IN THE HIGH COURT OF PUNJAB & HARYANA, AT CHANDIGARH

**CP No. 157 of 2014 connected
with CP No. 131 of 2014
Date of decision May 1 , 2015**

**In the matter of :
The Companies Act, 1956
AND
IN THE MATTER OF :-**

Section 391 to 394 of the Companies Act, 1956

AND

In the matter of

**Scheme of Amalgamation between
Acclipse India Private Limited**

.......Transferor Company No.1/Petitioner Company

Medknow Publications and Media Private Limited

....Transferor Company No.2/Non-Petitioner Company

**Wolters Kluwer Financial and Compliance Services Software
Private Limited**

........Transferor Company No.3/Non -Petitioner Company

Wolters Kluwer (India) Private Limited

....Transferee Company/Non Petitioner-Company

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Deepak Aggarwal, Advocate with
Mr. M. Jayakumar, 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?

AMIT RAWAL, J (ORAL).

The present petition has been filed under Sections 391 to 394 of the Companies Act, 1956 for sanction of the Scheme of Amalgamation of Transferor Companies Nos. 1 to 3 with Transferree Company. The Scheme of Amalgamation has been annexed as Annexure P-9.

The registered office of the petitioner Company/Transferor Company No. 1 is situated at Plot No. 14, Rajiv Gandhi Technology Park, Chandigarh-160101. Similarly that of the Transferor Company No.2/ Non-Petitioner is situated at B-9, Kanara Business Centre, Off, Ghatkopar (E) Mumbai Maharashtra-400075.

The Copy of Memorandum and Articles of Association of Transferor Company No. 1 to 3 and of Transferee Company are annexed as Annexure P-1, P-3 , P-5 and P-7 respectively.

Similarly copy of the resolution of the Board of Directors dated 16.4.2014 and 17.4.2014 of the Transferor Companies No. 1 to 3 has been annexed as Annexure P-10, P-11 & P-13 respectively and copy of resolution of Board of Directors dated 17.4.2014 of Transferee Company is at Annexure P-12 .

The petitioner-Transferor Company No.1 has filed a

Company Petition No. 131 of 2014 seeking dispensing with the holding and convening of the meeting of Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company No.1 and this Court vide order dated 7.8.2014 dispensed with the same.

It is pertinent to mention that non-petitioner Companies have filed separate individual petition for sanctioning of the said Scheme. On filing of the present petition, this Court issued a notice to the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator and also ordered for publication of the notice of the petition in the newspapers namely "The Indian Express (English), Dainik Bhaskar (Hindi) both Chandigarh Edition and the official Gazette of Chandigarh Administration.

The affidavit of publication has been filed and both the Official Liquidator and Regional Director have filed their respective reports. As per report of the Official Liquidator dated 9.3.2015 it has been pointed out that there was some clerical error. The details of which have been given as under:-

> "(5) Some clerical error in Company Petition No.157 of 2014 as under:-
>
> (a) Difference in Totaling of Balance sheet dated 31.3.2013 of Transferor Company No.2 Non petitioner Company- Medknow Publications and Media Private Limited. Total of Liabilities Side was Rs. 714.36 Lakhs. Total of Assets side comes Rs.714.45 Lakhs, but written as Rs. 714.36 Lakhs (Difference 0.09 Lakh)

(b) Difference in Totaling of Balance Sheet dated 31.12.2003 of Transferor Company No.3 Non Petitioner Company -Wolters Kluwer Financial and Compliance Services Software Private Limited. Total of Liabilities Side was Rs.12548.15 Lakhs, but written as Rs.1888.17 lakhs (difference Rs.10659.98 Lakhs). Total of assets side comes Rs. 1888.13 lakhs, but written as Rs.1888.17 Lakhs (difference 0.04 lakh)

(c)Difference in Totaling of balance sheet dated 31.3.2014 of transferee Company- Wolters Kluwer India Private Limited. Total of Liabilities side was Rs.615.56 Lakhs, but written as Rs.615.57 Lakhs (difference Rs.0.01 Lakh) Total of assets side comes Rs. 615.58 Lakhs, but written as Rs.165.57 lakhs (difference 450.01 lakhs)."

It has also been stated in the report of the official liquidator that as per the observations of the Chartered Accountant and Auditor the affairs of the company have not been conducted in a manner which is pre-judicial to the interest of its members or to public interest.

The Transferor Company-No.1-Petitioner has filed an affidavit/reply dated 23.4.2015 to the report of the Official Liquidator and have stated as under:-

"(4) Further, Official Liquidator has filed affidavit to this Hon'ble Court and the Chartered Accountant as

appointed by Official Liquidator has made few observations as mentioned in Para 3 and 4. The deponent hereby files para wise reply to the observations as follows:-

1) It is submitted that before incorporation of Petitioner Company, the parent company i.e. Acclipse Ltd. NZ had invested a sum of INR 18,82,617/- for the purchase of various assets and other day to day expenses of Indian office from October 2009 till the Company incorporation i.e. 21.12.2009. On incorporation of the company, the same were duly accounted in the books and the parent company was shown as the creditor for the same. Since due to FEMA regulations the funds could not be returned to the parent company and therefore it was reflected as creditors in the books. Further in October, 2013, due to shifting of office, most of these assets were sold at scrap value. Therefore, in order to knock off the outstanding amount of parent company this loss was transferred to the account of the parent company instead of claiming the same as a loss in the Income Tax Return."

It has been stated that amended Memorandum of Association has been annexed as Annexure P-1 whereby it has been mentioned that the present authorized share capital of the petitioner-Transferee shall be sufficient for issuance of shares pursuance to the Amalgamation.

The Regional Director has also filed his report by way of affidavit dated 9.1.2015 and has taken the following objections:-

" 4. That the Deponent craves leave to submit that as per clause 13.4 of section D of the scheme it has been stated that the excess/deficit of the value of the asset over the value of the Liabilities of Transferor Companies vested in WKIPL pursuant to this scheme, and as recorded in the books of account of WKIPL shall, after adjusting the amount recorded in clause 13.2 and 13.3 above and "Expenses of scheme", be treated in the Balance sheet of the Transferee Company in accordance with "The Pooling of Interests" method as prescribed under Accounting Standards-14 issued by the Institute of Chartered Accountant of India.

5. That the Deponent craves leave to submit that as per Ministry of Corporate Affairs General Circular No.1/2014 dated 15.1.2014, letter for furnishing the comments/observations, if any, in regard to scheme was sent to the office of Chief Commissioner of Income Tax, Gurgaon vide this Directorate's letter dated 11.11.2014. In this regard it is submitted that the letter has been received back undelivered with the Postal remark "Refused".

6. That the Deponent craves leave to submit that from the reply furnished by the company and report of ROC, Chandigarh it has been mentioned that M/s Acclipse Limited is a foreign Company shareholding of M/s Acclipse India Private Limited (Transferor Company No.1) is 100% subsidiary of said Foreign Company. Hence, it is not known whether the Petitioner Company has obtained the approval of the FIPB. Copy of ROC report is enclosed as Annexure "A" to this Affidavit.

7. That the Deponent craves leave to submit that as per clause 20 of Section D of the scheme it has *been stated on the scheme becoming effective, the Transferor Companies shall be dissolved without going through the process of winding up and no person shall make assert or take any claims, demands or proceedings against the directors or officers thereof in his capacity as such director or officer except in so far be necessary be enforcing the provisions of this order.*

8. That the Deponent craves leave to submit that the Valuation report is not attached with the copy of Company Petition supplied to this office.

In response to the report of the Regional Director, the petitioner-Transferor Company No.1 has filed an affidavit dated 25.2.2015 and given the following reply:-

"4. That in response to the following of various Accounting Standards, it is submitted that the excess/deficit of the value of the assets over the value of the liabilities of Transferor Companies vested in WKIPL pursuant to this Scheme, and as recorded in the books of account of WKIPL shall, after adjusting the amount as specified in Scheme and 'Expenses of Scheme', be treated in the balance sheet of the Transferee Company in accordance with "The Pooling of Interests" method as prescribed under Accounting Standard-14 issued by The Institute of Chartered Accountants of India. The same has been agreed and approved by the Board of Directors of all the Companies by virtue of Clause 13.4 of the Scheme.

5. That in this paragraph, the Regional Director has mentioned that a letter for furnishing *comments/observations, if any, to the Scheme had been sent to the office of Chief Commissioner of Income Tax, Gurgaon by his office and that the said letter had been returned undelivered. In response it is submitted that a copy of petition of the Petitioner Company along with Scheme had been sent to the concerned Income Tax Office that is ITO Wards 5 (4), Chandigarh-II as per Ministry of Corporate Affairs' General Circular No.1/2014 dated 15.1.2014 by the Petitioner Company itself. Copy of acknowledgement of Service is attached herewith and marked as Annexure P-A.*

6. That in this paragraph, the Regional Director has made an observation with regard to securing the necessary FIPB approval on account of M/s Acclipse Limited being a foreign Company. That in response it is submitted that investment of M/s Acclipse Limited (Foreign Company) in Acclipse India Private Limited (Petitioner Company) does not required any approval from FIPB. As per the Clause 3.7 read with Clause 6.2 of Consolidated FDI Policy of 2014, if the sector/activities of Indian Company are not mentioned in the specified list, then it is permitted for a foreign entity to invest in Indian entity upto 100% of capital under automatic route. The Petitioner-Company is engaged in software services which does not fall under any of the sectors mentioned in aforesaid clause and hence does not require approval from FIPB. A copy of the relevant provision Consolidated FDI Policy of 2014 is annexed as Annexure P-B.

7. That the said para is a virtual reproduction of what has been stated in the Scheme. However, in response to the observations contained in this *paragraph, it is re-iterated that on the Scheme becoming effective, the Transferor Companies shall be dissolved without going through the process of winding up and no person shall make assert or take any claims, demands or proceeding against a director or officer thereof in his capacity as such director or officer except in so far be necessary for enforcing the provisions of this order. The same has been agreed and approved by the Board of Directors of all the Companies by virtue of Clause 20 of the Scheme.*

8. The valuation report is submitted herein and marked as Annexure P-C."

The explanations submitted by the authorized signatory of the petitioner-Company i.e. Transferor Company No. 1 sufficiently meet with the queries raised by the Regional Director and the Official Liquidator.

The petitioner-Transferor Company No.1 has confirmed that there are no investigations or proceedings pending against it under Section 235 to 254 of the Act.

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 affidavits and rules and due consideration to the report of the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator coupled with the affidavits filed by the authorized representative of the petitioner/Transferor Company No.1, the Scheme of Amalgamation of the petitioner-Transferor Company No.1 with the Transferee

Company is hereby sanctioned and all the assets and liabilities of the of petitioner-Transferor Company shall merge into Transferee Company subject to the sanctioning of the Scheme filed by the Transferee Company in this Court. The Transferor Company No.1 shall be dissolved without being wound up.

The Scheme shall be binding on Transferor Company No. 1 and the Transferee Company, their respective share holders, creditors, both secured and unsecured and all concerned.

It is made clear that subject to whatever compliance the petitioner-Transferor Company and the Transferee Company has to do as undertaken in the reply, they shall do the same. It is made clear that without compliance, the scheme of Amalgamation would not deemed to be sanctioned.

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 certified copy of the same.

Copy of this order be published in 'Indian Express (English)' and 'Jansatta (Hindi)' both Delhi/NCR Edition as well as in the ofifical Gazette of State of Haryana.

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

Learned counsel for the petitioner-Transferor Company No.1 states that the petitioner-Company would voluntarily deposit a sum of ₹30,000/- in the Common Pool Fund Account of the Official Liquidator within one month.

Statement is accepted.

The Company Petition is disposed of accordingly.

(AMIT RAWAL)
JUDGE

May 1 , 2015
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