**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CP No. 79 of 2015 (O&M)
Date of decision : 13.10.2015

In the matter of
Scheme of Amalgamation and Arrangement between

1. Regus Office Centre (Gurgaon) Private Limited

... Transferor Company/ Petitioner Company No.1

AND

2. Regus Gurgaon Metropolitan Business Centre Private Limited

... Transferee Company/ Petitioner Company No.2

Present:- Ms. Munisha Gandhi, Senior Advocate with
Ms. Salina Chalana, Advocate, for the petitioners.

Mr. Deepak Aggarwal, Advocate, with
Mr. D. K. Singh, Official Liquidator.

Rajesh Bindal, J.

In this petition, the petitioner companies seek sanctioning of Scheme of Amalgamation and Arrangement (Annexure P-1), of Regus Office Centre (Gurgaon) Private Limited (Transferor Company/ Petitioner Company No.1) and Regus Gurgaon Metropolitan Business Centre Private Limited (Transferee Company/ Petitioner Company No.2).

The registered offices of the petitioner companies are situated at Gurgaon, Haryana.

The Memorandum and Articles of Association of the petitioner companies no.1 and 2 have been annexed with the petition at Annexures P-3 and P-5 respectively.

The Board of Directors of both the aforementioned Companies in their respective meetings held on 11.2.2015 and 16.2.2015 have approved the Scheme. Copies of the same have been annexed at Annexures P-7 and P-8, respectively.

Earlier vide order dated 6.4.2015, passed in CP No. 39 of 2015, this Court had dispensed with convening of meetings of the Equity Shareholders and Secured Creditors of both the companies and further directed to convene the meetings on 13.5.2015 of the Un-Secured Creditors of the Transferor and Transferee Companies for seeking approval of Scheme of Amalgamation and Arrangement. Notice of the meeting was also directed to be published in the newspapers and official gazette. Vide order dated 26.5.2015, the report of the Chairman was taken on record and the first motion petition was disposed of accordingly.

This is the second motion petition. Notice of the petition was directed to be issued to Regional Director, Ministry of Corporate Affairs and the Official Liquidator. Notice was also directed to be published in 'Financial Express' (English) and 'Jansatta' (Hindi), both Delhi/ NCR Edition, and in the official Gazette of Government of Haryana. The aforesaid order has been complied with and affidavit to this effect has been placed on record.

While referring to the report dated 31.8.2015 filed by way of affidavit of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, learned counsel appearing for Official Liquidator submitted that the Regional Director has raised the issue regarding the procedural violations made by the Companies.

In reply to the aforementioned issue raised by learned counsel appearing for the Official Liquidator, learned counsel for the petitioners submitted that the issue regarding procedural violations made by the companies, have either been compounded by the Companies or a specific para has been provided in the Scheme that Transferee Company shall be bound by any liability of the Transferor Company even before the effective date. She further submitted that even otherwise the violations, as have been referred to, pertained to the period prior to the year 2009.

Heard learned counsel for the parties and perused the paper book.

With regard to the issue of procedural violations, raised by the Regional Director, it has been provided in the Scheme and undertaken by learned counsel for the petitioners that the Transferee Company shall be bound by any liability of the Transferor Company even before the effective date. Clauses 4.4 and 4.7 of the Scheme take care of all liabilities, litigation, etc. of the transferor company. The same are extracted below:-

"4.4 Upon the Scheme becoming effective and with effect from the Appointed Date, all debts, liabilities, contingent liabilities, duties and obligations of every kind, nature and description of Transferor Company shall, under the provisions of Sections 391 to 394 and all other applicable provisions, if any, of the Act, and without any further act or deed,be transferred to or be deemed to be transferred to Transferee Company, so as to become from the Appointed Date the debts, liabilities, contingent liabilities, duties and obligations of Transferee Company and it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities, contingent liabilities, duties and obligations have arisen in order to give effect to the provisions of this sub-clause.

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4.7 All taxes of any nature, duties, cess or any other like payments or deductions made by Transferor Company to any statutory authorities such as Income Tax, Sales tax, Service Tax, Value Added Tax, etc. or MAT credit entitlement or any tax deduction or collection at source, relating to the period after the Appointed Date and upto the Effective Date shall be deemed to have been on account of and on behalf of Transferee Company and the relevant authorities shall be bound to transfer to the account of and give credit for the same to Transferee Company upon the Scheme becoming effective."

Still further in the affidavit dated 5.10.2015, filed by Rajan Verma, it has been specifically stated that Transferee Company undertakes to comply with such directions as this Court may deem fit and shall also comply with all future mandates of the statutory authorities in respect of the events of the past, subject to its legal rights.

The Official Liquidator has not raised any objection to the scheme.

The petitioner- companies have confirmed that there are no investigations or proceedings pending against them under the Act or under any provisions of Companies Act.

For the reasons afore-stated and on consideration of all the relevant facts and the procedural requirements contemplated under the Act and the relevant Rules and on due consideration of the reports of Regional Director, Northern Region, Ministry of Corporate Affairs and the Official Liquidator, the Scheme of Amalgamation and Arrangement is hereby sanctioned. The assets and liabilities of the Petitioner Transferor company shall stand vested in the Petitioner Transferee Company. The Transferor Company shall be dissolved without being wound up.

The Scheme shall be binding on the Transferor and Transferee Companies, their respective Shareholders, Creditors and all concerned.

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

Learned counsel for the petitioner companies states that the petitioner companies would voluntarily deposit a sum of ₹ 50,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks.

The statement is accepted.

Notice of the order be published in the 'Financial Express' (English) and 'Jansatta' (Vernacular) both Delhi/ NCR Edition and in the official Gazette of Government of Haryana.

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

Disposed of accordingly.

13.10.2015 (Rajesh Bindal)
vs Judge