

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 272/2015

Reserved on 14th September, 2015
Date of pronouncement: 5th October, 2015

In the matter of

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

And

**Petition under Sections 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

All India Film Corporation Private Limited

Petitioner/Transferor Company No. 1

The All India Investment Corporation Private Limited

Petitioner/Transferor Company No. 2

World Media International Limited

Petitioner/Transferor Company No. 3

WITH

World Media Private Limited

Petitioner/Transferee Company

**Through Mr. Mahesh Agarwal and
Mr. Rajeev Kumar, Advocates for the
petitioners**

**Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director**

**Mr. Sanjay Katyal, 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 All India Film Corporation Private Limited (hereinafter referred to as the transferor company no. 1); The All India Investment Corporation Private Limited (hereinafter referred to as

the transferor company no. 2); and World Media International Limited (hereinafter referred to as the transferor company no. 3) with World Media 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 no. 1 was originally incorporated under the Companies Act, 1913 on 27th October, 1944 under the name and style of All India Film Corporation Limited. The company changed its name to All India Film Corporation Private Limited and obtained the fresh certificate of incorporation from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 27th May, 1980.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1913 on 29th September, 1952 under the name and style of The All India Investment Corporation Limited. The company changed its name to The All India Investment Corporation Private Limited and obtained the fresh certificate of incorporation from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 23rd September, 1976.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 25th November, 1991 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferee company was originally incorporated under the Companies Act, 1913 on 17th October, 1949 under the name and style of Kishori Lal Shyam Lal and Company Private Limited. The company changed its name to L.M. Distributors Private Limited and obtained the fresh certificate of incorporation from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 18th January, 1982. The company again changed its name to L.M. Distributors Limited and obtained the fresh certificate of incorporation on 30th September, 1988. Thereafter, the company changed its name to World Media Limited and obtained the fresh certificate of incorporation on 10th October, 1991. The company finally changed its name to World Media Private Limited and obtained the fresh certificate of incorporation on 19th September, 2002.

7. The present authorized share capital of the transferor company no.1 is Rs.34,04,900/- divided into 34,04,900 equity shares of Rs.1/- each. The present issued, subscribed and paid-up share capital of the company is Rs.2,24,806/- divided into 2,24,806 equity shares of Rs.1/- each.

8. The present authorized share capital of the transferor company no.2 is Rs.15,00,000/- divided into 14,000 equity shares of Rs.100/- each aggregating to Rs.14,00,000/- and 1000 preference shares of Rs.100/- each aggregating to Rs.1,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.9,80,000/- divided into 9,800 equity shares of Rs.100/- each.

9. The present authorized share capital of the transferor company no.3 is Rs.1,00,00,000/- divided into 9,50,000 equity shares of Rs.10/- each aggregating to Rs.95,00,000/- and 50,000 non-cumulative redeemable preference shares of Rs.10/- each aggregating to Rs.5,00,000/-. The present issued, subscribed and paid-up share capital of the company is Rs.5,00,690/- divided into 50,069 equity shares of Rs.10/- each.

10. The present authorized share capital of the transferee company is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,01,000/- divided into 10,100 equity shares of Rs.10/- each.

11. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record along with CA(M) 49/2015 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.

12. 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 that the amalgamation will result in reduction of overheads, administrative, managerial and other expenditure, and bring about operational rationalization, organizational efficiency and optimal utilization of various resources. It is further claimed that consolidation of entities will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the companies and also avoid duplication of administrative functions and eliminate multiple record-keeping.

13. 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 companies in the following ratio:

“01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 887 fully paid up equity shares of Rs.1/- each held in the transferor company no. 1.”

It is provided that the transferor company no. 2 is a wholly owned subsidiary of the transferee company. Therefore, the investment in the

shares of the transferor company no. 2 shall get cancelled and there will be no issue and allotment of shares of the transferee company, upon the Scheme becoming effective. It is further provided that the entire issued, subscribed and paid up capital of the transferor company no. 3 is held by the transferee company and its subsidiaries. Accordingly, in compliance with Section 19 of the Companies Act, 2013, there shall be no issue and allotment of shares of the transferee company upon amalgamation of the transferor company no. 3.

14. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

15. The Board of Directors of the transferor and transferee companies in their separate meetings held on 6th February, 2015 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.

16. The petitioner companies had earlier filed CA (M) No. 49/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the

Scheme of Amalgamation. Vide order dated 29th April, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the transferor and transferee companies, there being no secured creditors of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

17. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 20th May, 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 (Hindi) editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 15th June, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

18. 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 24th July, 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 companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

19. 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 9th September, 2015. Relying on Clause 10.2 of Part-II of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 8 of Part-II of the Scheme, it has been stated that the amalgamation of the transferor companies with the transferee company shall be accounted as per the 'Pooling of Interest method' as specified in Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 20.1 of Part-II of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies 1 to 3 shall stand dissolved without the process of winding up.

20. Although the Regional Director, Northern Region has not raised any objection to the Scheme of Amalgamation, however, in Para 9.1 of his report he has submitted that there is no mention whether the transferee company is an NBFC and if it is registered with RBI to carry on such business. He, therefore, prays that the company may be asked as to whether it is registered with RBI as NBFC, and if so, whether it had obtained the prior written permission from RBI with regard to the proposed Scheme of Amalgamation. In response to the aforesaid observation, the petitioner companies in the affidavits dated 11th September, 2015 of Mr. Dinesh Bhatia, authorized signatory of the transferor companies no. 1 & 3, Mr. Anil Kumar Mehra, authorized signatory of transferor company no. 2 and Mr. Sunil Mohan Buckshee, authorized signatory of the transferee company have submitted that none of the petitioner companies are carrying on any financial activities and is, therefore, not required to be registered with the RBI as Non Banking Finance Company. Thus, the prior written permission of RBI with regard to the proposed Scheme of Amalgamation is not required. In support of their submission, the petitioner companies have placed on record certificates dated 10th September, 2015 from V. K. Arora & Associates, Chartered Accountants, certifying that the petitioner companies are not non-banking finance company and are not required to be registered as NBFC with RBI. Learned counsel for the petitioners also relies on paragraphs 11, 12 & 15 of this Court's order passed on 28.11.2014 in

Co.Pet. 437/2014 titled **Tooba Buildtech Pvt. Ltd. & Ors.**. In view of the aforesaid, the observation raised by the Regional Director does not subsist. It is, however, clarified that in case it is found that petitioner companies have violated any provision of the Reserve Bank of India Act, then the Directors of the petitioner companies guilty of said violation shall continue to be liable irrespective of the sanction of the Scheme.

21. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavits dated 10th September, 2015 of Mr. Dinesh Bhatia, authorized signatory of the transferor companies no. 1 & 3, Mr. Anil Kumar Mehra, authorized signatory of transferor company no. 2 and Mr. Sunil Mohan Buckshee, authorized signatory of the transferee company, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 15th June, 2015.

22. Considering the approval accorded by the equity 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 Scheme of Amalgamation. Consequently,

sanction is hereby granted to the 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 companies no. 1 to 3 shall stand dissolved without undergoing the process of winding up.

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

24. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

October 05, 2015