**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CP No.219 of 2015 (O&M)**
**Date of Decision: 12.08.2016**

**IN THE MATTER OF:**
SCHEME OF AMALGAMATION:

**AD2C HOLDINGS PRIVATE LIMITED**

. . . . Transferor Company I

AND

**AD2C (INDIA) PRIVATE LIMITED**

. . . . Transferor Company 2/Petitioner Company

AND

**APPSTUDIOZ TECHNOLOGIES PRIVATE LIMITED**

. . . .Transferor Company 3

WITH

**AFFLE (INDIA) PRIVATE LIMITED**

. . . Transferee Company

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**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**

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Present: - Ms.Munisha Gandhi, Sr. Advocate, with
Ms.Salina Chalana, Advocate, for the petitioner.

Mr.Deepak Aggarwal, Advocate, with
Mr.D.K. Singh, Official Liquidator.

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**RAKESH KUMAR JAIN, J.**

***CA No.159 of 2016***

This is an application for placing on record amended Scheme of Amalgamation between the Transferor and Transferee companies.

At the time of notice in the application, Official Liquidator had put in appearance and accepted notice. Notice to the Regional Director could not be issued for want of process fee. However, reply on behalf of both the Official Liquidator and Regional Director has been filed as per the amended Scheme of Amalgamation.

In view of the above, application is allowed.

Amended Scheme of Amalgamation is taken on record.

***CP No.219 of 2015***

This petition is filed under Section 391 to 394 of the Companies Act, 1956 [for short 'the Act'], duly supported by an affidavit of the Petitoner-Transferor Company, seeking sanction of the Amended Scheme of Amalgamation (Annexure A-2) [for short 'the Scheme'].

The main objects of the Transferor and Transferee Companies are detailed in their respective Memorandum and Articles of Association, annexed with the petition as Annexures P-3, P-5, P-7 and P-9, respectively.

The Registered Office of the Petitioner-Transferor Company 2 is situated at Gurgaon (Haryana). The registered office of the Transferee Company is situated at Mumbai.

The Board of Directors of the Transferor and Transferee Companies have approved the Scheme in their respective meetings held on 13.05.2015 & 05.08.2015 vide Resolutions at Annexure P-11 to P-14, respectively.

Earlier, Transferor and Transferee Companies had approached this Court by way of a Company Petition No.182 of 2015 which was disposed of on 7.12.2015 in which following order has been passed: -

> *"In this petition under Section 391-394 of the Companies Act, 1956 (for short, 'the Act'), duly supported by affidavit, the petitioner-Company seeks directions to convene meeting of its unsecured creditors to consider /approve the Scheme of Amalgamation (Annexure P-1) with Transferee Company.*
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> *It is stated by the learned counsel for the petitioner company that the petitioner company is registered under the Act. Registered office of the petitioner company is situated at Gurgaon (Haryana). The*

*registered office of the Transferee Company is situated at Mumbai.*

*Registered offices of the Transferor Companies No. 1 and 3 are situated at New Delhi.*

*Earlier vide order dated 5.10.2015, this Court had dispensed with holding of meetings of Equity Shareholders of AD2C (India) Private Limited (Transferor Company No.2/ Petitioner Company) and further directed to convene the meeting of unsecured creditors of the petitioner company. There is no secured creditor of the petitioner company.*

*Learned counsel for the petitioner filed affidavit of Anuj Kumar, authorised signatory of the petitioner company- AD2C (India) Private Limited regarding publication of notice for meeting of unsecured creditors. She has placed on record cuttings of newspapers and the Gazette Notification and postal receipts of the notices sent to the unsecured creditors in this regard.*

*Chairman of the meeting of unsecured creditors of petitioner company has submitted his report dated 25.11.2015, stating therein that the Scheme of Amalgamation was approved unanimously without any modifications by the unsecured creditors of the petitioner company. He submitted that 15 unsecured creditors, who were present, have voted in favour of the scheme. Out of 84 unsecured creditors, 15 unsecured creditors holding 72% of the total debts in value and 17.85% in number have given their consent/ no objection to the Scheme. The total unsecured debt is ₹6,54,92,762/-. The unsecured creditors, who have attended the meeting and voted in favour of the Scheme, holding ₹4,71,42,970/-, constituting*

> *72% of the total debt. However, 100% has voted in favour of the Scheme, who were present.*
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> *From the perusal of the reports, it transpires that the Scheme has been approved by the majority of the unsecured creditors present and voting. Accordingly, the first motion petition stands disposed of. The petitioner company shall be at liberty to move the Second Motion Petition."*

Notice of the present petition was issued on 22.12.2015 to the Regional Director, Ministry of Corporate Affairs, New Delhi and the Official Liquidator and was also ordered to be published in the newspapers, namely, 'Indian Express' (English) and 'Jansatta' (Hindi), both Delhi/NCR Edition, as well as in the Official Gazette of Government of Haryana and was also ordered to be uploaded on the official website of the Official Liquidator. The said order has been complied with and the affidavit of Publication dated 4.2.2016 has been placed on record.

The Official Liquidator has filed his report dated 26.04.2016. The Official Liquidator, on the basis of the report of M/s PRA & Associates, Chartered Accountant, has raised no objection by observing that the affairs of the Transferor company had not been conducted in the manner prejudicial to the interest of its members, creditors or to the public interest. It is also observed that there was delay in deposit of various taxes and filing of returns, however, the entire amount due along with interest and penalty has been deposited.

Pursuant thereto, report by way of an affidavit of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, dated 20.05.2016 has been placed on record, in which following averments, which are relevant, have been made in Para Nos.11, 13 & 17: -

> *"11. That the deponent states that the Petitioner Transferor Company has vide para No.21 of the reply furnished the details of pending Tax liabilities-as of 30 September 2015 there is Tax Deducted at Source (TDS) liability of ₹23,74,771/-. Further, there are no other tax liabilities towards income tax, sales tax or any Government tax and liability for the benefit of the Employees and workers pending against the company.*
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> *13. That the Deponent states that the Registrar of Companies in his additional report has inter-alia stated in para 6(d) that features as enumerated in para 12.1 of the present amended Scheme seems to be in line with the required accounting treatment of 'Purchase Method'. Copy of additional report of ROC marked as Exhibit-D for kind perusal of Hon'ble Court. However, the fair valuation report of Assets and Liabilities has not been made available to the office of deponent.*
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> *17. That the Deponent states that Hon'ble Court may direct the Petitioner Company to comply with the provisions of the Accounting Standard 14 related to "Purchase Method" as prescribed under Section*

*211(3C) of the Companies Act, 1956 and under Section 133 of the Companies Act, 2013 as stated in clause 12 of the Scheme of Amalgamation."*

In reply to the affidavit/representation of the Regional Director, Anuj Kumar, authorized signatory the Transferor Company 2/Petitioner Company has made the following averments in his affidavit dated 23.5.2016: -

*"1) It is submitted that Paras 1-12 and 14-16 of the affidavit are general observations regarding the mode and manner of the arrangement, and do not require any comment.*

*2) In response to the observations made in para 13 of the affidavit, wherein the respected Regional Director has stated that the fair valuation report of Assets and Liabilities has not been made available to the office of the deponent, the Petitioner Company submits as under:*

*i. It is submitted that the Petitioner Company has already obtained a fair valuation report to determine the share exchange ratio for the shareholders of the Petitioner Company, which has already been annexed with the petition seeking sanction of the shecme.*

*ii. It is humbly submitted that the fair valuation report of* *the assets and liabilities is required only to comply with the accounting treatment proposed under 12.1 of the Scheme of Amalgamation for the purpose of accounting the assets and liabilities in the books of accounts of the Transferee Company. Such a process only begins after the scheme is sanctioned by this Hon'ble Court, and other High Courts where other Transferor Companies and the Transferee Company are located. Therefore, the Transferee Company would only be required obtain such a fair valuation report of the assets and liabilities post the sanction to the Scheme, and not prior to it. This in any case, would not be an exercise required to be carried out by the Petitioner Company.*

iii. *It is submitted that the Transferee Company shall upon sanctioning of the scheme of the amalgamation undertake a fair valuation of the acquired assets and liabilities under purchase price allocation mechanism for the purpose of recording the assets and liabilities of* *the Petitioner Company in the books of accounts of the Transferee Company.*

iv. *Further, Clause 12.1 of the scheme deals with how the Transferee Company would record the assets and liabilities of the transferor companies and thus it is submitted that proposed restatement of assets and liabilities on the books of Transferee Company does not warrant any compromise from the creditors of the Petitioner Company, in any manner. Therefore, this would not be a subject that would in any manner be under the purview of the Regional Director or the Registrar of Companies in the present jurisdiction, as the Transferee Company is situated in Mumbai.*

v. *A similar Petition has already been filed by the Transferee Company with the Hon'ble jurisdictional Bombay High Court of the Petitioner Company for the sanctioning of the scheme of amalgamation and the final date of hearing for the same is June 17, 2016.*

vi. *Lastly, both the Petitioner Company and the Transferee Company are group subsidiaries, and the entire arrangement is only being carried out to streamline and better manage the operations of the group enterprise. The scheme of arrangement was only sought to be amended vide CA No.159 of 2016 in CP No.219 of 2015 to change the mode of recording the assets and liabilities in the books of the Transferee Company, from book value to fair value, to comply with the accounting treatment prescribed in the "Purchase Method", as acknowledged in the Regional Director's affidavit itself. This change has no tax implications, and there is no loss being caused to any statutory authority on account of this modification.*

*3. In response to para 17, the Petitioner Company undertakes to comply with the provisions of Accounting Standard 14 related to the "Purchase Method", as required by the Regional Director and well as statute. That further, the company is willing to abide by any directions of the court or undertaking given by the Counsel for the Company during course of hearing."*

With regard to the observations made by the Regional Director in para 11 of his affidavit/representation, learned Senior Counsel for the petitioner-Company has brought to the notice of this Court that as per clause 13 of the Amended Scheme of Amalgamation, all tax liabilities of the Transferor Companies shall be transferred to the Transferee Company.

The above stated explanation submitted by the authorised signatory of the Petitioner-Transferor Company 2 and counsel for the petitioner company meets with the queries raised by the Regional Director.

It is further submitted by counsel for the Petitioner Company that there are no proceedings pending against the Petitioner Company filed under Sections 235 to 251 of the Act.

For the reasons mentioned hereinabove and on the consideration of all the relevant facts and the procedural requirements, contemplated under Sections 391 & 394 of the Act, the relevant Rules and on due consideration of the report of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and Official Liquidator, the Amended Scheme of Amalgamation is hereby sanctioned subject to sanctioning of the Scheme by the High Court of judicature at Mumbai in the case of Transferee Company and as a result thereof, the assets and liabilities of the Petitioner-Transferor Company 2 shall stand vested in the Transferee Company and the Petitioner-Transferor Company 2 shall be dissolved without being wound up. The Petitioner-Transferor Company shall comply with the Accounting Standard 14 as has been undertaken.

The Amended Scheme of Amalgamation shall be binding on the Transferor and Transferee Companies, their respective shareholders, creditors and all concerned.

Let a formal order of sanction of the Amended Scheme of Amalgamation be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

A notice of the order be published in the newspapers, namely, Indian Express (English), Jansatta (Hindi) both Delhi/NCR Edition and in the Official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for Petitioner-Transferor Company 2 has stated that the petitioner-Company would voluntarily deposit a sum of ₹1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

**(RAKESH KUMAR JAIN)**
**JUDGE**

**12.08.2016**
*Vivek*

*Whether speaking/reasoned* *Yes/No*

*Whether non speaking* *Yes/No*