IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.42 of 2016 (O&M)
connected with CP No.32 of 2016
Date of Decision: 02.12.2016

IN THE MATTER OF:
SCHEME OF AMALGAMATION:

MARVEL INSTITUTE OF TECHNOLOGY PVT. LTD.

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

AND

SHIVA INFOSYSTEM PVT. LTD.

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

AND

NEW WAYS BUILDWELL PVT. LTD.

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

WITH

YUGA ESTATE PVT. LTD.

. . . Petitioner No.3/Transferee Company

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr. Sumeet Goel, Advocate, for the petitioner-Companies.

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

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RAKESH KUMAR JAIN, J.

CA No.624 of 2016

This is an application for placing on record document, Annexure P-14 (colly) along with a prayer for exemption from filing its certified typed copy.

Application is allowed as prayed for.

CP No.42 of 2016

This petition is filed under Section 391 (1), 391(2) & 394 of the Companies Act, 1956 [for short 'the Act'], duly supported by an affidavit of the Petitioner-Transferor and Transferee Companies, seeking sanction of the Scheme of Amalgamation (Annexure P-1) [for short 'the Scheme'].

The Registered Office of the Petitioner-Transferor and Transferee Companies is situated at Hisar (Haryana). The registered office of the non-petitioner/Transferor Company No.3 is situated at New Delhi.

The main objects of the Petitioner- Transferor and 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 Board of Directors of the Petitioner-Transferor and Transferee Companies have approved the Scheme in their respective meetings held on 07.11.2015 vide Resolutions at Annexure P-4, P-7 and P-10, respectively.

Earlier, Petitioner-Transferor and Transferee Companies had approached this Court by way of a Company Petition No.32 of 2016 in which vide order dated 05.2.2016 convening of meetings of the Equity Shareholders of the Petitioner-Transferor and Transferee Companies and Unsecured Creditors of the Petitioner Company Nos.1 and 3 were dispensed with and the petition was disposed of accordingly with liberty to file Second Motion petition.

Pursuant to the aforesaid order dated 5.2.2016, the Petitioner-Transferor and Transferee Companies have filed the present petition in which notice was issued on 26.02.2016 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 'Jansatta' (Hindi), 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 20.05.2016 has been placed on record.

Pursuant thereto, report by way of an affidavit of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, dated 06.05.2016 has been placed on record, in which following averments, have been made in Para No.13: -

> *"13. That the deponent states the Hon'ble Court may direct the Petitioner Companies to comply with the provisions of the Accounting Standard 14 related to "Pooling of Interest 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 11(a) of the Scheme of Amalgamation."*

With regard to the observations made by the Regional Director in para No.13 of his affidavit/representation, learned counsel for the petitioner-Transferor and Transferee Companies has undertaken that the petitioner-Transferor and Transferee Companies shall comply with the provisions of the Accounting Standard 14 related to "Pooling of Interest 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 11(a) of the Scheme.

The Official Liquidator has filed his report dated 20.05.2016 in which, on the basis of the report of M/s Naresh K. Singla & Associates, Chartered Accountant, he has observed at para No.11.2 that the objects of the Transferor and Transferee Companies are not similar. In para 11.4 of his report, it has been averred that provisional balance sheet as on 31.3.2016, which is required, has not found with the reply. It is further averred therein that the sale of plot has been shown as revenue instead of profit from the sale of fixed assests and thus, the surplus from the said transaction has made effect on the valuation, which will effect the share exchange ratio.

With regard to the observation made by the Official Liquidator at Para 11.2 regarding not having similar objects, learned counsel for the Petitioner-Transferor and Transferee Companies has relied upon judgment passed by Bombay High Court in CP No.516 of 1991 titled as ***"Morarjee Goculdas Spg. And Wvg. Co. Ltd."*** *1994 (80) Comp Cas 289* and by Gujarat High Court in ***"Rangkala Investments Ltd."*** *1997 (89) Comp Cas 754,* wherein objects of the Transferee Company were different to that of Transferor Company and the Scheme was sanctioned.

With regard to the observation made by the Official Liquidator at Para 11.4 regarding not filing of provisional balance sheet with the reply, learned counsel for the Petitioner-Transferor and Transferee Companies has filed the Audited Balance Sheet which has been taken on record vide order dated 08.11.2016 passed in CA No.588 of 2016 to which counsel for the Official Liquidator has not objected.

With regard to the remarks made by the Official Liquidator against the management's reply at para No.11.4 regarding 'sale of plot' to the observations made by the Chartered Accountants in which it is mentioned that they have taken the valuation by NAV method in which effect of profit on sale of plot is already covered and also NAV method is the most acceptable method of valuation, learned counsel for the Petitioner-Transferor and Transferee Companies has also stated at the Bar that the Equity Shareholders and the Creditors of the Petitioner-Companies have given their consent to the

Scheme, which are the most effected persons, hence, the said remarks of the Official Liquidator does not survive.

Learned counsel for the Official Liquidator has referred to clause 2(b) of the Scheme about the affixation of the stamp duty on the instrument of conveyance on transfer of property from the Transferor Company to the Transferee Company. In this regard, learned counsel for the Petitioner-Transferor and Transferee Companies has filed CA No.624 of 2016 averring that neither there are immovable nor moveable property in the Transferor Companies, therefore, the question of stamp duty does not arise. It is also stated in the affidavits filed by the Petitioner-Transferor Companies that they would not construed as an order granted exemption from payment of stamp duty or any other charges, if payable, in accordance with law.

The above stated explanations submitted by the learned counsel for the Petitioner-Transferor and Transferee Companies meets with the queries raised by the Regional Director and the Official Liquidator.

It is further submitted by counsel for the Petitioner-Transferor and Transferee Companies that there are no proceedings pending against the Petitioner-Transferor and Transferee Companies 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(1) & 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 Scheme of Amalgamation is hereby sanctioned and as a result thereof, the assets and liabilities of the Petitioner-Transferor Company Nos.1 and 2 shall stand vested in the Petitioner-Transferee Company and the Petitioner-Transferor Company Nos.1

& 2 shall be dissolved without being wound up. The Petitioner-Transferor and Transferee Companies shall comply with the Accounting Standard 14 and also with regard to stamp duty or any other charges, if payable, in accordance with law, as has been undertaken.

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

Let a formal order of sanction of the 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 and Transferee Companies has stated that the petitioner-companies 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

02.12.2016
Vivek

Whether speaking/reasoned *Yes/No*

Whether non speaking *Yes/No*