

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 789/2014

Reserved on 26th March, 2015
Date of pronouncement: 5th May, 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:

Pilani Soft Labs Private Limited

Petitioner/Transferor Company

WITH

Ibibo Group Private Limited

Petitioner/Transferee Company

Through Mr. Mahesh Aggarwal,
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 Pilani Soft Labs Private Limited (hereinafter referred to as the transferor company) with Ibibo Group 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 4th August, 2006 with the Registrar of Companies, Andhra Pradesh. The company shifted its registered office from the State of Andhra Pradesh to Karnataka and obtained a certificate in this regard on 5th June, 2013. Thereafter, the company again shifted its registered office from the State of Karnataka to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 9th September, 2014.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 23rd March, 2012 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of PVJ Ecommerce Private Limited. The company changed its name to Ibibo Group Private Limited and obtained the fresh certificate of incorporation on 8th January, 2014.

5. The present authorized share capital of the transferor company is Rs.75,57,999/- divided into 19,90,000 equity shares of Rs.1/- each aggregating to Rs.19,90,000/-; 17,999 series A equity shares of Rs.1/- each aggregating to Rs.17,999/-; 6,00,000 series A compulsorily convertible cumulative preference shares of Rs.1/- each aggregating to

Rs.6,00,000/-; 1,50,000 series B compulsorily convertible cumulative preference shares of Rs.1/- each aggregating to Rs.1,50,000/-; and 4,80,000 series C compulsorily convertible cumulative preference shares of Rs.10/- each aggregating to Rs.48,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.64,93,974/- divided into 11,23,617 equity shares of Rs.1/- each aggregating to Rs.11,23,617/-; 17,737 series A equity shares of Rs.1/- each aggregating to Rs.17,737/-; 5,41,960 series A compulsorily convertible cumulative preference shares of Rs.1/- each aggregating to Rs.5,41,960/-; 50,280 series B compulsorily convertible cumulative preference shares of Rs.1/- each aggregating to Rs.50,280/-; and 4,76,038 series C compulsorily convertible cumulative preference shares of Rs.10/- each aggregating to Rs.47,60,380/-.

6. The present authorized share capital of the transferee company is Rs.2,50,00,00,000/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.10/- each and 24,99,90,000 preference shares of Rs.10/- each aggregating to Rs.2,49,99,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.1,98,26,65,840/- divided into 10,000 equity shares of Rs.10/- each aggregating to Rs.1,00,000/- and 19,82,56,584 non cumulative compulsorily convertible preference shares of Rs.10/- each aggregating to Rs.1,98,25,65,840/-.

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) 138/2014, 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 that the proposed amalgamation will enable consolidation of value of similar businesses into the transferee company which is in the interest of various stakeholders of both the companies. It is further claimed that consolidation of entities will result in reduction in overheads, administrative, managerial and other expenditure, and bring about operational rationalization and organizational efficiency, and optimal utilization of various resources.

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 Compulsorily Convertible Debentures (CCDs) to the shareholders of the transferor company in the following ratio:

“For every 01 equity share of the face value of Rs.1/- each held by the shareholders in the transferor company, the equity shareholders shall be issued 28.0861 CCDs of face value of Rs.100/- each of the transferee company, credited as fully paid up.”

“For every 01 series A equity share of the face value of Rs.1/- each held by the shareholders in the transferor company, the equity shareholders shall be issued 28.0861 CCDs of face value of Rs.100/- each of the transferee company, credited as fully paid up.”

“For every 01 series A compulsorily convertible preference shares of the face value of Rs.1/- each held by the shareholders in the transferor company, the equity shareholders shall be issued 28.0861 CCDs of face value of Rs.100/- each of the transferee company, credited as fully paid up.”

“For every 01 series B compulsorily convertible preference shares of the face value of Rs.1/- each held by the shareholders in the transferor company, the equity shareholders shall be issued 28.0861 CCDs of face value of Rs.100/- each of the transferee company, credited as fully paid up.”

“For every 01 series C compulsorily convertible preference shares of the face value of Rs.10/- each held by the shareholders in the transferor company, the equity shareholders shall be issued 28.0861 CCDs of face value of Rs.100/- each of the transferee company, credited as fully paid up.”

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

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 15th 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. 138/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders and secured creditors and for convening of separate meetings of their unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 14th October, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, preference shareholders and secured creditors of the transferor and transferee companies and directed convening of separate meetings of their unsecured creditors, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The Chairpersons of the ordered meetings of the unsecured creditors of the transferor companies have filed their reports stating that the meetings were duly held on 6th December, 2014, as directed, and that the Scheme of Amalgamation has been approved unanimously by the unsecured creditors of the transferor and transferee companies, present and voting, in the meetings.

14. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 17th

December, 2014, 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 'Indian Express' (English) and 'Jansatta' (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 8th January, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

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 10th March, 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. However, in para 15 of his report, the Official Liquidator has submitted that as per the information provided by the transferor company in its reply dated 06.02.2015, the transferor company is having Income Tax Assessment pending for the financial year 2011-12 and 2012-13.

16. In reply to the aforesaid observation, the petitioners in their affidavit dated 11th March, 2015 have undertaken to take over the pending income tax proceedings against the transferor company for the financial year 2011-12 and 2012-13 and have further undertaken to discharge any liability arising upon finalization of such pending assessment in compliance with Clause 6.1 and 10.2 of the Scheme of Amalgamation. The aforesaid undertaking is accepted and the petitioner shall remain bound by the same. In view of the aforesaid, the observation made by the Official Liquidator stands satisfied.

17. 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 11th March, 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 13.1 of Part-III of the Scheme, it has been stated that the transferee company shall follow 'purchase method of accounting' and the accounting treatment shall be in compliance with Accounting Standard-14 governed by the Companies (Accounting Standards) Rules, 2006. He further submitted that in Clause 19 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.

18. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 9th March, 2015 of Mr. Pankaj Jain, authorized signatory of the petitioner companies, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 8th January, 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 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 company shall stand dissolved without undergoing the process of winding up.

20. Learned counsel for the Official Liquidator prays that costs may be imposed on the petitioner companies in view the fact that the matter has involved examination of voluminous record from the offices of the Regional Director and the Registrar of Companies for filing the reports. He submits that cost of at least Rs.1,00,000/- per company be imposed. Learned counsel for the petitioners states that the petitioner companies are ready and willing to pay cost of Rs.1.0 lakh each. Looking to the circumstances, the petitioner companies shall deposit cost of Rs.1.0 lakh each in the Common Pool Fund of the Official Liquidator within one week from today.

21. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

May 05, 2015