IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 742 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 588 OF 2015

Phanes Educations Private Limited

….Petitioner Company

AND

COMPANY SCHEME PETITION NO. 743 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 587 OF 2015

In the matter of the Companies Act, 1956

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956.

AND

In the matter of the Scheme of Amalgamation of Phanes Educations Private Limited, Transferor Company

with

EduSpark International Private Limited, Transferee Company

and

their respective Shareholders and Creditors

EduSpark International Private Limited

….Petitioner Company

Called for Hearing

Mr.Sanjay Udeshi with Mr. Darshan Ashar i/b M/s Sanjay Udeshi & Co, Advocate for the Petitioners.

Mr. D.P. Singh i/b Mr. A.A. Ansari for the Regional Director.

Mr. Vinod Sharma Official Liquidator present in C.S.P. No. 742 of 2015.

CORAM: K.R. SHRIRAM, J
DATE : 26th February, 2016

P.C.:

1. Heard Counsel for the parties. None appears before the Court to oppose the Scheme nor any party has contraverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to Scheme of Amalgamation of M/s Phanes Educations Private Limited the Transferor Company with M/s Eduspark International Private Limited the Transferee Company and their respective members and creditors.

3. The Learned Counsel for the Petitioners state that the Transferor Company was formed to provide educational services, running of schools, colleges, institutions, etc and also design, devise and create curriculum frameworks, lesson plans, learning methodologies for schools, colleges, technical courses, educational and other institutions, on CD, cassettes, books, television, internet, e-learning, online learning and other formats and Transferee Company was formed to establish, run, manage or otherwise conduct the affairs of the educational institute, colleges, schools, high schools, primary schools, business management schools, engineering & polytechnic colleges, medical & dental colleges, colleges in the field of Arts, Commerce, Science & other faculties, etc and to design, develop, customize , market, buy, sell, license, service and consulting in the field of computer hardware, software and internet based products and services related to education etc.

4. The Proposed Scheme of Amalgamation would, therefore, be necessary to carry out activities related to imparting education and setting up schools, colleges, institutions etc and also is to design,

devise and create curriculum frameworks, lesson plans, learning methodologies for schools, colleges, technical courses, educational and other institutions, on CD, cassettes, books, television, internet, e-learning, online learning and other formats. The Transferee Company is engaged in similar line of business. The Transferee Company is looking out to deploy the fund available with it in related and similar activities and expand its business by way of merger of the Transferor Company and avail the benefits of the Transferor Company along with its own activities. The Transferor Company do not wish to carry on their activities on standalone basis and also needs funds for carrying its activities and hence, it is thought appropriate to merge the same with the Transferee Company for financial assistance. Also the Transferor Company intends to reorganize and integrate its' operations with the activities of the Transferee Company as a part of group restructuring and hence it is proposed to merge Transferor Company into Transferee Company by way of amalgamation under this Scheme. The Amalgamated Company will have greater efficiency in overall business including economies of scales, cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund investing and financing related activities and their growth opportunities in the businesses of the Companies, to maximize shareholder value. Amalgamation will result in cost saving for both the Transferor Company and the Transferee Company as they are engaged in the related and interdependent activity which is expected to result in higher net worth for the Amalgamated Company and cost savings for the Amalgamated Company. The Amalgamated Company will have the benefit of the combined resources of the Transferor Company and the Transferee Company i.e., market share, scale, efficiency, high networth, combined employees base, reserves, investments, and other assets, manpower, finances, students, mitigating competition etc. The Amalgamated Company would be in a position to carry on consolidated operations through optimum utilization of its resources and avoidance of duplication. The Amalgamated Company will be in position to have more efficient and more cost effective management system in view of consolidation of operations and larger size. Also the Transferee Company will be expanding its operations as the future opportunities in this line of business activity are very good. The Amalgamated Company would also have a larger networth base, and greater borrowing capacity, which would provide it a competitive edge over others, especially in view of the increasing competition due to liberalization and globalization, which will be beneficial in more than one ways to both the Transferor Company and the Transferee Company and their shareholders and creditors, as the Transferor Company and the Transferee Company plan to meet the competition in more effective way by combining their asset base and operations. The Board of Directors of the Transferor Company and the Transferee Company are of the opinion that the amalgamation would benefit the shareholders, employees and other stakeholders of the Transferor Company and the Transferee Company. The Board of Directors of the Transferor Company and the Transferee Company are of the opinion that the amalgamation would motivate employees by providing better opportunities to scale up their performance with a corporate entity having, large revenue base, resources, asset base etc which will provide impetus to corporate performance thereby enhancing overall shareholder value.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the respective Company Scheme Petition.

6. The Learned counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Direction.

7. Counsel appearing on behalf of the Petitioner Companies state that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the court. Moreover, the Petitioner Companies through its counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 18th day of December, 2015 stating therein save and except stated in paragraph 6 (a) to (c), of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph 6 (a) to (c) of the said Affidavit, it is stated that;-

"6. That the Deponent further submits that,

a) Clause 13 (c) of the Scheme provides for creation of Securities Premium Account in the books of Transferee company by stating therein that, "The fair value of shares issued in excess of the face value of shares shall be recorded as share premium in the financial statements of the Transferee Company". This part of the Scheme be deleted in as much as the said proposed Securities Premium is not created out of revenue received either by cash or cash equivalent. When the matter was taken up with the Petitioner Company, the Transferee Company vide its letter dated 15/12/2015 has undertaken that the aforesaid part of clause 13 (c) of the scheme will be deleted. Copy of the said letter is annexed hereto and marked as 'Exhibit 'D'. In this regard, it is submitted that the Petitioner Companies may be directed to make suitable corrections in the Scheme / Petition.

b) It is respectfully submitted that the tax implication, if any, arising out of Scheme is subject to final decision of Income Tax Authorities. The approval of Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize tax return filed by Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company.

c) Clause 19 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by Board of Directors *without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect.*

9. As far as the content of paragraph 6 (a) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies undertakes to amend the Scheme by deleting in Clause No. 13 (c) line no. 6 starting from the line "The fair value of shares issued in excess of the face value of shares shall be recorded as share premium in the financial statements of the Transferee Company". The Learned counsel seeks liberty to carry out amendment in the Scheme. The said liberty is granted and the amendment to be carried out within two weeks from today.

10. As far as the content of paragraph 6 (b) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies states that that the Transferor Companies and the Transferee Company are bound to comply with the applicable provisions of the income Tax Act and all tax issues arising out of Scheme will be met and answered in accordance with the law.

11. As far as the content of paragraph 6 (c) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies undertakes that any amendment or modification to the Scheme, the Board of Directors shall the order and approval from the Hon'ble High Court.

12. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandana muthu, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with undertaking given by the Petitioner Companies mentioned hereinabove. The said undertaking is accepted.

13. The Official Liquidator has filed his report dated 16th day of December, 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 742 and 743 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clause (a).

16. The Petitioner 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 date of this Order.

17. Petitioner is directed to file a copy of this order alongwith a copy of Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form 21 / INC 28, in addition to physical copy, as per the provision of the Act.

18. Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to pay a sum of Rs.10,000/- each to the Official Liquidator, High Court, Bombay, in Company Scheme Petition No. 742 of 2015 towards their costs. Costs to be paid within four weeks from today.

19. Filing and issuance of the drawn up order is dispensed with.

20. All concerned regulatory authorities to act on a copy of this order alongwith the Scheme duly authenticated by Company Registrar, High Court, Bombay.

(K.R. Shriram J.)

<u>Certificate</u>

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