IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICITON

COMPANY SCHEME PETITION NO 367 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 390 OF 2014

Career Forum Limited.....Petitioner Company

AND

COMPANY SCHEME PETITION NO 368 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 391 OF 2014

Calibre Mindware Programming Private Limited.....Petitioner

In the matter of Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Career Forum Limited, Amalgamating Company with Calibre Mindware Programming Private Limited, Amalgamated Company

Called for Hearing

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Petitioner.

Mr. N.D.Sharma i/b Mr. H.P. Chaturvedi for Regional Director.

Mr. S Ramakantha Official Liquidator, present in Company Scheme Petition No. 367 of 2014

CORAM: S.J. Kathawalla, J.
DATE: 30th January 2015

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Career Forum Limited, Amalgamating Company with Calibre Mindware Programming Private Limited, Amalgamated Company.

3. Learned Advocate for the Petitioner states that the Petitioner Company in Company Scheme Petition No. 367 of 2014 is engaged in the business of imparting coaching and or training by arranging and conducting, in any part of India or elsewhere coaching classes, training programmes and seminars, whether general, scientific, commercial, engineering or any other type of education including coaching of entrance examinations for admissions to management or other professional or administration courses is imparted to the students orally or through post on such terms and conditions as may be laid down by the company from time to time and to carry on the business of development, selling and trading in audio visual teaching aids and to carry on the business as proprietors and publishers of newspapers and journals, magazines, books and other literary works for teaching and educational purpose and Petitioner Company in Company Scheme Petition No. 368 of 2014 is engaged in the business of providing, exporting, importing, buying, selling, distributing, servicing, programming and dealing in software solutions, website development, system and application software, data

processing, data warehousing, peripheral products and networking of systems and to carry on the business of imparting online coaching and training for online and offline entrance examinations and seminars for different types of e-learning educational programmes and to publish newspapers, magazines, books and literary works through the medium of internet or any other electronic media for teaching, educational, technical and commercial purpose.

4. The circumstances that necessitated and justified the Scheme of Amalgamation and the advantage thereof are that the nature of business carried on by the Petitioner Companies is Complementary therefore Scheme of Amalgamation would result into following benefits namely achieving economies of scale, lesser regulatory / procedural compliances, Integrate, rationalize and streamline the management structure of the merged business, Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs, eliminate duplication of work, administrative services.

5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Advocate for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in respective Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the order passed in respective Summons for Directions.

7. Learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Hon'ble Court and they have filed necessary Affidavits of compliance with the Hon'ble Court. Moreover, Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertakings given by the Petitioner Company are accepted.

8. The Official Liquidator has filed his report on 22nd January 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 28th November 2014 stating therein that save and except as stated in paragraph 6 (a) to (c), it appears that the scheme is not prejudicial to the interest of shareholders and public.

6. That the Deponent further submits that:-

(a) *Clause 14.4 of the Scheme provides for adjustment for differences in Accounting Policies between Amalgamating company and Amalgamated company. In this regard, it is submitted that in addition to compliance of Accounting Standard-14, the Amalgamated company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5, etc.*

(b) *It has been observed from the material documents submitted by the Petitioner companies that both the petitioner companies are loss making companies. In this regard, it is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Amalgamated Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Amalgamated company.*

(c) *Clause 21 of Scheme provides for Modification of Scheme wherein the Board of Directors of Amalgamating Company and Amalgamated Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining further approval from the Hon'ble High Court. The Transferor company and Transferee Company shall be directed to undertake to this effect.*

10. In so far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes that in addition to compliance of applicable accounting standards it shall pass such accounting entries which

are necessary in connection with the Scheme to comply with other applicable Accounting Standard.

11. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Amalgamated Company is bound to comply with all applicable provisions of Income Tax Act, 1961 and all tax issues arising out of scheme will be met and answered in accordance with law.

12. In so far as observations made in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel states that Clause 21 of the Scheme gives power to the Board of Directors of the Petitioner Company to amend any part of the scheme. The learned Counsel for the Petitioner Company further states that such powers to amend the scheme is subject to prior approval of the High Court. It is therefore clarified that power vested under Clause 21 of the scheme will be subject to the approval of High Court.

13. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the submissions and undertakings given by the Petitioner Companies as stated hereinabove. The said undertakings given by the Petitioner Companies are accepted.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petition are made absolute in terms of prayer clauses (a).

16. The Petitioner Companies to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

17. Petitioners are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form 21/E-Form INC-28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/ 2013 whichever is applicable.

18. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 367 of 2014 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

19. Filing and issuance of the drawn up order is dispensed with.

20. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.J. Kathawalla, J)