

R.P. AGARWAL

ADVOCATE, HIGH COURT

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Company Petition no. 14 of 2009
In
Company Application no 3 of 2009
District - Varanasi Buddha Nagar
In the Matter of Amalgamation of
Jaiprakash Associated Ltd and others.

Date of Application 16/05/09
Date of Ready 22/05/09
Date of Issue 24/05/09
Issuing Clerk





IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
ORIGINAL COMPANY JURISDICTION

COMPANY PETITION No. 157 OF 2009
[UNDER SECTION 391/394 OF THE COMPANIES ACT, 1956]

CONNECTED WITH

COMPANY APPLICATION No. 03 OF 2009
[Under Sections 391/394 of the Companies Act, 1956]

DISTT. : GAUTAM BUDDHA NAGAR

IN THE MATTER OF :

COMPANIES ACT, 1956

AND

IN THE MATTER OF AMALGAMATION OF COMPANIES

PETITION TO SANCTION THE SCHEME OF AMALGMATION

1. JAIPRAKASH ASSOCIATES LIMITED
having its registered office at
Sector - 128, NOIDA- 201304
District Gautam Buddha Nagar, (UP).
[Also referred to hereinafter as "JAL"] Transferee Company
2. JAYPEE HOTELS LIMITED
having its registered office at
Hotel Jaypee Palace, Fatehabad Road,
Agra, U.P.
[Also referred to hereinafter as "JHL"] Transferor Company No. 1
3. JAYPEE CEMENT LIMITED
having its registered office at
5 Park Road, Hazratganj,
Lucknow - 226 001
[Also referred to hereinafter as "JCL"] Transferor Company No. 2
4. JAIPRAKASH ENTERPRISES LIMITED
having its registered office at
Sector - 128, NOIDA- 201304
District Gautam Buddha Nagar, (UP)
[Also referred to hereinafter as "JEL"] Transferor Company No. 3

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5. GUJARAT ANJAN CEMENT LIMITED
having its registered office at
Sector - 128, NOIDA- 201304
District Gautam Buddha Nagar, (UP)
[Also referred to hereinafter as "GACL"] Transferor Company No. 4

PETITIONERS

HON'BLE THE CHIEF JUSTICE AND HIS COMPANION JUDGES OF THE
AFORESAID COURT ;

This petition of the petitioners, above-named, most respectfully SHOWETH as
under-

1. That the object of this Petition is to obtain the sanction of this Hon'ble
Court to the Scheme of Amalgamation, which stands duly approved at
the respective meetings of the Equity Shareholders and the Creditors of
the Transferee Company and the Transferor Companies No. 1, 3 and 4
and at the meeting of the Creditors of the Transferor Company No. 2,
duly convened and held as per the directions given by this Hon'ble
Court vide its order dated 9-2-2009 read with Order dated 2-3-2009.

A true copy of the Scheme of Amalgamation, as approved by the
Shareholders and the Creditors as aforesaid, is annexed hereto and
marked as **ANNEXURE - 1.**

2. That this petition is being filed through Shri Harish K. Vaid, who has
been duly authorised by the respective Board of Directors of the
Petitioner Companies, vide resolutions dated 22-12-2008, 17-01-2009
and 28-01-2009, to take all steps to seek appropriate directions and
approval/sanction of this Hon'ble Court for the proposed Scheme of
Amalgamation.

True copies of the resolutions dated 22-12-2008, 17-01-2009 and 28-
01-2009 passed by the Board of Directors of the Petitioner Companies
are annexed hereto and collectively marked as **ANNEXURE - 2.**

Sh. Kumar
20/05/09

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Court No. 29

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

COMPANY PETITION NO. 14 OF 2009
(Under Section 391/394 of the Companies Act, 1956)
Connected with

COMPANY APPLICATION NO. 3 OF 2009
(Under Section 391/394 of Companies Act, 1956)

1. **JAI PRAKASH ASSOCIATES LIMITED**
having its registered office at
Sector - 128, NOIDA- 201304
District Gautam Buddha Nagar, (UP).
[Also referred to hereinafter as "JAL"] Transferee Company
2. **JAY PEE HOTELS LIMITED**
having its registered office at
Hotel Jaypee Palace, Fatehabad Road,
Agra, U.P.
[Also referred to hereinafter as "JHL"]
..... Transferor Company No. 1
3. **JAY PEE CEMENT LIMITED**
having its registered office at
5 Park Road, Hazratganj,
Lucknow - 226 001
[Also referred to hereinafter as "JCL"]
..... Transferor Company No. 2
4. **JAI PRAKASH ENTERPRISES LIMITED**
having its registered office at
Sector - 128, NOIDA- 201304
District Gautam Buddha Nagar, (UP).
[Also referred to hereinafter as "JEL"]
..... Transferor Company No. 3
5. **GUJARAT ANJAN CEMENT LIMITED**
having its registered office at
Sector - 128, NOIDA- 201304
District Gautam Buddha Nagar, (UP)
[Also referred to hereinafter as "GACL"]
..... Transferor Company No. 4

- APPLICANTS

Hon'ble Sunil Ambwani, J.

1. By this Company Petition under Sections 391/394 of the Companies Act, 1956 read with Companies (Court) Rules 1959, the petitioners have prayed to sanction the 'Scheme of Amalgamation' and to order that 'J.P. Hotels Limited' (Transferor Company No.1); Jaypee Cement Limited'

(Transferor Company No. 2); 'Jaiprakash Enterprises Limited' (Transferor Company No.3) and 'Gujarat Anjan Cement Limited' (Transferor Company No.4) to be dissolved without being wound up upon filing the certified copy of the order sanctioning the scheme with the Registrar of Companies, U.P. at Kanpur.

2. Shri R.P. Agrawal assisted by Shri Abhay Kumar Singh have appeared for the petitioners.

3. The petitioners had filed Company Application No. 3 of 2009 under Section 391/394 of the Companies Act, 1956 seeking directions to convene meetings of the equity shareholders and creditors of the applicant companies except the meeting of the shareholders of 'Jaypee Cement Limited' (Transferor Company No.2), for which a prayer was made to dispense with the meeting.

4. The Court, by its order dated 9.2.2009, dispensed with the meetings of shareholders of Jaypee Cement Limited (Transferor Company No. 2) and while appointing Chairmen and Alternate Chairmen to chair the meetings, issued directions for advertisements, fixing dates and quorum of the meetings as follows:-

"1. By this Company Application under Sections 391/394 of the Companies Act, 1956, read with relevant Rules under the Companies (Court) Rules 1959, the applicants have sought directions of the Court to convene meetings of the equity shareholders of the applicant companies (excluding the shareholders of Jaypee Cement Limited-Transferor Company No.2) and the creditors of all the applicant companies, for considering and approving with or without modification the proposed 'Scheme of Amalgamation', between the applicant companies. The applicants have also prayed for dispensing with the meeting of the equity shareholders of Jaypee Cement Limited (Transferor Company No. 2) as the said Company is a wholly owned subsidiary of Jaiprakash Associates Limited (Transferee Company), and that the Board of Directors of the said company have already approved the proposed 'Scheme of Amalgamation'.

2. Heard Shri R.P. Agrawal assisted by Shri Abhay Kumar Singh. Advocates for the applicant companies.

3. The draft 'Scheme of Amalgamation' annexed to this company application approved by the Board of Directors of the applicant

companies at their meeting dated 22.12.2008 vide resolutions dated 22.12.2008; 17.1.2009 and 28.1.2009 respectively, propose to amalgamate 'Jaypee Hotels Limited' "JHL" with its registered office at Hotel Jaypee Palace, Fatehabad Road, Agra, U.P. (Transferor Company No.1); 'Jaypee Cement Limited' "JCL" with its registered office at 5 Park Road, Hazratganj, Lucknow (Transferor Company No.2); 'Jaiprakash Enterprises Limited' "JEL" with its registered office at Sector 128; NOIDA, District Gautam Buddha Nagar (Transferor Company No. 3), and 'Gujarat Anjan Cement Limited' "GACL" with its registered office at Sector 128, NOIDA, District Gautam Budh Nagar (Transferor Company No.4) with 'Jaiprakash Associates Limited' "JAL" with its registered office at Section 128, NOIDA, District Gautam Budh Nagar (Transferee Company). All the companies have their registered offices situate within the territorial jurisdiction of High Court at Allahabad.

4. The copies of the latest 'Memorandum and Articles of Association' of the companies are annexed to the company application. The financial details of these companies may be summarized as follows:-

5. **JAIPRAKASH ASSOCIATES LIMITED**

Jaiprakash Associates Limited, Transferee Company, was incorporated as a public limited company under the Companies Act, 1956, on 15-11-1995 in the State of Uttar Pradesh under the name of 'Bela Cement Limited'. Its name was changed from time to time and finally to its present name with effect from 11-3-2004.

The Authorized and Issued, Subscribed and Paid up Capital of the Company as on 31-03-2008 has been as under :-

<u>AUTHORISED CAPITAL :</u>	Rs.
5,15,00,00,000 Equity Shares of Rs. 2 each	10,300,000,000
30,00,00,000 Preference Shares of Rs. 100 each	<u>300,000,000</u>
TOTAL	10,600,000,000
<u>ISSUED, SUBSCRIBED AND PAID UP CAPITAL :</u>	
117,15,22,417 Equity Shares of Rs. 2 each fully paid up	<u>2,343,044,834</u>

As on 31-10-2008, being the valuation date, the Paid up Capital stood increased to Rs. 236,75,05,236 divided into 118,37,52,618 Equity Shares of Rs.2 each on account of conversion of outstanding FCCBs/Warrants.

The Company received Certificate of Commencement of Business on 29-01-1996.

The audited accounts of the Company have been presented to the shareholders up to the financial year ended on 31-03-2008. The summarized financial position of the Company, as per the latest Audited Accounts is as under :

	<u>As on 31-03-</u>
<u>2008</u>	<u>Rs. In Lacs</u>
<u>ASSETS :</u>	
Fixed Assets (WDV)	793,052
Investments	322,483
Deferred Tax Assets	1,149

Current Assets, Loans & Advances :	596,293	
Less Current Liabilities & Provisions	<u>365,414</u>	
230,779		
Misc. Expenditure not w/off		<u>10</u>
TOTAL		<u>1,347,473</u>

SOURCES OF FUNDS :

Share Capital		23,430
Reserves and Surplus		396,520
Equity Warrants		39,850
Loans –		
Secured	464,030	
Unsecured	<u>366,528</u>	830,558
Deferred Tax Liability		<u>57,115</u>
TOTAL		<u>1,347,473</u>

6. JAYPEE HOTELS LIMITED

Jaypee Hotels Limited, the Transferor Company No. 1, was incorporated as a public limited company under the Companies Act, 1956, on 29-12-1980 in the name of 'Sidharth Inter-continental Hotels (India) Limited' in the National Capital Territory of Delhi. The registered office of the Company was shifted from NCT of Delhi to the State of Uttar Pradesh and this alteration was confirmed by the Company Law Board vide its order dated 19-02-1999. The order of the Company Law Board was duly registered with the Registrar of Companies, Kanpur, on 23-02-1999. The name of the Company was changed to its present name 'Jaypee Hotels Limited' with effect from 26-6-1987.

The Authorized and Issued, Subscribed and Paid up Capital of the Company has been as under –

As on 31-03-
2008

<u>AUTHORISED CAPITAL :</u>	<u>Rs.</u>
59,000,000 Equity shares of Rs. 10 each	590,000,000
100,000 Preference Shares of Rs. 100 each	<u>10,000,000</u>
TOTAL	<u>600,000,000</u>
<u>ISSUED, SUBSCRIBED AND PAID UP CAPITAL :</u>	
55,490,000 Equity Shares of Rs. 10 each fully paid up	<u>554,900,000</u>

The Transferor Company No. 1 is a subsidiary of the Transferee Company, which holds 72.18 % of the Paid Up Capital of the Transferor Company No. 1.

The Company received Certificate of Commencement of business on 23-02-1981.

The audited accounts of the Company have been presented to the shareholders up to the financial year ended on 31-03-2008. The summarized financial position of the company as per the latest Audited Accounts is as under :

As on 31-03-2008

Rs. In Lacs

ASSETS :

Fixed Assets (WDV)		20,154
Capital Work-in-progress		138
Investments		72
Current Assets, Loans & Advances :	16,031	
Less Current Liabilities & Provisions	<u>15,906</u>	<u>125</u>
TOTAL		<u>20,489</u>

SOURCES OF FUNDS :

Share Capital		5,549
Reserves and Surplus		8,786
Loans -		
Secured	21,514	
Unsecured	<u>201</u>	2,171
Deferred Tax Liability		<u>3,983</u>
TOTAL		<u>20,489</u>

7. JAYPEE CEMENT LIMITED

Jaypee Cement Limited, Transferor Company No. 2, was incorporated as a public limited company under the Companies Act, 1956, on 19-10-2004 in the State of Uttar Pradesh.

The Authorized and Issued, Subscribed and Paid up Capital of the Company has been as under -

As on 31-03-2008

Rs.

AUTHORISED CAPITAL :

500,000,000 Equity shares of Rs. 10 each 5,000,000,000

ISSUED, SUBSCRIBED AND PAID UP CAPITAL :

355,950,700 Equity Shares of Rs. 10 each fully paid up 3,559,507,000

As on 31-10-2008 being the valuation date, the Authorised Capital stood increased to Rs. 1000 Crores, divided into 100 Crore Equity Shares of Rs.10 each and the Paid Up Capital stood increased to Rs.5,060,507,000 divided into 506,050,700 Equity Shares of Rs.10 each.

The Transferor Company No. 2 is a wholly owned subsidiary of the Transferee Company as the entire paid up share capital of the Transferor Company No. 2 is beneficially held by the Transferee Company. The Company received Certificate of Commencement of business on 28-07-2005.

The audited accounts of the Company have been presented to the shareholders up to the financial year ended on 31-03-2008. The summarized financial position of the company as per the latest Audited Accounts is as under :

As on 31-03-2008

Rs. in Lacs

ASSETS :

Fixed Assets (WDV)	246
Investments	37,390
Current Assets, Loans &	

Advances :	91	
Less Current Liabilities & Provisions	<u>197</u>	(106)
Misc. Expenditure		<u>200</u>
TOTAL		<u>37,730</u>

SOURCES OF FUNDS :

Share Capital	35,595
Share Application Money	2,110
Reserves and Surplus	<u>25</u>
TOTAL	<u>37,730</u>

8. JAIPRAKASH ENTERPRISES LIMITED

Jaiprakash Enterprises Limited, Transferor Company No. 3, was incorporated as a public limited company under the Companies Act, 1956, on 15-04-1978, in the name of 'Uttra Rasayan Udyog Limited' in the National Capital Territory (NCT) of Delhi. The name of the Company was changed to "Jaypee Chemicals Limited" with effect from 14-02-1985. The registered office of the Company was shifted from NCT of Delhi to the State of Uttar Pradesh and this alteration was confirmed by the Company Law Board vide its order dated 21-04-1986. The Order of the Company Law Board was duly registered with the Registrar of Companies, Delhi & Haryana, on 04-06-1986. The name of the Company was again changed to its present name 'Jaiprakash Enterprises Limited' with effect from 13-05-1988.

The Authorized and Issued, Subscribed and Paid up Capital of the Company has been as under -

	<u>As on 31-03-2008</u>
	<u>Rs.</u>
<u>AUTHORISED CAPITAL :</u>	
29,800,000 Equity shares of Rs. 10 each	298,000,000
20,000 9% Cumulative Preference Shares of Rs. 100 each	<u>2,000,000</u>
TOTAL	<u>300,000,000</u>
<u>ISSUED, SUBSCRIBED AND PAID UP CAPITAL :</u>	
26,700,000 Equity Shares of Rs. 10 each fully paid up	<u>267,000,000</u>

The objects of the Company are set out in the Objects Clause of the Memorandum of Association [Annexure - 9 hereto]. It is presently engaged in the business of Civil Engineering Construction, has limestone mines, Real Estate and factory premises at Sikandarabad (near Delhi) which is proposed to be used for setting up a Clinker Grinding Unit.

The Company received Certificate of Commencement of business on 01-06-1978.

The audited accounts of the Company have been presented to the shareholders up to the financial year ended on 31.3.2008. The summarized financial position of the company as per the latest Audited Accounts is as under :

As on 31-03-2008
Rs. In Lacs

ASSETS :		
Fixed Assets (WDV)		1,285
Capital Work-in-progress		50
Investments		5,618
Current Assets, Loans & Advances :	7,440	
Less Current Liabilities & Provisions	<u>7,723</u>	(283)
Deferred Tax Liability		<u>(71)</u>
TOTAL		<u>6,599</u>

SOURCES OF FUNDS :

Share Capital		2,670
Reserves and Surplus		<u>3,929</u>
TOTAL		<u>6,599</u>

9. GUJARAT ANJAN CEMENT LIMITED.

Gujarat Anjan Cement Limited, Transferor Company No. 4, was incorporated as a public limited company under the Companies Act, 1956, on 06-05-1992 in the name of 'Anjan Cement Limited' in the State of Gujarat. The name of the Company was changed to "Gujarat Anjan Cement Limited" with effect from 18-03-1996. The registered office of the Company was shifted from the State of Gujarat to the State of Uttar Pradesh and this alteration was confirmed by the Company Law Board vide its order dated 17-12-2008. The order of the Company Law Board was duly registered with the Registrar of Companies, Kanpur, on 19-12-2008.

The Authorized and Issued, Subscribed and Paid up Capital of the Company has been as under –

		<u>As on 31-03-2008</u>
		Rs.
<u>AUTHORISED CAPITAL :</u>		
350,000,000 Equity shares of Rs. 10 each		<u>3,500,000,000</u>
<u>ISSUED, SUBSCRIBED AND PAID UP CAPITAL :</u>		
333,975,070 Equity Shares of Rs. 10 each fully paid up		<u>3,339,750,700</u>

As on 31-10-2008, being the valuation date, the Paid up Capital stood increased to Rs.3,499,750,700 divided into 349,975,070 Equity Shares of Rs.10 each.

The Company is a subsidiary of the Transferor Company No. 2 i.e. Jaypee Cement Limited, which holds 95.31 % of the equity share capital of the Company. Since Jaypee Cement Limited is a subsidiary of the Transferee Company, in view of provisions contained in section 4(1)(c) of the Companies Act, Gujarat Anjan Cement Limited is deemed to be subsidiary of the Transferee Company also.

The Company received Certificate of Commencement of business on 14-07-1992.

The audited accounts of the Company have been presented to the shareholders up to the financial year ended on 31-03-2008. The summarized financial position of the company as per the latest Audited Accounts is as under :

As on 31-03-2008

Rs. In LacsASSETS :

Fixed Assets (WDV)		1,685
Capital Work-in-progress		68,478
Incidental Expenses during construction		6,376
Investments		1,901
Current Assets, Loans & Advances :	5,162	
Less Current Liabilities & Provisions	<u>7,245</u>	(2,083)
Misc. Expenditure		<u>179</u>
TOTAL		<u>76,536</u>

SOURCES OF FUNDS :

Share Capital		33,397
Share Application Money		3,183
Reserves and Surplus		6
Loan Funds (Secured)		<u>39,950</u>
TOTAL		<u>76,536</u>

10. The scheme proposes the 'Appointed Date' as 1st April 2008 and the 'Effective Date' to be the date on which the certified copy of the order of the High Court sanctioning the scheme is filed with the Registrar of the Companies, U.P.

11. The scheme relies upon the valuation report and fairness opinion of the share exchange ratio prepared by Bansi S. Mehta & Co. Chartered Accountants, Merchant Chamber, 3rd Floor 41, New Marine Lines, Mumbai. The report is annexed with the application and provides that the Transferee Company shall issue and allot to the equity shareholders of the Transferor Companies whose names are recorded in the Register of Members of the respective Transferor Companies or whose names appear as the beneficial owners of the equity shares of the said Companies in the records of the Depositories as on the Record Date to be fixed by the Board of Directors of the Transferee Company or a duly constituted committee of such Board of Directors -

(a) ONE equity share of Rs. 2/- (Rupees Two only), credited as fully paid up, in the Transferee Company for every ONE equity share of Rs. 10/- (Rupees Ten only) fully paid up held in the Transferor Company No. 1.

(b) ONE equity share of Rs. 2/- (Rupees Two only), credited as fully paid up, in the Transferee Company for every TEN equity shares of Rs. 10/- (Rupees Ten only) each fully paid up held in the Transferor Company No. 2.

(c) THREE equity shares of Rs. 2/- (Rupees Two only) each, credited as fully paid up, in the Transferee Company for every ONE equity share of Rs. 10/- (Rupees Ten only) fully paid up held in the Transferor Company No. 3.

(d) ONE equity share of Rs. 2/- (Rupees Two only), credited as fully paid up, in the Transferee Company for every ELEVEN equity shares of Rs. 10/- (Rupees Ten only) each fully paid up held in the Transferor Company No. 4.

12. The scheme further provides that the shares held by the applicants companies in each other will not stand cancelled. The said shares will be held by the trust for the benefit of the respective applicants companies as provided in Clause-5.02 to 5.05 of the scheme.

13. Shri R.P. Agrawal, learned counsel for the applicants companies submits that the holding of shares of the applicant companies in trust for the benefit of the applicant companies and upon the Scheme becoming effective, for the benefit of JAL is not in violation of Section 77 of the Companies Act, 1956. He has relied upon similar arrangement in **United Veneers (P) Ltd. and United Aromatics (P) Ltd.**, by Kerela High Court in (1999) 5 CLJ 31 (Ker) which in turn has relied upon the orders passed in Company Petition No. 27 and 28 of 1994 by the Madras High Court. Shri Agrawal has also referred to the similar arrangement in **Indian Oil Corporation Limited** in which the company was required to obtain approval of the shareholders of the company in terms of the orders dated 30.4.2007 of the Ministry of Company Affairs while according sanction to the 'Scheme of Amalgamation' the IBP Co. Ltd with Indian Oil. Shri Agrawal states that if it is so directed a resolution to the same effect will be put to vote to the shareholders and creditors of the applicants companies.

14. In para-15 of the application it is stated:-

"15. That as on 31-03-2008, the Transferee Company has outstanding Non-convertible Secured Debentures aggregating Rs. 40,250 lacs; Non-convertible Unsecured Debentures aggregating Rs. 647 lacs and Unsecured Foreign Currency Convertible Bonds [FCCBs] aggregating Rs. 165,475 lacs. On account of conversion of part of the FCCBs into shares as per terms and conditions of FCCBs, the value of outstanding FCCBs as on 31-10-2008 was Rs 163,072.91 lacs. There are no defaults in repayment of principal or payment of interest on the aforesaid Debentures/ Bonds. None of the Transferor Companies have issued any debentures. "

15. Shri Agrawal submits that individual notice to each bond holders of FCCBs is not required. He has referred to the Trust Deed dated 11.9.2007 between Jaiprakash Associate Limited and the Bank of New York. The Trust Deed has witnessed the terms and conditions of the U.S. \$ 400,000,000 Zero Coupon Convertible Bonds due 2012, convertible into ordinary shares of Jaiprakash Associate Limited and states that the bonds are represented by the Global Certificate in the aggregate of the principal amount of the bonds issued in the name of the nominee of a common depository for Euroclear and Clearstream, Luxembourg. He would submit that the Definitive Certificates have not been issued which required the printing in accordance with the requirement of the stock exchange where the bonds are listed.

16. Shri Agrawal has referred paragraphs 2 to 15 of the affidavit of Shri Harish K. Vaid, Senior President (Corporate Affairs) and Company Secretary of the Transferee Company quoted as follows:-

"2. That in compliance with the directions given by this Hon'ble Court on 6-2-2009, the deponent is filing copy of the Trust Deed dated 11-09-2007 pertaining to issue of Foreign Currency Convertible Bonds issued by the Transferee Company during the FY 2007-08 marked as ANNEXURE - SA-II. The above Trust Deed is hereinafter referred to as the 'Trust Deed'.

The deponent submits that the Trust Deeds in respect of earlier two series of FCCBs are identical to the above Trust Deed dated 11-09-2007.

3. That under Clause 3 of the Trust Deed, the bonds are represented either by the 'Global Certificate' or the 'Definitive Certificates', if issued. The form of Definitive Certificate and the conditions applicable to bonds when the definitive certificates are issued, are given in Schedule - 1 to the Trust Deed [Pages 28 to 72 of the Trust Deed]. The form of Global Certificate and the conditions applicable to such bonds are given in Schedule - 2 to the Trust Deed [Pages 73 to 78 to the Trust Deed].

4. That the deponent states that all the FCCBs issued by the Applicant Company i.e. Jaiprakash Associates Limited, are represented by Global Certificate and not by Definitive Certificates. The deponent states that no definitive certificates have been issued or are outstanding.

5. That in view of above, the conditions mentioned in Schedule - 2 to the Trust Deed are relevant and applicable. The conditions mentioned in Schedule - 1 are irrelevant and not applicable.

6. That as provided in Clause 3.1 of the Trust Deed, the Global Certificate is required to be issued in the name of a nominee of a common depository for Euroclear and Clearstream, Luxembourg, being the depositories.

7. That the deponent states that in the present case, the nominee as contemplated in Clause 3.1 is 'The Bank of New York Depository (Nominees) Limited' and Global Certificate for the entire amount of FCCBs has been issued in the name of the said nominee as mentioned in the form of the global certificate given on page 73 of the Trust Deed. The said nominee is the holder of all the FCCBs and registered as such in the Register of Bondholders, as mentioned in the form of the global certificate given on page 73.

8. That as mentioned in the Trust Deed as well as in the form of Global Certificate given on page 73 of the Trust Deed, the Bank of New York is the Trustee under the said Trust Deed.

9. That the condition pertaining to 'Meetings' mentioned on page 74 of the Trust Deed, provides that the registered holder [The Bank of New York Depository (Nominees) Limited] will be entitled to attend and vote at the meetings of bondholders. The Trustee i.e. Bank of New York, is

allowed to appoint any account holder as the proxy but he shall not be entitled to vote.

10. That the condition pertaining to 'Notices' mentioned on page 75 of the Trust Deed, provides that so long as the Bonds are represented by the Global Certificate and this Global Certificate is held by the nominee of Euroclear and Clearstream, notices required to be given to Bondholders may be given by their being delivered to the relevant clearing system for communication by it to entitled accountholders in substitution for notification, as required by the Conditions. The expression 'Conditions' has been defined in Clause 1.1 on page 2 of the Trust Deed which reads as under -

"Conditions" means the terms and conditions set out in Schedule 1 as from time to time modified in accordance with this Trust Deed, and as modified, in their application to the Bonds in respect of which the Global Certificate is issued, by the provisions of the Global Certificate, and any reference to a particularly numbered condition shall be construed accordingly."

11. That where the bonds are issued in the form of Definitive Certificate then the conditions specified in Schedule 1 are applicable. The condition no. 17 of Schedule 1 on page 69 of the Trust Deed reads as under -

"17. Notices

All notices to Bondholders shall be validly given if mailed to them at their respective addresses in the register of Bondholders maintained by the Registrar and published in a leading newspaper having general circulation in (i) Asia (which is expected to be the Asian Wall Street Journal) and (ii) Europe (which is expected to be the Financial Times). Any such notice shall be deemed to have been given on the later of the date of the last such publication and the seventh day after being so mailed."

12. That as already highlighted above, the above condition no. 17 of Schedule 1 is not applicable where Bonds are represented by Global Certificate, as is the present case. There is no such condition in case of Global Certificate. As already pointed out above, the condition pertaining to 'Notices' mentioned on page 75 of the Trust Deed expressly provides that so long as the Bonds are represented by the Global Certificate and this Global Certificate is held by the nominee of Euroclear and Clearstream, notices required to be given to Bondholders may be given by their being delivered to the relevant clearing system for communication by it to entitled accountholders in substitution for notification, as required by the Conditions.

13. That Clause 6.1.3 on page 10 of the Trust Deed also provides that in case of consolidation, amalgamation, merger etc. the notice shall be given to the Trustee and the Principal Agent and the Bondholder [i.e. The Bank of New York Depository (Nominees) Limited] in accordance with the provisions of the Global Certificate while the Bonds are in the form of Global Certificate. It is relevant to point out that notice meant for

Bondholder i.e. The Bank of New York Depository (Nominees) Limited, is required to be sent to Euroclear and Clearstream as provided under the heading 'Notices' on page 75 of the Trust Deed.

14. That the deponent most respectfully submits that in view of above terms and conditions of FCCBs, the notices of the meetings of the creditors to be convened for consideration of the proposed Scheme of Amalgamation are required to be given to the Trustee and the Principal Agent [i.e. Bank of New York] and the Euroclear and Clearstream, so far the FCCBs issued by Jaiprakash Associates Limited is concerned. The same are neither required to be sent to the accountholders individually nor the same are required to be published in newspapers outside India as otherwise contemplated under Condition No. 17 which condition is applicable when bonds are issued in the form of Definitive Certificate. In the present case the bonds being represented by Global Certificate, notices sent to the Trustee and the Principal Agent [i.e. Bank of New York] and Euroclear and Clearstream will be full and sufficient compliance with the conditions of the Trust Deed.

15. That the deponent states that the notices of the meetings will be duly sent to Trustee and the Principal Agent [i.e. Bank of New York] and Euroclear and Clearstream as per the terms of the Trust Deed as applicable in case of Global Certificate.

17. Having heard Shri R.P. Agrawal and considered the provisions of the Companies Act and the Rules and taking into account the interest of the shareholders, creditors, and public interest the Court directs that the meetings of the shareholders and creditors, except the meetings of equity shareholders of Jaypee Cement Limited which is wholly owned subsidiary at Jaiprakash Associates Limited and for which directions are issued to exempt the meeting to be held as follows:-

1) The meetings of the equity shareholders and creditors of all the companies, except Jaypee Cement Limited, which is wholly owned subsidiary of Jaiprakash Associates Limited in all nine meetings, will be held in the premises Jaypee Institute of Information & Technology University A-10 Sector-62 NOIDA 201307, on the dates and timings given as follows:

- A) Meetings to be held on 27.3.2009- Friday
- (i) Meeting of Equity Shareholders of Jaiprakash Associates Limited, Transferee Company 10.30 AM
 - (ii) Meeting of Creditors of Jaiprakash Associate Ltd., Transferee Company 02.30 PM
 - (iii) Meeting of Equity Shareholders of Jaiprakash Enterprises Ltd., Transferor Company No. 3 04.30 PM

- B) Meetings to be held on 28.3.2009 - Saturday
- (i) Meeting of Equity Shareholders of Jaypee Hotels Ltd.,

- | | | |
|-------|---|----------|
| (ii) | Transferor Company No. 1
Meeting of Creditors of
Jaypee Hotels Ltd., | 10.30 AM |
| (iii) | Transferor Company No. 1
Meeting of Creditors of
Jaiprakash Enterprises Ltd., | 02.30 PM |
| | Transferor Company No. 3 | 04.30 PM |

C) Meetings to be held on 29.3.2009- Sunday

- | | | |
|-------|---|----------|
| (i) | Meeting of Creditor of
Jaypee Cement Ltd,
Transferor Company No. 2 | 10.30 AM |
| (ii) | Meeting of Equity Shareholders of
Gujarat Anjan Cement Ltd,
Transferor Company No.4 | 02.30 PM |
| (iii) | Meeting of Creditors of
Gujarat Anjan Cement Ltd.,
Transferor Company No. 4 | 04.30 PM |

18. The notice of the meetings with statement as required by Section 393 (1) (a) of the Companies act, 1956, shall be given to individual shareholders and creditors under Rule 73 of the Companies (Court) Rules 1959 under certificate of posting sent atleast 21 days before the meetings scheduled to be held. The notices of the meetings shall also be published in the newspapers at least 21 days before the meetings in the prescribed form in accordance with Section 393 (1) (b) of the Companies Act, 1956 as follows:-

- (a) Hindustan Times (English) published from Delhi, Mumbai and Lucknow.
- (b) Dainik Jagaran (Hindi) published from NCR Delhi, Agra and Lucknow.
- (c) The Economic Times (English) published from Delhi and Mumbai.
- (d) Daily News Activist (English) published from Agra.
- (e) Asian Wall Street Journal
- (f) Financial Times published and having circulation in Europe.

(g) The notice of the meetings to the bond holders of the Global Certificate shall be served upon the Bank of New York-cum-Trustee of the Global Depository Certificate for information through the relevant clearing system as provided on page 75 of the Trust Deed.

19. In addition to the aforesaid directions regarding the mode of service of the notices of the meetings of the shareholders and creditors of the applicant companies the applicants shall also provide the information on internet on a separate website, or on a separate window/link on the website of Jaiprakash Associates Limited, providing for all the information including the orders of the Court; Scheme of Amalgamation; latest audited annual reports of the applicant companies; Articles and Memorandum of Association of the applicant companies; fairness statements; resolutions of the Board of Directors of the companies and no objection letters from the stock exchange and the Trust Deed constituting

U.S. \$ 400,000,000 Zero Coupon Convertible Bonds due 2012 convertible into ordinary shares of Jaiprakash Associate Limited.

20. *The cut of date of the list of shareholders for the purposes of sending notices is fixed at February 13, 2009, but for the purposes of voting rights the latest available records of the shareholders shall be utilized. For the purposes of issuing notices to the creditors the cut of date is fixed at December 31, 2008 but for voting the latest available records of the creditors shall be used.*

21. *The quorum of the meeting shall be as provided in Articles of Association of the respective companies for the meetings of the shareholders. The proxies shall be accepted provided the proxies in the prescribed form are filed atleast 48 hours before the scheduled meeting at the registered office of the company. For the creditors meetings, the same quorum and method of voting by proxy shall apply. The Court however reserves its satisfaction with regard to the requisite majority for approving the resolutions passed in the meeting.*

22. *The shareholders and creditors of the Company shall vote on the resolution to approve the Scheme of Amalgamation to be passed with or without any modification. They shall also vote separately on the same ballot, on a resolution in respect of paras 5.02 to 5.05 of the scheme regarding creation of trust of the shares held by applicant companies, which are not to be cancelled.*

23. *Shri S.D. Singh and Shri Diptiman Singh, Advocates are appointed Chairman and Alternative Chairman respectively for the meetings to be held on 27.3.2009. Shri Rajnath N. Shukla and Shri Arun Kumar Pundir, Advocates are appointed as Chairman and Alternate Chairman respectively for the meetings to be held on 28.3.2009 respectively. Shri Rajeev Gupta and Shri Manu Yadav, Advocates are appointed as Chairman and Alternate Chairman respectively for the meetings to be held on 29.3.2009. Both the Chairmen and Alternate Chairmen will be present in their respective meetings. All the Chairmen and Alternate Chairmen will ensure that the directions of this Court for serving notices on the shareholders and creditors and for the meetings are complied with. The Chairmen will file affidavits of service and will report on the business transacted at the meetings within one week of the date of the meeting under Rule 78 of the Companies (Court) Rules 1959. The Chairman shall be paid Rs. 30,000/- (Rupees Thirty thousand only) per meeting and the Alternate Chairman shall be paid Rs. 20,000/- (Rupees Twenty thousand only) per meetings. In addition they will be paid 20% of the total amount as incidental expenses. They will also be paid Rs. 10,000/- for any meeting held in preparation for sending notices or for other purposes. The applicant companies shall meet their travelling expenses by a air condition first class train fare, or air fare and make arrangements for their stay and travel in a respectable hotel or guest house.*

24. *The applicants shall make suitable arrangement for transportation of the shareholders and creditors on their request communicated at the registered office of the company at least 48 hours before the meeting from*

a centrally located point in New Delhi, to attend the meetings. The applicants shall also provide necessary accounting and clerical staff to assist the Chairmen/Alternate Chairmen in conducting the meetings and will also provide sufficient number of scrutineers for their assistance. The voting for decisions on resolutions shall be held by poll. In case of any dispute, the decision of the Chairman/Alternate Chairman shall be final.

25. The applicants shall record the entire proceedings of the meeting by digital video cameras accurately, and shall provide the DVDs to the Chairmen to be annexed with their reports.

26. The applicants are given liberty to seek any clarification with regard to these directions upto a week before the meetings are held.

27. List on 15th April 2009. Let a certified copy of this order be given to counsel for the applicants on payment of usual charges by tomorrow and the Chairmen and Alternate Chairmen free of cost by day after tomorrow."

5. Upon advertisements made and notices issued, in accordance with the order dated 9.2.2009, and meetings held on 27th, 28th and 29th March, 2009, in which the quorum was reported to be complete, and the resolutions both for sanctioning the 'Scheme of Amalgamation' and for creation of trusts was carried out by majority of the voters present in voting, the petitioners presented the Company Petition No. 14 of 2009, for sanctioning the scheme, and in the meantime advertising the date to be fixed for hearing in the same newspapers and in the same manner in which the meetings of the shareholders and creditors were convened, and for calling reports of the Official Liquidator in respect of the companies and the Regional Director, Company Affairs and upon hearing the counsels the Court made an order on 15.4.2009:-

"Heard Shri R.P. Agrawal and Shri Abhay Kumar Singh appearing for the petitioners.

In this company petition under Section 391/394 of the Companies Act, 1956 for confirmation of the 'Scheme of Amalgamation' the petitioners have prayed for fixing the date of hearing to be advertised in the same newspapers in which notices calling for meeting of the shareholders and creditors of the companies for considering the scheme of amalgamation were published. The petitioners have also prayed for directing the service of notices on the Regional Director, Ministry of Corporate Affairs, Northern Region, PDIL Bhawan, Ground Floor, Sector-1, Noida and the Official Liquidator, Allahabad, and further to direct the Regional Director and the Official Liquidator to submit their statutory reports before the date fixed for hearing of the petition.

By the order dated 9.2.2009 in Company Application No.3 of 2009 under Section 391/394 of the Companies Act, 1956 the Court had convened the meetings of the equity shareholders of the applicant companies (excluding shareholders of JP Cement Ltd.-Transferor Company No.2), and creditors of all the applicant companies for considering and approving, with or without modification, the proposed 'Scheme of Amalgamation', between applicant companies. The Court had dispensed with the meeting of the equity shareholder of JP Cement Ltd. (Transferor Company No.2) as said company is a wholly owned subsidiary of Jaiprakash Associates Ltd. (Transferee Company), and that the Board of Directors of Transferor Company No.2 had already approved 'Scheme of Amalgamation'.

The Court had after issuing directions for advertisement, and fixing the quorum, appointed Chairman and Alternate Chairman for holding the meeting on the date and timing given as below:-

- "A) Meetings to be held on 27.3.2009- Friday
- | | | |
|-------|---|----------|
| (i) | Meeting of Equity Shareholders of Jaiprakash Associates Limited, Transferee Company | 10.30 AM |
| (ii) | Meeting of Creditors of Jaiprakash Associate Ltd., Transferee Company | 02.30 PM |
| (iii) | Meeting of Equity Shareholders of Jaiprakash Enterprises Ltd., Transferor Company No. 3 | 04.30 PM |
- B) Meetings to be held on 28.3.2009 - Saturday
- | | | |
|-------|--|----------|
| (i) | Meeting of Equity Shareholders of Jaypee Hotels Ltd., Transferor Company No. 1 | 10.30 AM |
| (ii) | Meeting of Creditors of Jaypee Hotels Ltd., Transferor Company No.1 | 02.30 PM |
| (iii) | Meeting of Creditors of Jaiprakash Enterprises Ltd., Transferor Company No. 3 | 04.30 PM |
- C) Meetings to be held on 29.3.2009- Sunday
- | | | |
|-------|---|-----------|
| (i) | Meeting of Creditor of Jaypee Cement Ltd, Transferor Company No. 2 | 10.30 AM |
| (ii) | Meeting of Equity Shareholders of Gujarat Anjan Cement Ltd, Transferor Company No.4 | 02.30 PM |
| (iii) | Meeting of Creditors of Gujarat Anjan Cement Ltd., Transferor Company No. 4 | 04.30 PM" |

It is reported that the meetings were held as scheduled in which resolutions for amalgamation as well as resolution regarding creation of trusts were put to vote. The Chairman after submitting their affidavit of service before the meetings have filed their reports.

Shri S.D. Singh has submitted his report on 2.4.2009 and that Shri Rajnath N. Shukla and Shri Rajiv Gupta have submitted their reports on 4.4.2009.

Shri R.P. Agrawal has summarised the reports with regard to presence of the shareholders at the meetings; presence of the creditors at the meeting and the majority by which the resolutions were passed. The summary giving the presence of the shareholders and creditors both in value and percentage and the number of persons present at the meeting and the percentage with which the resolutions were carried out, as prepared and given by Shri R.P. Agrawal is as follows:-

"A : PRESENCE AT THE MEETINGS OF SHAREHOLDERS

Sl.No.	Name of Company	Paid up Capital on 20.3.2009 Rs. Lacs	Presence in value Rs. Lacs	% of presence to Total	No. of persons present
1	Jaiprakash Associates Ltd.	23676.01	12749.72	53.88%	856
2	Jaypee Hotels Ltd.	5549.00	4140.10	74.61	272
3	Jaypee Cement Ltd.				
4	Jaiprakash Enterprises Ltd.	2670.00	2368.65	88.71%	44
4	Gujarat Anjan Cement Ltd.	34997.51	33367.68	95.34%	91

B : PRESENCE AT THE MEETINGS OF CREDITORS

Sl.No.	Name of Company	Paid up Capital on 28.2.2009 Rs. Lacs	Presence in value Rs. Lacs	% of presence to Total	No. of persons present
1	Jaiprakash Associates Ltd.	1187321.99	522144.69	43.97%	314
2	Jaypee Hotels Ltd.	11455.19	10993.05	95.97%	85
3	Jaypee Cement Ltd.	133.40	125.17	93.83%	8
4	Jaiprakash Enterprises Ltd.	3122.75	2340.83	74.96%	40
4	Gujarat Anjan Cement Ltd.	90122.66	59769.94	66.32%	28

C: MAJORITY BY WHICH RESOLUTIONS PASSED

Sl.No.	Name of Company	Majority by which approval granted by Shareholders-%age		Majority by which approval granted by Creditors-%age	
		SCHEME	TRUSTS	SCHEME	TRUSTS
1	Jaiprakash Associates Ltd.	99.85	99.85	100.00	100.00
2	Jaypee Hotels Ltd.	99.99	99.99	100.00	100.00
3	Jaypee Cement Ltd.	-	-	100.00	100.00
4	Jaiprakash Enterprises Ltd.	100.00	100.00	100.00	100.00
5	Gujarat Anjan Cement Ltd.	100.00	100.00	100.00	100.00"

A perusal of the summary of reports would show that the resolutions on both the approval for the 'Scheme of Amalgamation' and on Clause 5.02 and 5.05 of the 'Scheme of Amalgamation' providing for creation of Trusts of the equity shares for the benefit of the respective shareholders of the companies instead of cancelling the shares held by the respective companies were passed by the majority of the shareholders and creditors present at the meeting.

Let the company petition be advertised in the same newspapers in which notices convening the meetings were published to consider the sanction of the 'Scheme of Amalgamation'. The petitioners are permitted to serve the Regional Director, Ministry of Corporate Affairs, Noida, U.P. and the Official Liquidator, Allahabad with the requisite copies of the company petition by Dasti summons and to file an affidavit of service within a week.

The notices to be published for hearing in the same newspapers in which the notices convening the meetings were published not less than 10 days before the date fixed for hearing will indicate that the company petition will come up for hearing on 15th May, 2009.

List on 15th May, 2009."

6. The petitioners have filed the affidavit of service of Shri Harish K. Vaid, Senior President (Corporate Affairs) and Company Secretary of the Transferee Company and also authorised by all the four transferor companies annexing therewith copies of the newspapers in original in which the notices fixing the date for hearing of the company petition have been advertised namely 'Hindustan Times' (English) published from Delhi, Mumbai and Lucknow on 22.4.2009; 'Dainik Jagaran' (Hindi) published from NCR Delhi, Agra and Lucknow on 24.4.2009; 'Economics Times' (English) published from Delhi and Mumbai on 22.4.2009; Daily News Activist (English)

published from Agra on 22.4.2009; Asian Wall Street Journal having circulation in Asia on 27.4.2009 and Financial Times published and having circulation in Europe on 28.4.2009. The original copy of the newspapers Asian Wall Street Journal dated 27.4.2009 has been filed along with affidavit of service-II of Shri Harish K. Vaid. Both the affidavits of service are taken on record and that the publication of service of the company petition is treated to be sufficient.

7. The Court has not received any objection or request for modification of the 'Scheme of Amalgamation' by any of the shareholders, creditors or any other person either before or today on the date fixed on the matter.

8. The Official Liquidator, U.P. & Uttrakhand at Allahabad has filed his report dated 15.5.2009 in which after stating the facts of receipt of notice, submission of statutory records by the transferor companies and its scrutiny, observed as follows:-

"30. That as per the SEBI guidelines, the fairness opinion report on valuation of shares have been obtained from M/s Sobhagya Capital Options Limited, Merchant Banking Company, which has held the valuation/share exchange ratio determined by M/s Banshi S. Mehta & Company, Chartered Accountants is fair and reasonable and can be adopted for share exchange with regard to the proposed amalgamation of the companies.

31. That through the scheme of amalgamation under reference, 4 Trusts are to be created i.e. JEL Trust, JHL Trust, JCL Trust and GACL Trust for transfer of the shares held by M/s Jaiprakash Associates limited, the transferee company in M/s Jaypee Hotels Limited and M/s Jaypee Cements Limited, the shares held by M/s Jaypee Cement Limited in M/s Gujarat Anajan Cements Limited and one by M/s Jaypee Enterprise Limited for shares held by it in M/s Jaiprakash Associates Limited and M/s Jaypee Hotels Limited.

32. That the transfer companies were requested to provide the names of the trustees and trust deed. They have informed that the trusts were to be created in terms of clause-5 of Scheme of Amalgamation which provides that trust is to be settled by the respective company after moving the petition under rule 79 of the Companies (Court) Rules, 1959 and before the date fixed for hearing of the petition, which is 15th May, 2009. A copy each of the four Trust Deeds executed on 09.5.2009 has been produced according to which beneficiary is M/s Jaiprakash Associates Ltd. and its successor and assigns. Further, they have also informed that the creation of trust pursuant to the Scheme of Amalgamation is a transitory arrangement

for holding the shares for the benefit of settler company and ultimately i.e. after the scheme becoming effective for the benefit of M/s Jaiprakash Associates Limited being the transferee and successor company. The tenure of the trusts have been planned for 5 years.

33. That the transferor company no. 3 has also informed that the same method has been adopted in the past by various companies in merger scheme of (i) United Veneers Limited with United Aromatics (P) Limited; (iv) IOC with IBP, (iii) Reliance Petro with Reliance Industries Limited, (iv) ICCI Limited with ICCI Bank Limited, (v) Sri Ganesh Anand Petro Chemicals Limited with M/s Nagarjun Fertilizers & Chemicals Limited (C.P. 47/94). The said schemes having clauses relating to creation of trust for transfer of cross holdings to such trusts instead of cancellation thereof have been sanctioned by the respective Hon'ble High Courts.

34. That as required under Section 394 (1) of the Companies Act, 1956 on the scrutiny of the statutory books and papers produced of the transferor companies, the Official Liquidator is of the opinion that the affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of its members or to public interest and the company application under Section 391 and 394 of the Companies Act, 1956 may be decided by this Hon'ble Court on merit."

9. Shri R. Vasudevan, Regional Director, Northern Region, Ministry of Corporate Affairs, having his office at PDIL Bhawan A-14 Sector-I, Noida, U.P. has filed his representation/affidavit through the Official Liquidator, U.P. & Utrakhand at Allahabad dated 15.5.2009 as follows:-

"2. That the copy of the petition having been received by the office of the deponent has been examined and I have acquainted myself with the facts of the matter.

3. That the deponent craves leave to submit that as per clause 4.12 (i) of Part-IV of the Scheme of Amalgamation, all the employees of the Transferor Companies shall become the employees of the Transferee Company, without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court.

4. That the deponent further craves leave to submit that on perusal of the Chairman's report of the meeting of the shareholders of the petitioner Transferee Company viz. M/s Jaiprakash Associates Ltd., it is observed that out of 764 shareholders who participated in voting, 03 shareholders entitled together to Rs. 18.53 lacs voted against the scheme.

5. That the deponent further craves leave to submit that on perusal of the Chairman's report of the meeting of the shareholders of the petitioner transferor company No. 1 viz. M/s Jaypee Hotels Ltd., it is observed that out of 232 shareholders who participated in voting,

05 shareholders entitled together to Rs. 10 lacs voted against the Scheme.

6. That the deponent craves leave to submit that on perusal of the chairman's report of the meeting of the shareholders of the petitioner transferee company viz. M/s Jaiprakash Associates Ltd. in regard to creation of trust, it is observed that out of 764 shareholders who participated in voting, 08 shareholders entitled together to Rs. 18.58 lacs voted against the scheme.

7. That the deponent further craves leave to submit that on perusal of the chairman's report of the meeting of the shareholders of the petitioner transferor company No. 1 viz M/s Jaypee Hotels Ltd. in regard to creation of trust, it is observed that out of 232 shareholders who participated in voting, 06 shareholders entitled together to Rs. 11 lacs voted against the scheme.

8. That the deponent further craves leave to submit that the Registrar of Companies, Kanpur has reported that one complaint dated 10.2.2009 received from Shri Sandeep Kumar Agarwal, Kolkata against the Company regarding non-receipt of fixed deposit as no feedback has been received from the complainant till date.

9. That it is submitted that the Hon'ble Court may kindly consider the submissions made in para-4 to 8 here in above and decide the case on its merits."

10. Shri R.P. Agrawal submits that the 'Scheme of Amalgamation' has been approved by the requisite majority of the equity shareholders and creditors of the transferor companies. The advertisement provided under the Companies (Court) Rules 1959 for hearing of the petition has been carried out in accordance with the directions of the Court, and that the representations of the Official Liquidator and the Regional Director, Company Affairs have been received. He would submit that no one has raised any objection to the sanction of the 'Scheme of Amalgamation'. He has filed an affidavit of Shri Harish K. Vaid, Senior President (Corporate Affairs) and Company Secretary of the Transferee Company providing the schedule of properties with short description of freehold property, leasehold property and stocks and other chose in action of the Transferor Company No. 1, J.P. Hotels Limited; Transferor Company No. 2 Jaypee Cement Limited; Transferor Company No.3 Jaiprakash Enterprises Limited and Transferor Company No. 4 Gujarat Anjan Cement Limited to be transferred to Jaiprakash Associates Limited-the Transferee Company.

11. Shri R.P. Agrawal would submit that though no objection has been raised to the creation of trusts of the shares of the Transferee Company held

by transferor companies, instead of cancelling the shares and that a separate resolution to that effect was passed by the requisite majority of the shareholders and creditors of the transferor companies and transferee company, the holding of shares of the applicant companies in trust for the benefit of the shareholders is not in violation of Section 77 of the Companies Act, 1956. He has relied upon a judgment in **United Veneers (P) Ltd. and United Aromatics (P) Ltd.** by Kerela High Court reported in (1999) 5 Comp LJ 31 (Ker) which in turn relied upon the orders passed in Company Petition Nos. 27 and 28 of 1994 by the Madras High Court. Shri R.P. Agrawal has relied upon a passage from Company Law with Secretarial Practice K.M. Ghose & Dr. K.R. Chandratre 13th Edition Volume 3 para 63.634:-

"63.634 Shares held by transferor company in the transferee company may be permitted to be transferred to an individual member in trust for shareholders of transferor company. It is permissible to allow the shares of the transferor company in the name of an individual being trust for the benefit of the transferee company with direction to hand over the shares consequent upon amalgamation to the transferee company within a specified period. The shares so held in trust may be permitted to be distributed to shareholders along with other shares to be allotted to them as per the part of the scheme."

12. Shri R.P. Agrawal has also cited **Part III- Prospectus & Allotment, & Others Matters etc. in Ramaiya Commentary Company Law of Section 77 at page 960** in which the Author has opined:-

"Transferor of shares to nominees

Although a company cannot purchase or hold its own shares, a bequest of his shares by a shareholder to the company is not illegal. The company may have the shares transferred to a nominee in trust for itself, the nominee being a person qualified to hold shares under the company's Articles of Association, Re, Castiglione's Will Trusts, Re, Hunter v. Mackenzie (1958) 1 All ER 480; (1958) 28 Com Cases 365. This method is often resorted to in amalgamation practices. Shares held by the amalgamated company in the amalgamating company are transferred to a nominee who will hold them for the benefit of all the shareholders of the transferee company. Such a scheme was approved by the Andhra High Court in Sri Ganesh Anand Petro Chemicals Ltd., Re (Company Petition No. 47 and 48 of 1994 (CP No. 47/94) (unreported) (AP) Nagarjuna Fertilizers and Chemicals Ltd., Re (Co. Petition No. 47 and 48 of 1994 (Ct. No. 47/94) (unreported) (AP))"

13. It is stated that in the 'Scheme of Amalgamation' M/s Sri Ganesh Anand Petro Chemicals Ltd. and Nagarjuna Fertilizers and Chemicals Ltd.; the 'Scheme of Amalgamation' of IBP Co. Ltd. with Indian Oil approvals were accorded to the trust deed. IOC-IBP merger scheme trust was approved Ministry of Petroleum, Government of India. The Scheme of Amalgamation of Reliance Petroleum Limited with Reliance Industries Limited sanctioned by the Bombay High Court on 7.6.2002, provided for creation of trust for holding the shares instead of cancelling them. Shri R.P. Agrawal submits that the restriction in Section 77 of the Companies Act on a public limited company, is to buy its shares and not to hold it for the benefit of the shareholders under an arrangement in which the Transferee Company in order to preserve its borrowing power by allowing not to reduce its share capital.

14. The Court had called upon the shareholders and creditors of the transferor companies and transferee company to consider the matter of creation of trusts and to pass a special resolution to that effect. The shareholders and creditors of the transferor companies and transferee company have not made any objection and have passed a resolution to that effect by requisite majority. No other person has raised any objection. The Court finds that in the circumstances the issue is purely academic and that since no one has requested the Court to decide the question is left open to be decided in an appropriate case.

15. The Official Liquidator, U.P. & Utrakhnad at Allahabad and the Regional Director, Company Affairs, NOIDA have not raised any objections to the sanction of the 'Scheme of Amalgamation' as it is without any modification.

16. There is no material or any objection made by any person that any enquiry with regard to corporate affairs is pending against the transferor companies and transferee company and/or affairs of the companies have been carried out in any manner which is prejudicial to the interest of its shareholders, creditors or in public interest.

17. The Court thus orders to sanction the 'Scheme of Amalgamation'. All the four transferor companies shall stand dissolved without winding up order. The petitioners shall file a certified copy of this order sanctioning the scheme with the Registrar of Companies at Kanpur within 30 day's from the date the formal order drawn in the prescribed form is received by the petitioners.

18. The registry shall issue formal order in prescribed form annexing therewith a copy of the 'Scheme of Amalgamation' and the schedule of properties along with the supplementary affidavit dated 10.5.2009 filed on 11.5.2009 within two weeks.

Sd- Sunil Anandani J

Dt. 15.5.2009
RKP-

Compared by
Rupesh Kumar
20/05/09

TRUE COPY

[Signature]
20-5-09

Section Officer
Copying (E) Department
High Court, Allahabad