

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY PETITION NO. 74 OF 2014

M/s. CL Media Private Ltd. Company	...Transferor
	Petitioner Company
AND	
M/s. CL Educate Limited Company	...Transferee
	Non Petitioner

Through – Mr. P. Nagesh with
Rishi Sood Advocates for
Petitioner Company.
Mr. Atma Shah, Assistant
Registrar of Companies for the
Regional Director
Mr. Rajiv Bahl, Advocate for
the official Liquidator

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER
% **02.05.2014**

SANJEEV SACHDEVA, J. (Oral)

1. This second motion Petition has been filed under Sections 391- 394 of the Companies Act, 1956(hereinafter referred to as 'Act') by the Petitioner Company seeking sanction of the Scheme of Amalgamation (hereinafter referred to as 'Scheme'). The Transferor Company is a wholly owned subsidiary of Transferee Company. A copy of the proposed Scheme of Amalgamation is filed along with this application.
2. The Registered Offices of both the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The details of respective dates of incorporation of the petitioner companies, their authorized, issued, subscribed and paid up capital have been set out in the petition.
4. The copies of Memorandum and Articles of Association of the Petitioner Companies have been enclosed with the Petition.
5. The copies of resolutions passed by the Board of Directors of the Petitioners Companies approving the scheme have also been filed along with the Petition.
6. Learned Counsel for the Petitioner Companies submits that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.
7. The petitioner company had earlier filed C.A. (M) No. 4 of 2012 seeking directions of this Court for dispensation of the meetings. Vide Order dated 10th January, 2014 this court allowed the application and dispensed with the requirement of convening meetings of Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Company.
8. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 31.01.2014, notice in the Petition was directed to be issued to the Regional Director, Northern Region, the Official Liquidator and to the Secured Creditor namely Kotak Mahindra Bank. Citations were also directed to be published in "Business Standard" (English, Delhi Edition) and "Business Standard" (Hindi, Delhi Edition). Affidavit of service and publication has been filed by the petitioner Company showing compliance regarding service of the petition on the Regional Director, Northern Region, Official Liquidator and to the sole Secured Creditor i.e. Kotak Mahindra Bank and also regarding Publication of

Citations in the aforesaid News papers on 11.02.2014, copies of the news papers cuttings, in original, containing the publications have been filed with the affidavit of service.

9. 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 25.03.2014 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.
10. It has been stated in the said report that the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation. It is further stated that affairs of the Petitioners Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the second proviso to Section 394(1) of the Act.
11. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit / report dated 27th March, 2014. Relying on clause 4.12 of Part-IV of the Scheme of Amalgamation, he has stated that, upon sanction of the Scheme of Amalgamation all the employees of the Transferor companies 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.

12. The Regional director has also raised the certain objections in his affidavit to which a Rejoinder affidavit dated 25.04.2014 was filed on behalf of the Petitioner Company. The objections raised by the Regional Director and its reply by the Petitioner Company is as follows:

- a. The Regional director has submitted that the scheme is incomplete & vague and liable to be dismissed on the grounds that there is no dissolution clause of the Transferor Company in the scheme or in the Petition.

The Petitioner Company in response to the objection has stated that the Petitioner Company in the prayer clause of the Petition has sought a direction from the Hon'ble High Court of Delhi for dissolution of Transferor Company, without following the process of winding up. Further, the Hon'ble High court under section 394 of the Companies Act, 1956 can order dissolution of the transferor Company, without following the process of winding up.

- b. The Regional Director has submitted that Para 8.1 of Part III of the Scheme is not in accordance with the provisions of section 2(43) of the Companies Act, 2013 and the petitioner Company may be asked to file an undertaking by way of an affidavit that they will comply with the provisions of Section 2(43) of Companies Act, 2013.

The Petitioner Company in response to the said objection has stated that the proposed scheme of amalgamation is a merger of wholly owned subsidiary with its holding company and as per clause 6.1 of the scheme, all the assets and liabilities of transferor company shall be transferred at their respective book value, so no reserve will be created by virtue of such

scheme of amalgamation. Further, if any reserve is created the Transferee Company undertakes to comply with the provisions of Section 2(43) of the Companies Act, 2013 post giving effect to the proposed scheme.

- c. The Regional Director has further submitted that the Auditors of the Transferor Company in its balance Sheet as at 31.03.2013 has reported that the company is not maintaining proper records of inventory and this attracts the violation of provisions of section 209 of Companies Act, 1956. Hence, it is submitted that the Petitioner Company may be asked to move the compounding Application under Section 209 of Companies Act, 1956.

The Petitioner Company in response to the said objection has stated that the Transferor Company has started to maintain inventory of books and a new ERP system has been implemented and now the records in the proper manner are being maintained. A certificate has been issued by the chartered accountant certifying that Transferor Company is maintaining inventory records in a proper manner along with Director's report. The learned counsel for the Petitioner Company further undertakes to seek compounding of violation of Section 209 of Companies Act, 1956.

- d. The Regional Director has submitted that on perusal of the balance sheet as at 31.03.2013 of the Transferor Company it has been observed that the Auditors have reported that Advance Tax not deposited by the Company with the Income Tax department. Auditors have further reported 'unpaid' advance tax of Rs. 58,19,580/-. Therefore, it was not clear as to whether notice were issued to the Income Tax Department.

The petitioner Company in response to the said objection has stated that since profits of the Transferor Company are exempted u/s 80IC of the Income tax Act, 1961, its income is non taxable and therefore no advance tax was to be deposited in FY 2012-13 with the Income Tax authorities. However, on account of book Profits in the Transferor company at the year end, the provisions of Minimum Alternative tax (MAT) were attracted and therefore advance tax was to be deposited with the income Tax authorities. The petitioner company has submitted that MAT is calculated on Book Profits in accordance with Schedule VI of Companies Act, 1956 and thus can be computed only after the Annual accounts are audited by auditors and therefore the tax on Book Profits were deposited by the company at the time of filing its return with the Income tax authorities. The Transferor Company has deposited the tax due on Book Profits of Rs 1,18,74,010/- along with the interest on 28.11.2013 with the income tax authorities. Further, the Regional director in compliance of MCA circular no. 1/2014 dated 15.01.2014 had sent a letter dated 06.02.2014 to Chief Income Tax Commissioner, New Delhi to examine the scheme of amalgamation and submit their comments and observations, if any. As reported by Regional director at para no. 8 of its affidavit that no comments has been received from Income tax department

- e. As per the Regional Director the Income Tax Department has not furnished their comments /observations to the Regional Director and 15 days has already lapsed since the letter dated 17th February 2014 was written by the Regional Director to the Chief Income

Tax Commissioner, New Delhi requesting to examine the Scheme of Amalgamation and submitting their comments/observations, if any within 15 days.

- f. The Regional Director has further submitted that on perusal of Balance sheet of the Transferee Company, following observations were reported by the Auditors

“In our opinion and according to the information and explanations given to us, the rate of interest and other terms & conditions for loans given to CLmedia Private Limited, Career Launcher Asia Educational Hub Pte. Ltd., Career Launcher USA INC are prima facie prejudicial to the interest of the Company. The year end balance of such loans was Rs. Nil, Rs. 9,362,491 and Rs. 38,390,608 respectively. Maximum amount involved during the year on such loans was Rs. 47,760,000, Rs. 362,491 and Rs. 38,390,608 respectively.”

The Petitioner Company in response to said objection has stated that the observations made by the auditors in the balance sheet of the Transferee Company were duly replied to by the directors of the Transferee Company in its Director's report. It is further reiterated that these interest free loans have been granted by the Transferee Company to its subsidiary companies for meeting their short term fund requirements. It is further stated that granting of these loans, in fact, is in the interest of shareholders of the Transferee Company to protect their investment in these subsidiary companies and these being 100% subsidiaries, any grant of interest free loan is not prejudicial to the company. Further, the provisions of Section 372A of the Companies Act 1956 has no applicability which makes obligatory to charge interest

on loans is not applicable in case of a loan being granted by a holding company to its wholly owned subsidiaries in view of section 372A(8) (c) of the Companies Act, 1956. It is further stated that subsequent to the approval of scheme of amalgamation the loan granted to the Transferor Company will vest with the Transferee Company therefore there is no loss caused to the Transferee Company.

“During the year the company has fully written off loan granted in earlier years to Career launcher Educational Foundation aggregating Rs. 112,878,251. Accordingly, in our opinion such loan was prejudicial to the interest of the Company.

The Petitioner Company in response to said objection has stated that the loan, in fact, was infrastructure charges recoverable from Career Launcher Education Foundation on account of running of business school from the premises owned by the company. Initially due to inability to pay these infrastructure charges were converted into a loan, which was returnable and was carrying interest at market rates. Inability to pay and the closure of the business school has led to the write off of these charges by the company in its books a provision for which was made in the full in the previous financial year.

- g. The Regional director further in its affidavit has stated that auditor of company has reported transferee company is not maintaining the inventory records.

The petitioner Company in response to the said objection has stated that the transferee company has started maintaining the records of inventory of books,

the new ERP system has been implemented in the Transferee Company and now the records are being maintained in the proper manner and a certificate of the C.A. has been issued to certify that the records have been maintained in the proper manner.

- h. The Regional Director has further submitted that the Transferor Company is subsidiary of the Transferee Company as such under the proposed Scheme of Amalgamation, the Transferee Company has not filed petition under 391/394 of the Companies Act, 1956.

The petitioner Company in response to the said objection has stated that the entire issued, subscribed and paid up equity share capital of Transferor Company is held by Transferee Company directly and the Transferor Company is a wholly owned subsidiary of the Transferee Company. Therefore, the Transferee Company is not required to file a separate or joint application before this Hon'ble Court for sanction of the Scheme of Amalgamation. This issue has been considered and approved by this High Court and other High Courts in the case of **Auto Tools India Pvt. Ltd. [Co. Appl. (M) No. 41 of 2010]**, **Sharat Hardware Industries Pvt. Ltd. [1978 (48) Com Cas 23 Delhi]**, **Mahaamba Investments Ltd. vs. IDI Limited [2001 (105) Com Cas 16 Bombay and Andhra Bank Housing Finance Ltd. [2004 (118) Com Cas 295 Andhra Pradesh]**.

In view of the above submissions, the objections/ observations made by Regional Director do not survive and are addressed.

13. No objection has been received to the Scheme of Amalgamation from any other party, Mr. Nikhil Mahajan, Director of the Petitioner Company has filed an affidavit dated 20th March, 2014 confirming that neither the petitioner companies nor their Legal Counsel has received any objection pursuant to the citations published in the Newspapers.
14. Learned counsel for the Official Liquidator Mr. Rajiv Bahl states that the Official Liquidator has no objection to the present Scheme being sanctioned.
15. In view of the approval accorded by the Shareholders and Creditors of the petitioner Company, 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 Arrangement under Section 391 and 394 of the Companies Act, 1956.
16. The petitioner companies shall 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.

17. 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.
18. Learned counsel for the petitioners states that the petitioner Companies would voluntarily deposit a sum of Rs.50,000/- in the Common Pool Fund of the Official Liquidator within three weeks from today. The statement is accepted.
19. The petition is allowed in the above terms.

SANJEEV SACHDEVA, J.

MAY 02, 2014/sv