IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CP No. 32 of 2016 (O&M)

Date of decision : 5.2.2016

In the matter of
The Scheme of Amalgamation between

Marvel Institute of Technology Private Limited

.... Petitioner No.1/ Transferor Company No.1,

Shiva Infosystem Private Limited

.... Petitioner No.2/ Transferor Company No.2,

And

New Ways Buildwell Private Limited

.... Non-Petitioner / Transferor Company No.3

With

Yuga Estate Private Limited

.... Petitioner No.3/ Transferee Company

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Sumeet Goel and Mr. Sangram Singh, Advocates, for the petitioner-companies.

Rajesh Bindal, J.

In this petition filed under the Companies Act, 1956 (for short, 'the Act'), duly supported by affidavits, the petitioner- Companies seek dispensation of the meetings of their Equity Shareholders, Secured and Un-secured Creditors for sanctioning of the Scheme of Amalgamation (Annexure P-20) of the Transferor Companies with Yuga Estate Private Limited (Petitioner No.3/ Transferee Company).

It is stated in the petition that the registered office of Marvel Institute of Technology Private Limited (Petitioner No.1/ Transferor Company No.1), Shiva Infosystem Private Limited (Petitioner No.2/ Transferor Company No.2), and Yuga Estate Private Limited (Petitioner No.3/ Transferee Company) is situated at Hisar, whereas registered office of

New Ways Buildwell Private Limited (Non-Petitioner / Transferor Company No.3) is situated at New Delhi.

Main objects of Petitioner No.1/ Transferor Company No.1, Petitioner No.2/ Transferor Company No. 2, and Petitioner No. 3/ Transferee Company are detailed in their respective Memorandum and Articles of Association annexed with the petition at Annexure P-1, P-7, and P-13, respectively.

The Board of Directors of Petitioner No.1/ Transferor Company No.1, Petitioner No.2/ Transferor Company No. 2, and Petitioner No. 3/ Transferee Company have approved the said Scheme in their meetings held on 7.11.2015, Annexures P-3, P-9 and P-15, respectively.

The present authorised share capital of the Petitioner No.1/ Transferor Company No.1 is ₹ 1,25,00,000/- divided into 12,50,000 equity shares of ₹ 10/- each. The present issued, subscribed and paid up share capital of the company is ₹ 1,21,00,000/- divided into 12,10,000 equity shares of ₹ 10/- each and the paid up share capital of the company is ₹ 61,00,000/- divided into 10,000 equity shares of ₹ 10/- each fully paid up aggregating to ₹ 1,00,000/- and 12,00,000 equity shares of ₹ 10/- each, partly paid up @ ₹ 5/- per share aggregating to ₹ 60,00,000/-.

The present authorised share capital of the Petitioner No.2/ Transferor Company No.2 is ₹ 25,00,000/- divided into 2,50,000 equity shares of ₹ 10/- each. The present issued, subscribed and paid up share capital of the company is ₹ 22,40,450/- divided into 2,24,045 equity shares of ₹ 10/- each.

The present authorised share capital of the Petitioner No.3/ Transferee Company is ₹ 1,25,00,000/- divided into 12,50,000 equity shares of ₹ 10/- each. The present issued, subscribed and paid up share capital of the company is ₹ 4,00,000/- divided into 40,000 equity shares of ₹ 10/- each.

The Petitioner No.1 /Transferor Company No.1 has 11 shareholders. All of them have given their consent to the Scheme of Amalgamation. The list and their consents/NOCs are annexed as Annexure P-4.

There is no secured creditor of the Petitioner No.1/ Transferor Company No.1 as certified by K.K. Bansal & Associates, Chartered Accountants vide Annexures P-5.

There is only one unsecured creditor of the Petitioner No.1/ Transferor Company No.1, as certified by K.K.Bansal & Associates, Chartered Accountants. The list and the consent given by the said unsecured creditor to the Scheme of Amalgamation is annexed as Annexure P-6.

The Petitioner No.2 /Transferor Company No.2 has 14 shareholders. All of them have given their consent to the Scheme of Amalgamation. The list and their consents/NOCs are annexed as Annexure P-10.

There is no secured creditor of the Petitioner No.2/ Transferor Company No.2 as certified by K.K. Bansal & Associates, Chartered Accountants vide Annexures P-11.

The Petitioner No.2/ Transferor Company No.2, has no unsecured creditor. Certificate to this effect given by K.K.Bansal & Associates, Chartered Accountants is annexed as Annexures P-12.

The Petitioner No.3 /Transferee Company has 2 shareholders. Both of them have given their consent to the Scheme of Amalgamation. The list and the consents/NOCs given by the shareholders are annexed as Annexure P-16.

There is no secured creditor of the Petitioner No.3/ Transferee Company. Certificate to this effect duly certified by K.K.Bansal & Associates is annexed as Annexure P-17.

Petitioner No.3/ Transferee Company has 5 unsecured creditors. All of them have given their consent/ NOC to the scheme of Amalgamation. The list and the consent/NOC given by the unsecured creditors is annexed as Annexures P-18.

Learned counsel for the petitioner companies submitted that the valuation exercise has been carried out to determine the share swap ratio for the proposed Scheme of Amalgamation. The report on valuation of shares and share exchange ratio has been prepared by K. K. Bansal & Associates, Chartered Accountants (Annexure P-19). The relevant proposed share exchange ratio is extracted below:-

“a. The Transferee Company will issue 1 (one) Equity

Share of Rs. 10 each, credited as fully paid up, for every 33 (thirty three) Equity Shares of Rs. 10 each held in the Transferor Company No.1- Marvel Institute of Technology Pvt. Ltd. In case of any partly paid up shares in the Transferor Company No.1, as on the record date, if any, issue of new equity shares will be reduced proportionately.

b. The Transferee Company will issue 1 (one) Equity Share of Rs. 10 each, credited as fully paid up, for every 8 (eight) Equity Shares of Rs. 10 each held in the Transferor Company NO.2 – Shiva Infosystem Pvt. Ltd.

c. The Transferee Company will issue 7 (seven) Equity Shares of Rs. 10 each, credited as fully paid up, for every 4 (four) Equity Shares of Rs. 10 each held in the Transferor Company No.3- New Ways Buildwell Pvt. Ltd."

The registered office of New Ways Buildwell Private Limited (Non-Petitioner / Transferor Company No.3) is situated at New Delhi, which falls under the jurisdiction of High Court of Delhi at New Delhi. Learned counsel for the petitioner companies submitted that the Transferor Company No.3 is moving appropriate application before High Court of Delhi at New Delhi.

The petitioner companies have confirmed that there are no investigations or proceedings pending against them under Sections 235 to 251 of the Act.

It was submitted that the proposed Scheme of Amalgamation is for the benefit of the companies, their shareholders and creditors. The proposed scheme will not adversely affect the rights of any of the shareholders/ creditors of the petitioner companies in any manner whatsoever.

In this view of the aforesaid factual matrix, when all the equity shareholders of the Petitioner Companies and unsecured creditors of Petitioner Company Nos. 1 and 3, have consented to the Scheme of

Amalgamation, convening of their meetings are ordered to be dispensed with. There is no secured creditors of the Petitioner Companies and unsecured creditor of Petitioner Company No.2, hence, no meeting is required.

First motion petition is disposed of accordingly.

Petitioners are at liberty to move 2nd motion petition.

5.2.2016 (Rajesh Bindal)
vs Judge