.2004. The said extension has been done by the said Boards of Directors in exercise of power given in the said Clause 4.6 itself.

The proposed Scheme of Amalgamation including its Clause 4.6 having received consent of the Shareholders and the Creditors of the Transferor Company and the Shareholders and the Creditors of the Transferee Company, the respective Boards of Directors of the Transferor Company and the Transferee Company could validly exercise the power conferred under the said Clause 4.6 for extending the period beyond 30.6.2004, and no fresh consent of the Shareholders and/or the Creditors of the Transferor Company and the Shareholders and / or the Creditors of the Transferee Company was required in such a situation.

The submissions made by Shri Yashwant Verma, learned counsel for the Petitioner -Transferee Company, in this regard, in my opinion, are correct.

It is further noteworthy that Clause 4.2 of the proposed Scheme of Amalgamation also gives wide powers to the respective Boards of Directors of the Transferor Company and the Transferee Company, inter alia, to "give such directions as they may consider necessary to settle any question or difficulty arising under the Scheme or in regard to its implementation or in any matter connected therewith".

Reading Clause 4.6 with Clause 4.2 of the proposed Scheme of Amalgamation, it is evident that the Board of Directors of the Transferor Company and the Board of Directors of the Transferee Company may agree to the extension of the period mentioned in Clause 4.6 of the proposed Scheme of Amalgamation.

In view of the aforesaid discussion, particularly in view of the provisions contained in Clause 4.6 itself and in view of the wide powers given in Clause 4.2 of the proposed Scheme of Amalgamation, I am of the opinion that it is not necessary for the Transferor Company and the Transferee Company to approach this Court for calling fresh meeting(s) as per the provisions of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956 for extending the period as contemplated in Clause 4.6 of the proposed Scheme of Amalgamation.

It is thus evident that the question raised in the said representation/affidavit of the aforementioned Regional Director, Kanpur regarding the period mentioned in Clause 4.6 of the proposed Scheme of Amalgamation, has been satisfactorily explained by the Petitioner-Transferee Company.

As noted above, separate meetings of the Shareholders/Members of the Transferee Company and the Unsecured Creditors of the Transferee Company were held on 15.5.2004, as per the directions given in the Order dated 6.4.2004 passed on Company Application No. 7 of 2004, and the Resolutions, as reproduced above, approving the proposed Scheme of Amalgamation were passed unanimously at the said meetings.

Further, as noted hereinbefore, the requirement for holding the meeting of the Secured Creditors of the Transferee Company for consideration of the proposed Scheme of Amalgamation, as per the requirements of Section 391(1) and (2) read with Section 393 of the Companies Act, 1956, was dispensed with by the said Order dated 6.4.2004. However, while dispensing with the requirement for holding the said meeting of the Secured Creditors of the Transferee Company, it was observed as follows:

"Hence, in my opinion, it is necessary that express provision(s) be incorporated in the proposed Scheme of Amalgamation ensuring fulfilment of the conditions mentioned by the above four secured creditors in their aforementioned Letters of consent and affidavits (Annexure 10 to the Company Application). It is further necessary that affidavit(s) be filed by/on behalf of the Transferee Company/Applicant making averments ensuring fulfilment of the said conditions mentioned by the

above four secured creditors".

"Accordingly, it is directed that while filing Petition for confirmation of the proposed Scheme of Amalgamation on behalf of the Transferee Company/Applicant, express provision(s), as mentioned above, will be incorporated in the proposed Scheme of Amalgamation, and further, affidavit(s) making averments, mentioned above, will also be filed".

Averments regarding compliance of the aforementioned directions given in the said Order dated 6.4.2004, have been made in paragraphs 37,38 and 39 of the Company Petition, as already mentioned hereinbefore.

The affidavit, as required by the said Order dated 6.4.2004, has been filed as Annexure-13 to the Company Petition, and the same appears at page 264 of the Paper Book of the Company Petition.

The said affidavit is sworn on 25.7.2004 by Pankaj Garg, stated to be the Authorized Representative of the Petitioner-Transferee Company.

It is, interalia, stated in the said affidavit of Pankaj Garg that pursuant to the proposed Scheme of Amalgamation, the charges of the existing Secured Creditors of BEL (i.e., Bharat Explosives Limited-Transferee Company) shall not be adversely affected on the acquisition of the liabilities of BEPL (i.e. Bulk Explosives Limited-Transferor Company) by BEL.

It is, interalia, further stated in the said affidavit of Pankaj Garg that Clause 2.4 of the proposed Scheme of Amalgamation be amended by insertion of the proviso, as mentioned above.

Further, as noted earlier, the Resolution, as reproduced above, was passed unanimously at the meeting of the Shareholders/Members of the Transferee Company held on 15.5.2004. The said Resolution, interalia, recorded the consent of the Shareholders/Members of the Transferee Company (namely, Bharat Explosives Limited) to the amendment made in the proposed Scheme of Amalgamation "with respect to ensuring the interest of the Secured Creditors of M/s Bharat Explosives Limited in pursuance to the order dated 6.4.2004 of Hon'ble High Court of Judicature at Allahabad".

Again, as noted above, Resolution, as reproduced above, was passed unanimously at the meeting of the Unsecured Creditors of the Transferee Company held on 15.5.2004. The said Resolution, interalia, recorded the approval of the Unsecured Creditors, represented by the class of persons having made Fixed Deposits with the Transferee Company and Corporate entities having made Inter-Corporate Deposits, to the amendment made in the proposed Scheme of Amalgamation "with respect to ensuring the interest of the Secured Creditors of M/s Bharat Explosives Limited in pursuance to the order dated 6.4.2004 of Hon'ble High Court of Judicature at Allahabad".

Again, as mentioned hereinbefore, in paragraph 39 of the Company Petition, it is, interalia, stated that Clause 2.4 of the proposed Scheme of Amalgamation, be amended by insertion of the proviso, as mentioned above.

Thus, the directions given in the said Order dated 6.4.2004 while dispensing with the meeting of the Secured Creditors of the Transferee Company, have been complied with by the Petitioner-Transferee Company.

It is further evident from the narration of facts given above that the Petitioner-Transferee Company has brought on record the Annual Report in respect of the Petitioner-Transferee Company for the financial year 2002-03 containing the Audited Balance Sheet and Profit and Loss Account as well as other particulars in respect of the Transferee Company for the year ended on 31.3.2003.

Further, summary of the financial position of the Transferee Company as on 31.3.2003 has been given in paragraph 22 of the Company Petition.

It is further evident from the narration of the facts above that the Petitioner-Transferee Company has brought on record the Annual Report in respect of the Petitioner-Transferee Company for the financial year 2003-04 containing the Audited Balance Sheet and Profit and Loss Account as well as other particulars in respect of the Transferee Company for the year ended on 31.3.2004.

In paragraph 25 of the Company Petition, as noted above, it has, interalia, been stated that no investigation proceedings have been initiated or are pending in respect of the Transferee Company or the Transferor Company under Section 235 or Section 251 or the like of the Companies Act, 1956.

In paragraph 23 of the Company Petition, it is, interalia, stated that the Transferee Company is in a sound financial position.

In paragraph 24 of the Company Petition, it is, interalia, stated that the merger/amalgamation or compromise or arrangement embodied in the proposed Scheme of Amalgamation will not affect the interests of the Creditors of the Transferor Company or the Transferee Company as the combined assets of the Transferor and Transferee Companies are more than sufficient to meet not only the liabilities of the Transferor Company as and when the same accrue or arise but also the liabilities of the Transferee Company since the Transferee Company will under the proposed Scheme of Amalgamation take over all the liabilities, debts, obligations and duties of the Transferor Company, and hence on merger/amalgamation, it will in no way cast an additional burden on the Shareholders of the Transferee Company as well

as the interest of the Unsecured Creditors of the Transferee Company will not be materially effected.

In paragraph 40 of the Company Petition, it is, interalia, stated that the proposed Scheme of Amalgamation is in the best interest of the Shareholders of the Companies concerned, Concerns and all persons connected therewith.

In paragraph 41 of the Company Petition, it is, interalia, stated that the Company Petition is made bonafide and for the ends of justice.

As noted above, pursuant to the Order dated 3.8.2004 passed on the present Company Petition, notice of hearing of the present Company Petition was published in the same Newspapers in which advertisements convening the aforementioned meetings had been published.

However, despite publication of notice of hearing of the present Company Petition in the said Newspapers, no objections appear to have been filed by any one in the matter.

Further, as discussed above, the query/question raised by the aforementioned Regional Director, Kanpur has been satisfactorily explained by the Petitioner-Transferee Company.

Having regard to the aforesaid, the Court is satisfied that the Petitioner-Transferee Company has disclosed to the Court all material facts relating to the Petitioner-Transferee Company as per the requirements of proviso to Sub-Section (2) of Section 391 of the Companies Act, 1956. Nothing adverse has been brought to the notice of the Court dissuading it from giving its approval to the proposed Scheme of Amalgamation.

In view of the aforesaid discussion, the proposed Scheme of Amalgamation, annexed as Annexure-4 to the Company Petition, appearing at page 110 of the Paper Book of the Company Petition, is hereby sanctioned subject to the insertion of the following proviso at the end of Clause 2.4 of the proposed Scheme of Amalgamation:

"Provided however that the proposed acquisition of liabilities of BEPL by BEL shall not however have any adverse effect on the charges of the existing secured creditors on the assets of BEL"

Let the Order be issued in Form No. 42 of the Companies (Court) Rules, 1959.

Certified copy of the Order will be filed by the Petitioner-Transferee Company with the Registrar of Companies, Kanpur within 30 days of the issuance of the certified copy of the Order, as per the requirements of Section 394 of the Companies Act, 1956.

The Company Petition stands disposed of accordingly.

Dt. 21.12.2005

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