IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.30 of 2015 (O&M)
connected with CP No.206 of 2014
Date of Decision:- 07.07.2015

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

AND

In the matter of:-
Scheme of Amalgamation between:

1. Acclipse India Private Limited
...Transferor Company No.1

2. Medknow Publications And Media Private Ltd.
...Transferor Company No.2/Petitioner Company

3. Wolters Kluwer Financial And Compliance Services Software Pvt. Ltd.
...Transferor Company No.3

4. Wolters Kluwer (India) Private Ltd.
...Transferee Company

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Ms. Munisha Gandhi, Sr. Advocate with
Mr. Tarurag Gaur, Advocate,
for the Petitioner/Transferor Company-2.

Mr. Deepak Aggarwal, Advocate with
Mr. M. Jayakumar, Official Liquidator.

AMIT RAWAL, J. (ORAL)

The present company petition has been filed under Sections 391-394 of the Companies Act, 1956 read with Rule 9 of Companies (Court) Rules, 1959 on behalf of petitioner-Transferor Company No.2, for sanctioning of the Scheme of Amalgamation (Annexure P-13).

It is averred that the Transferor & Transferee Companies are registered under the Companies Act, 1956 and their registered offices are within the territorial jurisdiction of this Court.

The main objects of the Transferor Company no.1, Transferor Company No. 2/ Petitioner Company, Transferor Company no. 3, and the Transferee Company are set out in their Memorandum and Articles of Association which are annexed with the petition at Annexure P-2, P-5, P-8, and P-11, respectively.

The Board of Directors of the Transferor Company no. 1, Transferor Company No. 2/ Petitioner Company, Transferor Company no. 3, and the Transferee Company have approved the Scheme of Amalgamation in their respective meetings held on 16/17.4.2014 vide resolutions annexed with the petition at Annexures P-14 to P-17, respectively.

The petitioner/Transferor Company No.2 has earlier approached this Court by filing Company Petition No.206 of 2014 and this Court vide order dated 22.12.2014 on the basis of the prayer made in the aforementioned petition directed the convening of a meeting of the unsecured creditors of the petitioner-Transferor Company No.2 and further dispensed with the convening of meeting of the Equity Share- holders of the petitioner-Transferor Company No.2 and also noticed the fact that there are no secured creditors of petitioner-Transferor Company No.2. For convening the meeting of unsecured creditors of petitioner-Transferor Company No.2, Sh. Sudhir Aggarwal and Sh. Bhupeshwar Jaswal, Advocates were appointed as Chairman and Co-Chairman, respectively. The Chairman had submitted his report and the first motion petition was disposed of.

On presentation of this second motion petition, this Court vide order dated 03.03.2015 issued a notice to the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator and also ordered the publication of the notice in the newspapers namely 'Economic Times' (English) and 'Dainik Tribune' (Hindi) both Punjab Edition as well as in the Official Gazette of State of Punjab. The compliance affidavit of the said order has been filed and is taken on record.

Report of the Official Liquidator and the Regional Director has been filed. Same are taken on record.

In the report dated 24.04.2015 filed by way of affidavit, Mr. A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, Noida has not raised any queries regarding amalgamation of the Transferor Company, thus, in essence has no objection to the Scheme of Amalgamation.

The Official Liquidator in the report dated 30.04.2015 vide para No.4 has submitted that M/s Deviyal & Co., Chartered Accountant has verified the accounts of the Transferor Company and submitted his report to his office on 21.04.2015. He has further submitted that Chartered Accountant has made the observations that the company has outstanding income tax demand in following years:-

AY	**Outstanding Demand (INR)**
2009-10	2,00,420/-
2012-13	1,42,750/-
2013-14	2,12,970/-

and the company has been served upon show cause notice for imposing penalty u/s 29(3) of the MVAT Act 2002, which is still pending. In para No.6, the Official Liquidator has submitted that in view of the observations of the Chartered Accountant, the Official Liquidator most respectfully submits that affairs of the Company has not been conducted in a manner prejudicial to the interest of its members or to public interest.

In response to the query raised by the Official Liquidator in his report, Mr. Ajay Arora, Authorized Signatory of Wolters Kluwer (India) Pvt.Ltd. i.e. Transferee Company has filed an affidavit dated 07.05.2015. Paragraph 1 and 2 of the said affidavit are reproduced herein as under:-

> *"1. That in response to the observations regarding the tax liability of the Petitioner company, it is stated that as per Clause 11 of the Scheme of Amalgamation, it is incumbent upon the Transferee Company to take over and be responsible for any liability of the Transferor companies, whether reflected in its books or not. Thus in the event of any demand raised or enforced by the Income Tax Department, the deponent undertakes that the Transferee Company shall duly discharge the same, in accordance with law and subject to its legal rights.*
>
> *Clause 11 of the scheme is reproduced below for the kind perusal of this court:*
>
> *"11.* ***TREATMENT OF TAXES***
>
> *11.1 Any tax liabilities under the Income-Tax Act, 1961, Customs Act, 1962, Central Excise Act, 1944, Service Tax, State Sales Tax laws, Central Sales Tax Act, 1956 or other applicable laws/regulations dealing with taxes/duties/levies (hereinafter in this Clause referred to as "**Tax Laws**") allocable or related to the business of Transferor Companies to the extent not provided for or covered by tax provision in the accounts made as on the date immediately preceding the Appointed Date shall be transferred to WKIPL. Any surplus in the provision for taxation/duties/levies account including advance tax and withholding tax as on the date immediately preceding the Appointed Date will also be transferred to the account of the*

WKIPL. Any refund under the Tax Laws due to Transferor Companies consequent to the assessments made on Transferor Companies and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received by WKIPL.

11.2 All taxes (including income tax, sales tax, excise duty, customs duty, service tax, VAT etc) paid or payable by Transferor Companies in respect of the operations and/or the profits of the business before the Appointed Date, shall be on account of Transferor Companies and, insofar as it relates to the tax payment (including without limitation, sales tax, excise duty, custom duty, income tax, service tax, VAT etc.), whether by way of deduction at source, advance tax or otherwise howsoever, by Transferor Companies in respect of the profits or activities or operation of the business after the Appointed Date, the same shall be deemed to be the corresponding item paid by WKIPL, and, shall, in all proceedings, be dealt with accordingly.

Upon the Scheme becoming effective, WKIPL is also expressly permitted to revise its income tax returns and other returns filed under the tax laws and to claim refunds, advance tax and withholding tax credits, etc, pursuant to the provisions of this Scheme."

2. That further the company is willing to abide by any directions of the court or undertaking given by Company Counsel during course of hearing."

The above-stated explanations submitted by the Authorized Signatory of Wolters Kluwer (India) Pvt.Ltd. i.e. Transferee Company sufficiently meets with the queries raised by the Official Liquidator.

The petitioner-company has confirmed that there are no investigations or proceedings pending against them under Sections 235 to 251 of the Companies Act, 1956.

For the reasons afore-stated and on consideration of all the relevant facts and the procedural requirements contemplated under Sections 391 to 394 of the Companies Act, 1956 and the relevant Rules and on due consideration of the reports of the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida and the Official Liquidator, the Scheme of Amalgamation is hereby sanctioned and as a result thereto, all the assets and liabilities of the petitioner-Transferor company No.2 shall stand vested in the Transferee Company and the petitioner-Transferor Company No.2 shall be dissolved without being wound up. The Transferee Company shall satisfy the due liabilities of the petitioner-Transferor Company No.2, if any, arised from any of the Tax Department.

The Scheme shall be binding on the petitioner-Transferor Company No.2 and Transferee Company, their respective Shareholders, 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.

A notice of the orders be published in the daily newspapers namely 'Economic Times' (English) and 'Dainik Tribune' (Hindi) both Punjab Edition as well as in the Official Gazette of State of Punjab.

Any person interested shall be at liberty to apply to the court for any direction(s) as per law.

Company petition is disposed of accordingly.

(AMIT RAWAL)
JUDGE

July 07, 2015
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PAWAN KUMAR
2015.07.22 16:00
I attest to the accuracy and
integrity of this document