

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

% *Date of Judgment: 14.12.2012*

+ CO.PET. 411/2012

In the matter of

The Companies Act, 1956

And

Petition under Sections 391(2) & 394 of the Companies Act, 1956

Scheme of Amalgamation of

TEN PEBBLES MANAGEMENT PRIVATE LIMITED

..... Transferor Company

AND

ANYTIME LEARNING PRIVATE LIMITED

..... Transferee Company

Through Mr. Mukesh Sukhija, Advocate
for the Petitioners

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This joint Petition has been filed under sections 391(2) & 394 of the Companies Act, 1956 by the Petitioner Transferor Company and Transferee Company seeking sanction of the Scheme of Amalgamation of M/s TEN PEBBLES MANAGEMENT PRIVATE LIMITED

(Transferor Company) with ANYTIME LEARNING PRIVATE LIMITED (Transferee Company).

2 The registered offices of the Petitioner Transferor Company and Transferee Company are situated at New Delhi, within the jurisdiction of this Court.

3 Details with regard to the date of incorporation of Transferor and Transferee Company, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4 Copies of the Memorandum and Articles of Association as well as the latest audited Accounts as at 31st March, 2012 of the Petitioner Transferor and Transferee Company have also been enclosed with the Petition.

5 Copies of the Resolutions passed by the Board of Directors of the Petitioner Company approving the Scheme of Amalgamation have also been placed on record.

6 It has been submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Company.

7 So far as Share Exchange ratio is concerned, the Scheme provides that upon amalgamation of the ‘Transferor Company’ with the ‘Transferee Company’ pursuant to the Scheme of Amalgamation, the following would be the share Exchange Ratio:

- *1 (One) Equity Shares of Re.1/- (Rupee One) each of the Transferee Company for every 1 (One) Equity Shares of Re.1/- (Rupee One) each held in the Transferor Company- TEN PEBBLES MANAGEMENT PRIVATE LIMITED.*

8 The Petitioner Company had earlier filed CA (M) No. 131 seeking directions of this Court for dispensation/convening of meetings. Vide order dated August 24, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders, in view of the written consents/NOC given by all the Shareholders of the Transferor Company and the Transferee Company are dispensed with. In view of the payments made to the all the un-secured creditors of the Transferee Company and 1 out of 2 un-secured creditors of the Transferor Company before making the present application & written consents/ NOC given by another un-secured creditor of the Transferor Company, the requirement of convening

meeting of the un-secured creditors of the Transferor Company and the Transferee Company was dispensed with. Further, there were no secured creditors in the Transferor Company and the Transferee Company accordingly there was no requirement of convening the meetings of the secured creditor in the Transferor Company and the Transferee Company.

9 The Petitioner Transferor Company and the Transferee Company have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated September 04, 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 the 'Business Standard' (English, Delhi Edition) and 'Business Standard' (Hindi, Delhi Edition). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspaper on October 13, 2012. Copies of the newspaper cuttings, in original, containing the publications have been filed along with the Affidavit of Service.

10 Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Company. Based on the information received, the Official Liquidator has filed his report dated December 11, 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.

11 In response to the notices issued in the Petition, Mr. Rakesh Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated December 12, 2012. Relying on Clause 8 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 the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Amalgamation by the Hon'ble. Further the Ld. Regional Director had made some observations, regarding allotment of shares made to some Non Resident India's by the Transferor Company.

12 That with regard to the above observations, Mr. Rajul Garg, Director of the Petitioner Transferor Company and the Petitioner Transferee Company filed his affidavit dated 13th December 2012, giving his following reply to the observations raised by the Ld. Regional Director:

- (i) *That the Transferor Company had received three foreign inward remittances amounting to Rs.27,92,022/- as advance towards share subscription money from three Non Resident Indians, however, the inward remittances for the same were reported to New Delhi Regional Office of Reserve Bank of India beyond the prescribed time.*
- (ii) *That the Transferor Company had made allotment of 5129 shares to the Non Resident India on 25th March 2010 and the same was reported to New Delhi Regional Office of Reserve Bank of India beyond the prescribed time.*
- (iii) *That the Transferor Company had made the application for compounding of the contravention of the abovementioned provisions of Foreign Exchange Management Act. And the Compounding Authority of the Reserve Bank of India was pleased to compound the abovementioned contraventions in accordance with the Foreign Exchange (Compounding Proceeding) Rules 2000.*

13 No objection has been received to the Scheme of Amalgamation from any other party by either of the Petitioner Company or the counsel. Mr. Rajul Garg, the Director of the respective petitioner companies had given his affidavit dated December 10, 2012 confirming that neither the Petitioner Company nor the counsel has received any objection pursuant to citations published in the newspapers.

14 In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/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 sections 391 and 394 of the Companies Act, 1956. The Petitioner Company 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 the date of receipt of the same. In terms of the provisions of sections 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

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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.

15 Learned Counsel for the Petitioners states that the Petitioner Company would voluntarily deposit a sum of Rs. One lac in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted.

16 The Petition is allowed in the above terms.

17 Order dasti.

INDERMEET KAUR, J

DECEMBER 14, 2012

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