IN THE HIGH COURT OF PUNJAB & HARYANA, AT CHANDIGARH

CP No. 11 of 2015(O&M)
connected with CP No.21 of 2015
Date of decision: August 7 , 2015

In the matter of

Scheme of Amalgamation between :

York Calltech Private Limited

Petitioner Company-1/Amalgamating Company-I

And

Valley Computech Limited

Petitioner Company-2/Amalgamating Company-2

And

Uphill Farms Private Limited

Petitioner Company-3/Amalgamated Company

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Munisha Gandhi, Senior Advocate with
Mr. Gaurav Goel, and
Mr. Tarurag Gaur, Advocate
for the petitioner-Companies.

Mr. Deepak Aggarwal, Advocate with
Mr. Manjit Singh, Assistant Official Liquidator.

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

<u>AMIT RAWAL, J (ORAL).</u>

The present petition has been filed as second motion under Sections 391 to 394 of the Companies Act, 1956 for sanction of the Scheme of Amalgamation(Annexure P-1) of First Petitioner Company-1/Amalgamating Company and Petitioner Company-2/ Amalgamating Company with Petitioner company -3/ Amalgamated Company.

This Court vide order dated 9.1.2015 in CP No.2 of 2015 was pleased to dispense with holding of meetings of equity shareholders and unsecured creditors of the Amalgamating and Amalgamated Companies . There was no secured creditors of the aforesaid companies and the first motion petition was disposed of.

Copy of Board of resolution of amalgamation of Amalgamating Company Nos. 1, 2 and amalgamated Company No.1 have been annexed as Annexures P-2, P-3 and P-4 respectively.

Main objects of the Petitioner Company-1/Amalgamating Company, Petitioner company-2/ Amalgamating Company and Petitioner Company-3/ Amalgamated Company are detailed in their respective Memorandum and Articles of Association which are annexed as Annexure P-5, P-7 and P-9 respectively.

The notice of the present petition was issued to the

Official Liquidator and Regional Director, Ministry of Corporate Affairs, Noida, and it was further directed to cause publication in the newspapers namely 'Indian Express' (English), 'Jansatta' (Hindi) both Delhi NCR Editions as well as in the official Gazette of Haryana. The affidavit of publication has also been filed.

As per report of Mr. A. K. Chaturvedi, Regional Director, Ministry of Corporate Affairs, Noida, it is borne out that since the details of assets of liabilities to be transferred will become the part of the formal Orders of this Court, therefore there is no purpose of shifting the appointed date and showing appointed date as 1.4.2014 will not have any adverse impact on the proposed scheme. The relevant para Nos. 15 and 16 of the same reads thus:-

> *“15. Registrar of Companies vide para 31 of its report has stated that the Appointed Date for the proposed scheme of amalgamation has been fixed as 31.3.2015 whereas financial position of all these companies are mentioned in the petition/scheme based on their Balance sheet as at 31.3.2014 and stated that the petitioner Companies may be advised to file the Balance Sheet of year ended 31.3.2015 and shift the appointed date to 1.4.2015 to avoid the practical difficulty of finalizing the Balance sheet for the year ended 31.3.2015 and identifying the actual assets and liabilities to be transferred as on the appointed date.*
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> *16. The answering Deponent in this connection most respectfully submits that since the details of assets and liabilities to be transferred will become the part of the formal Orders of this Hon'ble Court therefore there is no purpose of shifting the*

> *appointed date and showing appointed date as 1.4.2015 (future date) will not have any adverse impact on the proposed scheme.”*

Similarly, the Official Liquidator has also filed his report dated 4.8.2015 which contains the extraction of the report of M/s KJMA and Associates, Chartered Accountants, 13, Industrial Area, Phase-II, Panchkula to whom the matter was referred to verify the accounts of the Transferor Companies. On going through the report of the Chartered Accountant, it is borne out that the affairs of the Transferor Company had not been conducted in a manner not pre judicial to the interest of its Shareholders, Members, Creditors or to the Public interest. As per report of the Official Liquidator, it has been stated that the Chartered Accountant has pointed out that Petitioner/Amalgamating Company No.1 had obtained some loans from the Holding Company, which are interest free loans, and thus there is no repayment schedule and is re-payable on demand and further the Petitioner/Amalgamating Company-2 has been legally advised that the said amount is likely to be deleted. Similarly, during the financial year 2012-13 the Company had received a demand of ₹46,158/- under Section 143(3) of Income Tax Act, 1961 and for the subsequent year 2010-11 against which an appeal is pending with the Commissioner of Income Tax (Appeals-II), New Delhi,

It is averred in the petition that there is no investigation proceedings are pending against the Amalgamating Company 1, Amalgamating Company-2 and Amalgamted company under Section 235 to 251 of the Companies Act, 1956.

For the reasons, aforementioned, and keeping in view the procedural requirements under Section 391 to 394 of the Companies Act, 1956 and as well as relevant affidavit and rules and due consideration of the reports of the Regional Director, Ministry of Corporate Affairs, Noida, and the Official Liquidator, the Scheme of Amalgamation of Petitioner Company-1/Amalgamating Company, Petitioner company-2/ Amalgamating Company and Petitioner Company-3/ Amalgamated Company is hereby sanctioned and both the Amalgamating Companies shall be dissolved without being wound up.

The Scheme shall be binding on Petitioner Company-1/Amalgamating Company, Petitioner Company-2/ Amalgamating Company and Petitioner Company-3/Amalgamated Company their respective Shareholders and creditors, and all concerned.

Let the formal order of sanction of Scheme of Amalgamation be drawn in accordance with law and certified copy of the same be filed with the Registrar of Companies within 30 days from the receipt of the same.

Copy of this order be published in 'Indian Express' (English), 'Jansatta' (Hindi) both Delhi/NCR editions and Official Gazette of Haryana.

Any interested person shall be at liberty to apply to this Court for any directions as per law.

It is made clear that in case any demand in future is made by the Income Tax from the Petitioner/Amalgamating Company-1 & 2, the Amalgamated Company shall make the payment.

The Company Petition is disposed of accordingly.

(AMIT RAWAL)
JUDGE

August 7, 2015
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