IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CP No. 183 of 2014(O&M)
Date of decision May 1, 2015

In the matter of Scheme of Amalgamation of

Allure Imports Private Ltd.

....Petitioner Company-1/Amalgamating Company

AND

HSG Propmart Private Ltd.

....Petitioner Company-2/Amalgamated Company

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Munisha Gandhi, Senior Advocate with
Mr. Gaurav Goel, Advocate
for the petitioners.

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 Petitioner Company-1/Amalgamating Company and Petitioner Company-2/Amalgamated Company have filed the present petition under Section 391 to 394 of the Companies Act, 1956 (hereinafter called 'the Act') for sanctioning of the Scheme of Amalgamation between petitioner Company-1/Amalgamating Company and petitioner Company-2/Amalgamated Company. The Scheme of Amalgamation has been annexed on record as Annexure P-1.

Both the first and second motion petitions have been filed together.

This Court vide order dated 25.11.2014 after noticing the aforementioned fact as well as the main objects of the Petitioner-Companies annexed as Annexure P-2 and P-4 respectively and the Board resolution of the Companies copies of the same had been annexed as Annexure P-6 and P-7 respectively, meetings of Equity shareholders and Secured and Unsecured Creditors were dispensed with and notice of the petition was ordered to be issued to the Regional Director, Ministry of Corporate Affairs, Noida as well as to the Official Liquidator, much less publication was also directed in respective manner.

The affidavit of publication along with copies of newspapers and Gazette notification have also been filed which has been taken on record.

That both Regional Director and Official Liquidator have filed their respective reports. The Official Liquidator vide his report dated 27.3.2015 has given no objection to the sanctioning of the Scheme of Amalgamation, whereas, the Regional Director in his report dated 25.3.2015 vide paragraph 7 and 10 stated as under:-

> *"7. That the Registrar of Companies vide para 14 & 15 of its report has stated that the Authorized Capital of the Transferee Company is not sufficient for allotment of shares to the Transferor Company. The Deponent most respectfully submits that the Petitioner Transferee Company may be directed to increase the Authorized Capital for allotment of shares to the Transferor Company before the*

scheme is approved.

xx xx xx

10. From the Scheme it is observed that there is no mention regarding Accounting Standards i.e. AS-14 issued by the ICAI."

In response to the report of Regional Director, Mr. Ram Kishan, Authorized signatory of the Petitioner-Comapny 2/Amalgamated Company has filed affidavit dated 1.5.2015. Paras 7 and 10 of the said affidavit are reproduced hereunder:-

"7. That in this paragraph, the Regional Director has made an observation with regard to Authorised Share Capital of the Amalgamated Company stating it is insufficient to allot shares to the shareholders of the Amalgamating Company. However, in response to the observation of the Regional Director the Amalgamated Company submits it has increased its share capital to the amount which is required for allotment of shares to the shareholders of the Amalgamating Company. A proof of the form filed with the ROC is enclosed as Annexure P-A.

10. That in this paragraph, the Regional Director has made an observation with regard to the scheme being silent on the Accounting Standard 14 issued by the Institute of Chartered Accountants of India. However, in response to the observation of the Regional Director the Amalgamated Company submits to this Hon'ble High Court that the Amalgamated Company shall comply with the provisions of the Accounting Standard (AS) 14 issued by the Institute of Chartered Accountants of India dealing with 'Accounting For Amalgamation'.

In view of the stand taken by the petitioner-

Company-2/ Amalgamated Company in its affidavit, the objection of the Regional Director has been met with as Amalgamated Company has increased its authorized capital and a proof to this effect has been appended in the shape of form filed with ROC which is enclosed as Annexure P-A and as regards the objection qua compliance of provisions of Accounting Standards i.e. AS-14 issued by the ICAI, the Amalgamated Company has undertaken to comply with AS-14 issued by the ICAI

For the reasons aforementioned and keeping in view the procedural requirements under Section 391-394 of the Companies Act, 1956 as well as relevant affidavit and rules and due consideration of the report of the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator coupled with the affidavit filed by the authorized representative of the petitioner-Amalgamated Company, the Scheme of Amalgamation of the Amalgamating Company with the Amalgamated Company is hereby sanctioned and all the assets and liabilities of the petitioner Company-1/Amalgamating Company i.e. Allure Imports Private Limited shall merge into petitioner Company-2/Amalgamated Company i.e. M/s HSG Propmart Private Limited. The petitioner-Company-1/Amalgamating Company shall stand dissolved without being wound up. The undertaking given by the Amalgamated Company shall be complied with.

It has been averred in the petition that no investigation proceedings against the Amalgamating company and Amalgamated Company under Sections 235 to 251 of the Act are pending.

The Scheme shall be binding on petitioner Company-1/Amalgamating Company and petitioner Company-2/Amalgamated Company, their respective share holders, creditors, both secured and unsecured 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 certified copy of the same.

Copy of this order be published in 'Indian Express (English Version)' and 'Jansatta (Hindi Version)' 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 Companies states that the petitioner-Transferee Company could voluntarily deposit a sum of ₹30,000/- in Common Pool Fund Account of the Official Liquidator.

Statement is accepted.

The Company Petition is disposed of accordingly.

(AMIT RAWAL)
JUDGE

May 1 , 2015
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