

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**COMPANY SCHEME PETITION NO. 502 OF 2016**  
**CONNECTED WITH**  
**COMPANY SUMMONS FOR DIRECTION NO. 460 OF 2016**

EINS Institute of Management Technology And Research Private  
Limited

...Transferor Company/Petitioner Company

In the matter of the Companies Act 1 of 1956  
(or re-enactment thereof upon effectiveness of  
Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the  
Companies Act, 1956 (or any corresponding  
provision of Companies Act, 2013 as may be  
notified);

AND

In the matter Scheme of Amalgamation of  
EINS Institute of Management Technology  
And Research Private Limited with Jaro  
Institute of Technology Management And  
Research Private Limited and their respective  
shareholders And creditors

**Called for Hearing**

Ms. Shruti Kelji and Mr. A. S. Lambhate for Petitioner

Mr. Vinod Sharma, Official Liquidator present

Mr. A. R. Singh i/b. Pankaj Kapoor for the Regional Director present

CORAM: S. C. Gupte, J.

DATE: 22<sup>nd</sup> November, 2016

P.C:

1. Heard Counsel for the parties. Neither any objector has come before the court to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Court is sought under Section 391 to 394 of the Companies Act, 1956 to the scheme of Amalgamation EINS Institute of Management Technology And Research Private Limited with Jaro Institute of Technology Management And Research Private Limited and their respective shareholders And creditors.
3. The Learned Advocate for the Petitioner states that the Petitioner Company is engaged in the business of carrying out all the activities of education including providing services to various Business Institutes and Universities, training, business process outsourcing and management development and Transferee Company is engaged in the business of providing online MBA programs in association with leading Indian and international Universities/institutes of repute for working professionals.
4. The Learned Advocate for the Petitioner states that the proposed scheme of Amalgamation of Petitioner Company and Transferee Company will have the benefit that the Transferor Company is a wholly owned subsidiary of the Transferee Company and it is engaged in the same line of business as the Transferee Company. Further it would reduce the operational costs and run the Transferee Company and the Transferor Company as a single unit more effectively and economically which resulting in better turnover and profits and it would make available financial

resources, and managerial, technical and marketing expertise of the Transferee Company and it would bring in greater economies in scale of operations and which help in reducing expenditure considerable and it would result in more efficient and economic control and conduct of the business of the Transferee Company and it would reduce the administration work and the combined assets, man-power and cash flows of both the companies and it would enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility to market and meet consumer needs more effectively.

5. The Learned Advocate for the Petitioner Company states that the Petitioner Company is a wholly owned subsidiary of Transferee Company viz. Jaro Institute of Technology Management And Research Private Limited and no new shares are being issued and there will be no change in capital structure of the Transferee Company and the Scheme does not affect the rights of the members and interest of the creditors of the Transferee Company and does not involve any re-organization of the paid up Share Capital of the Transferee Company and in view of the judgement of this Hon'ble Court in Mahaamba Investment Limited vs. IDI Limited (2001) Company Cases 105 filing of a separate Company Summons for Direction and Company Scheme Petition for sanction of the Scheme by Jaro Institute of Technology Management And Research Private Limited, Transferee Company was dispensed with vide order dated 1<sup>st</sup> July, 2016 passed in Company Summons for Direction No. 460 of 2016.
6. The Learned Advocate for the Petitioner states that the Board of Directors of the Petitioner Company and Transferee Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.

7. The Learned Advocate for the Petitioners further states that the Petitioner Company have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the Order passed in respective Company Summons for Direction.
8. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/ 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Company is accepted.
9. The Official Liquidator has filed his report on 24<sup>th</sup> October, 2016 in Company Scheme Petition No. 502 of 2016 stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
10. The Regional Director has filed an Affidavit on 24<sup>th</sup> October, 2016 stating therein Save and except as stated in para 6(i) to (iii) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph 6 (i) to 6 (iii) of the said Affidavit, the Regional Director has stated that :
  - (i) *That the Petitioner Companies had accepted the pooling of interest method as set out in AS 14 however the Petitioner Companies should also shall pass accounting entries as mentioned in AS-5 of the Accounting Standards. Therefore*

*Deponent prays that the Hon'ble Court may pass such orders as deem fit.*

- (ii) *The Office of the Dy. Commissioner of Income Tax – CC(2)(2) sent letter to this Directorate vide letter No. Mum/DCITCC 2(2)/Misc./2016-17 dated 22/08/2016, they have mentioned in the respective letter as their office has no objection to the proposed scheme of amalgamation M/s. Eins Institute of Management Technology and Research Private Limited with M/s. Jaro Institute of Technology Management and Research Private Limited.*

*That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

- (iii) *ROC-Mumbai has observed as follows :*  
*“In the books of Transferee Company and Transferor Company for the year ended 2015, the Auditor vide point (iii) has pointed out that control system in respect of sale of services need to be strengthened. The board report has not discussed the remark of auditor. Hence, there is the violation of Section 134(5)(c) of the Companies Act, 2013. The Deponent prays that the Transferor Company and Transferee Company may be directed to make the necessary compliance as per the provisions of Sec. 441 of the Companies Act, 2013 and rules thereof.*

11. As far as the observations made in paragraph 6(i) of the Affidavit of the Regional Director is concerned, the Petitioner Company undertakes that in addition to compliance of Accounting Standards 14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the scheme of amalgamation to comply with any other applicable accounting standards including Accounting Standard 5.
12. As far as the observations made in paragraph 6(ii) of the Affidavit of the Regional Director is concerned, the Petitioner Company and Transferee Company is bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.
13. As far as the observations made in paragraph 6(iii) of the Affidavit of the Regional Director is concerned, the Petitioner Company undertakes to comply with the provisions of Section 441 of the Companies Act, 2013 and rules thereof.
14. The Learned Counsel for the Regional Director on instructions of, Mr. R. K. Dalmia, Dy. Regional Director, Ministry of Corporate Affairs, Westerns Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 502 of 2016 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (c).

17. The Petitioner Company is directed to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the receipt of the order.
18. The Petitioner Company is further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy, as per the relevant provisions of the Companies Act, 1956 / 2013, whichever is applicable.
19. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region Mumbai and the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 502 of 2016. Costs to be paid within four weeks from the date of the Order.
20. Filing and issuance of the drawn up order is dispensed with.
21. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, (O.S), Bombay.

(S. C. Gupte, J.)

**C E R T I F I C A T E**

I certify that this Order uploaded is a true and correct copy of the original signed Order.

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