IN THE HIGH COURT OF DELHI

COMPANY PETITION NO. 116/2015

Reserved on 12th October, 2015
Date of pronouncement: 6th November, 2015

In the matter of
The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Section 391 to 394 of the Companies Act, 1956

Scheme of Amalgamation of:

Pinnacle Vision Care Private Limited
Petitioner/Transferor Company

WITH

Eye-Q Vision Private Limited
Petitioner/Transferee Company

Through Ms. Yukti Gupta, Advocate for the petitioners
Ms. Aparna Mudiam, Assistant Registrar of Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the Official Liquidator

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Pinnacle Vision Care Private Limited (hereinafter referred to as the transferor company) with Eye-Q Vision Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was originally incorporated under the Companies Act, 1956 on 27th June, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 31st August, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Pinnacle Eye Care & Research Private Limited. The company changed its name to Eye-Q Vision Private Limited and obtained the fresh certificate of incorporation on 18th February, 2008.

5. The present authorized share capital of the transferor company is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.6,00,000/- divided into 60,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.35,48,00,000/- divided into 60,000 equity shares of Rs.10/- each aggregating to Rs.6,00,000/-; 12,200 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series A)

aggregating to Rs.8,54,00,000/-; 15,500 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series B) aggregating to Rs.10,85,00,000/-; 5,500 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series B-1) aggregating to Rs.3,85,00,000/-; 2,000 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series C-1) aggregating to Rs.1,40,00,000/-; and 15,400 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series C-2) aggregating to Rs.10,78,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.33,65,87,570/- divided into 18,157 equity shares of Rs.10/- each aggregating to Rs.1,81,570/-; 11,628 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series A) aggregating to Rs.8,13,96,000/-; 15,148 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series B) aggregating to Rs.10,60,36,000/-; 5,470 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series B-1) aggregating to Rs.3,82,90,000/-; and 1,761 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series C-1) aggregating to Rs.1,23,27,000/- and 14,051 fully and compulsorily convertible non-cumulative preference shares of Rs.7,000/- each (Series C-2) aggregating to Rs.9,83,57,000/-.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 174/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is claimed by the petitioners that the proposed amalgamation is expected to result in integration of processes, thereby resulting in synergies of operations and economies of scale. It is further claimed that the proposed amalgamation is expected to enable pooling of resources of the petitioner companies to their common advantage, resulting in more productive utilization of the said resources, cost and operational efficiencies which would be beneficial for all stakeholders.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:-

"100 equity shares of Rs.10/- each of the transferee company, credited as fully paid up, for every 984 equity shares of Rs.10/- each held by them in the transferor company."

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or the relevant corresponding provisions under Section 210 to 227 of the Companies Act, 2013 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 10th September, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 174/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 22nd December, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor company, there being no secured or unsecured creditors of the transferor company, and equity shareholders,

preference shareholders and secured creditors of the transferee company, and directed convening of a meeting of the unsecured creditors of the transferee company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The Chairperson of the ordered meeting of the unsecured creditors of the transferee company has filed her report stating that the meeting was duly held on 14th February, 2015, as directed, and that the Scheme of Amalgamation has been approved unanimously by the unsecured creditors of the transferee company, present and voting, in the meeting.

14. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 10th March, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and ‘Veer Arjun’ (Hindi) Delhi editions and also in Official Gazette. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator, and also regarding publication of citations in the aforesaid newspapers on 29th April, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of

service. The petitioners have also filed an affidavit showing publication of notice in the Delhi Gazette on 03.09.2015. A copy of the Gazette Notification containing the publication has also been placed on record.

15. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 17th September, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

16. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 22nd September, 2015. Relying on Clause 7.1 of Part-II of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 21(a) of Part-V of the Scheme, it has been stated that the transferee company shall account for amalgamation of the transferor

company as per AS-14 and the amalgamation shall be an 'Amalgamation in the nature of merger' as defined in Accounting Standard-14 as notified under the Companies Accounting Standard Rules, 2006. He further submitted that in Clause 20 of Part-IV of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

17. The Regional Director has not raised any objection to the proposed Scheme of Amalgamation, although in para 9 of his report he has submitted that there has been a change in the shareholding pattern of the transferee company for which the petitioner companies have filed an application seeking amendment in Clause 18(e) of Part-III of the Scheme. The petitioners vide CA 3074/2015 have placed on record the necessary Board Resolutions of the petitioner companies enhancing the share capital of the transferee company. They have also placed on record a certificate dated 17th September, 2015 issued by Sandeep Kumar & Associates, Chartered Accountants, certifying that there is no change in the share swap ratio, pursuant to an increase in the share capital of the transferee company. The said application, viz. CA 3074/2015 was allowed by this Court vide separate orders passed on 12.10.2015 and the modified Scheme has been taken on record.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 19th September, 2015 of Ms. Yukti Gupta, advocate of the petitioner companies, have submitted that the counsel of the petitioner companies have not received any objection pursuant to the citations published in the newspapers on 29th April, 2015.

19. Considering the approval accorded by the shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the amended Scheme of Amalgamation annexed with CA 3074/2015. Consequently, sanction is hereby granted to the amended Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the Official Liquidator prays that costs of at least Rs.1,00,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner companies states that the same is acceptable to her. Looking to the circumstances, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs with the Common Pool Fund of the Official Liquidator within two weeks.

21. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

November 06, 2015