

\$~10

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

%

Date of Judgment:06.9.2012

+

COMPANY PETITION NO. 212 OF 2012

IN THE MATTER OF

The Companies Act, 1956

AND

Petition Under Section 391 to 394 of the Companies Act, 1956

SCHEME OF AMALGAMATION

VIENOVA EDUCATION PRIVATE LIMITED

PETITIONER NO. 1/TRANSFEROR COMPANY

AND

VIENOVA TECHNOLOGY PRIVATE LIMITED

PETITIONER NO. 2/TRANSFeree COMPANY

Through – Mr. Saurabh Kalia,
Sameer Chaudhary and Mr. A. K.
Kuchhal for Petitioner Companies

Mr. K.S. Pradhan, Deputy
Registrar of Companies for the
Regional Director

Mr. Rajiv Bahl, Advocate for the
official Liquidator

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This Second motion joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 (hereinafter referred to as 'Act') by the petitioner Companies seeking sanction of the Scheme of Amalgamation (hereinafter referred to as 'Scheme')
2. The petitioner companies had earlier filed C.A. (M) No. 58 of 2012 seeking directions of this Court for dispensation of the meetings. Vide Order dated 25.04.2012, this court allowed the application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Companies.
3. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 09.05.2012, notice in the Petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also

directed to be published in “Business Standard” (English) and “Jansatta” (Hindi). Affidavit of service and publication has been filed by the petitioners showing compliance regarding service of the petition on the Regional Director (NR); Registrar of Companies, NCT of Delhi & Haryana and the Official Liquidator and also regarding Publication of Citations in the aforesaid Newspapers on 07.06.2012, copies of the newspapers cuttings, in original, containing the publications have been filed with the affidavit of service.

4. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received the official liquidator has filed his report dated 09.08.2012 wherein he has stated that he has not received any complaint against the proposed Scheme from any person/ party interested in the Scheme in any manner and that the affairs of the Transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

5. In response to the notices issued in the Petition, learned

Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit / report dated 07.08.2012. Relying on para 7.1 of part III of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation all the employees of the Transferor Company shall become the employees of Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble Court.

6. That the Regional Director (NR) in para 5 and 5.1 of the affidavit has also stated that ROC, Delhi has reported an investment in Transferor Company from a Mauritius based foreign investment company. In view of the same the Petitioner Companies may be asked to clarify whether any RBI approval was required under FEMA in regards to receiving of money from foreign investor, if deemed fit and proper by this Hon'ble Court. The Petitioner Companies in their response dated 03.09.2012 has stated that vide letter dated 01.08.2012, both the Transferor and Transferee companies have intimated

to the Regional Director (NR) that as said funds were received under the automatic route of FDI, and as per the extant policy, no approval of RBI was required for inward remittance of funds from the automatic route. Furthermore, it is submitted that all requisite compliances including filing of relevant forms have been undertaken by the petitioner companies and the requirement as needed post-merger will also be completed by the petitioner companies.

7. In para 6 and 6.1 of the Regional Director (NR) affidavit, relying upon para 4.20 of part III of the scheme the Regional Director, NR has stated that it provides for change of name of Transferee Company to that of Transferor Company post-merger and the Transferee Company be asked to follow the relevant procedure under the Companies Act, 1956. The petitioner companies vide their reply affidavit dated 03.09.2012 in para 5 has stated that the said observation is of procedural compliance in nature and the Transferee Company gives an undertaking that post approval of the scheme the

company will follow the procedure as prescribed under the Companies Act, 1956 for such change of name.

8. No objection has been received to the Scheme of Amalgamation from any other party, the director of the petitioner companies has stated in his affidavit dated 03.09.2012 confirming that he has not received any objection pursuant to the citations published in the Newspapers. The counsel for the petitioner companies has also filed affidavit dated 09.08.2012 confirming that he has not received any objection pursuant to the citations published in the Newspapers
9. Even today, During the Course of hearing Mr. Rajiv Bahl, Learned counsel for the Official Liquidator and Mr. K.S. Pradhan, Deputy Registrar of Companies for Regional Director (Northern Region) state that they have no objection to the present Scheme being sanctioned.
10. In view of the approval accorded by the Shareholders and Creditors of the petitioner Companies, representations/ reports

filed by the Regional Director, Northern Region and the official liquidator, attached with this court to the proposed scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently sanction is hereby granted to the Scheme of Amalgamation under Section 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of the order be filed with the Registrar of Companies within 30 days from receipt of the same. In terms of the provisions of Section 391 and 394 of the Companies Act, 1956 and in terms of the Scheme, the whole or part of the undertaking, the property, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. It is,

however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/ compliance with any other requirement which may be specifically required under any law.

11. Learned counsel for the petitioners states that the petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/- in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is accepted.
12. The petition is allowed in the above terms.

Order Dasti.

INDERMEET KAUR, J.

SEPTEMBER 6, 2012
nandan