IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.4 of 2016 (O&M)
Date of Decision: 25.07.2016

IN THE MATTER OF:
SCHEME OF AMALGAMATION:

EROS FABRICATORS PRIVATE LIMITED

. . . . Transferor Company-I/Petitioner Company - I

LAKSHYA RESEARCH AND DEVELOPMENT PRIVATE LIMITED

. . . . Transferor Company-II/Petitioner Company – II

With

ALLEGNERS GLOBAL HEALTHCARE PRIVATE LIMITED

. . . .Transferee Company/Non-Petitioner

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Yash Pal Gupta, Advocate,
for the petitioners-Companies.

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

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RAKESH KUMAR JAIN, J.

This petition is filed under Section 391 to 394A of the Companies Act, 1956 [for short 'the Act'], duly supported by an affidavits of the petitioners-Companies, seeking sanction of the Scheme of Amalgamation (Annexure P-1) [for short 'the Scheme'].

The main objects of the petitioners-Transferor & Transferee Companies are detailed in their respective Memorandum and Articles of Association, annexed with the petition as Annexures P-2, P-5 and P-8 respectively.

The Registered Office of the Transferor Company-I is situated at Chandigarh, Transferor Company-II/Petitioner Company-II is at Ludhiana and the registered office of the Transferee Company-Non-Petitioner is situated at New Delhi.

The Board of Directors of the petitioner-Transferor Company-I and II have approved the Scheme in their respective meetings held on 3.11.2015 and the non-petitioner-Transferee Company has approved the Scheme in its meeting held on 5.11.2015.

Earlier, the petitioners-Transferor & Transferee Companies had approached this Court by way of a Company Petition No.231 of 2015 and vide order passed therein on 22.12.2015, holding of meetings of the Equity Shareholders of both the petitioner-Transferor Companies and Unsecured Creditors of Petitioner-Transferor Company No.1 were dispensed with. It was also ordered that since there are no Secured Creditors of the petitioner-Transferor Companies and Unsecured Creditors of Petitioner-Transferor Company-II, therefore, no meeting is required. The first motion petition was disposed of accordingly.

Notice of the present petition was issued on 8.1.2016 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 'Punjabi Tribune' (Vernacular), both Chandigarh Edition, as well as in the official gazette of Union Territory, Chandigarh and State of Punjab 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 14.3.2016 has been placed on record.

The Official Liquidator has filed his report dated 27.05.2016. The Official Liquidator, on the basis of the report of M/s Deviyal K. & Co., Chartered Accountant, has raised no objection by observing that the affairs of the Transferor company have not been conducted in the manner prejudicial to the interest of its Members, Creditors or to the public at large.

Pursuant thereto, report by way of an affidavit of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, dated 18.04.2016 has been placed on record, in which following averments have been made in Para No.6 to 6(iii): -

> *"6. That the deponent states that in response to the deponent's letter dated 25.2.2016 issued to the income Tax Department requesting to offer their comments, letter dated 10.3.2016 has been received from Income Tax Officer, HQ. (Jud), Chandigarh stating that the amalgamation scheme and documents related to the other Transferor and Transferee Companies have not been received in their office. It has been further stated that on the basis of records available in their office related to M/s Eros Fabricators P. Ltd. (Transferor Company of Chandigarh), it is conveyed that their office has no objection to the amalgamation of M/s Eros Fabricators P. Ltd. (Transferor Company of Chandigarh) falling in the jurisdiction of their charge with M/s Allengers Global Healthcare P. Ltd. (Transferee Company of Delhi) alongwith another Transferor Company i.e. M/s Lakshya Research and Development P. Ltd. (Transferor*

Company of Punjab), subject to following conditions: -

(i) There should not be any accumulated loss and/or unabsorbed depreciation allowance in the other Transferor and Transferee Companies so as to adversely affect the interest of revenue after amalgamation.

(ii) The amalgamation should not be effective retrospectively.

(iii) The market value of the transferred assets including the asset(s) from which the rent is being received by M/s Eros fabricators Pvt. Ltd. (Transferor Company of Chandigarh), is not more than the total liabilities shown by it at Rs.20,27,952/- as on 31.03.2015."

As regards the objection raised by the Regional Director, Karan Sharma authorized signatory and Director of the petitioner-Transferor Company-1 has made the following averments in his affidavit dated 28.5.2016: -

"(iv) (i) I depose that there is no accumulated loss/unabsorbed depreciation in the transferor Companies and there shall not be any accumulated loss/unabsorbed depreciation allowance in the Transferee Company consequent to the sanctioning of the Scheme except

the already existing in the Balance Sheet of the Transferee Company. Therefore, it will not adversely affect the interest of revenue after amalgamation.

(ii) I depose that the Scheme of Amalgamation shall be effective as per the Clause 1.2 (d) which reads as under: -

"Effective Date" Shall be the last of the following dates or such other date as the Hon'ble Court of Punjab and Haryana at Chandigarh and / or Hon'ble Court at New Delhi may direct, namely:

(i) The date on which the last of the certified copy of the order, under Section 394 of the Act, of the Hon'ble Court of Punjab & Haryana at Chandigarh and New Delhi sanctioning the Scheme of Amalgamation are filed with the Registrar of Companies, Chandigarh and New Delhi respectively.

(ii) The date on which last of the consents, approvals, sanctions and / or orders as are hereinafter referred to in para 4.5 of this Scheme have been obtained.

References in this Scheme to the date of the "coming into effect of this Scheme" or "effectiveness of this Scheme" shall mean the Effective date;

> *4.5 This Scheme is conditional upon and subject to:*
>
> *(a) the consents by the requisite majority of the shareholders and creditors, if any, of the Transferor Companies and the Transferee Company to the Scheme, if required and the requisite orders of the Hon'ble High Court(s) sanctioning the Scheme in exercise of the powers vested in it under the Act; and*
>
> *(b) the certified copies of the High Court(s) order being filed with ROC."*
>
> *(iii) I further depose that the entire balance sheet incorporating all the assets and liabilities of the Transferor is going to merge into the Balance sheet of the Transferee Company at book value of the entire Assets cannot be more than the Liabilities and the Fixed Assets are indeed less than the Liabilities."*

The above stated explanation submitted by the Director-cum-authorised signatory of the Transferor Company-I meets with the queries raised by the Regional Director.

It is further submitted by counsel for the petitioner-Companies that there are no investigation proceedings against the Transferor 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, Ministry of Corporate Affairs, New Delhi and Official Liquidator, the Scheme of Amalgamation is hereby sanctioned subject to sanctioning of the Scheme by the Delhi High Court in the case of Transferee Company and as a result thereof, the assets and liabilities of the Transferor Company-I and II shall stand vested in the Transferee Company. The Transferee Company shall comply with the procedural requirements mentioned in Clause 3.20 of the Scheme.

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

Let a formal order of sanction of the Scheme 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), Punjabi Tribune (Vernacular) both Chandigarh Edition and in the official gazette of Government of Punjab and Chandigarh Administration, UT, Chandigarh.

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

Learned counsel for the petitioner-Transferor Company-I and Transferor Company-II states that the Transferor Companies would voluntarily deposit a sum of ₹50,000/- in the Common Pool

Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

25.07.2016
Vivek

WHETHER SPEAKING/REASONED	YES/NO
WHETHER REPORTABLE	YES/NO