

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 226/2016

Reserved on 10th August, 2016
Date of pronouncement: 2nd September, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Sections 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Foundation e-Learning Private Limited

Petitioner/Transferor Company

WITH

Cambridge University Press India Private Limited

Non-Petitioner/Transferee Company

**Through Mr. Sharad Vaid, Advocate for
the petitioner**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Kanwal Chaudhary, Advocate for
the Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner/transferor company seeking sanction of the Scheme of Amalgamation of Foundation e-Learning Private Limited (hereinafter referred to as the petitioner/transferor company) with Cambridge University Press India Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the petitioner/transferor company and the transferee company are situated at New Delhi, within the jurisdiction of this Court.

3. The petitioner/transferor company was incorporated under the Companies Act, 1956 on 27th September, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the petitioner/transferor company is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.1,11,000/- divided into 11,100 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the petitioner/transferor company and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2015, of petitioner/transferor company and the transferee company, along with the report of the auditors, have also been filed.

6. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is claimed by

the petitioner that the proposed amalgamation will simplify group and business structure and eliminate multiplicity of companies leading to synergies in operations, achieving efficiencies and economies of scale and reduction in operational costs, overheads, administrative and other expenditure.

7. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor company is a wholly owned subsidiary of the transferee company, no shares of the transferee company shall be allotted in lieu or exchange of its holding in the transferor company and the issued, subscribed and paid-up share capital of the transferor company held by the transferee company and its nominees shall stand cancelled/extinguished.

8. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/transferor company and the transferee company.

9. The Board of Directors of the petitioner/transferor company and the transferee company in their separate meetings held on 6th January, 2016 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the

Board of Directors of the transferor and transferee companies have been placed on record.

10. The petitioner/transferor company had earlier filed CA (M) No. 30/2016 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of Scheme of Amalgamation. Vide order dated 22nd February, 2016, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditor of the petitioner/transferor company, there being no secured creditors of the petitioner company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. Vide the said order, this Court also dispensed with the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation.

11. The petitioner/transferor company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 15th March, 2016, notice in the petition was directed to be issued to

the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and "Jansatta" (Hindi) Delhi editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 11th April, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 20th July, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

13. In response to the notices issued in the petition, Mr. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 4th August, 2016 stating that he had no objection to the proposed Scheme of Amalgamation subject to filing of

compounding application for violation committed under Sections 166 and 210 of the Companies Act, 1956 and payment of pending demand to the Income Tax Department by the petitioner company. The Regional Director in para 6 of his report has stated that a letter dated 19.04.2016 has been received from the Income Tax Officer Ward 9(3) stating that a demand of Rs.32,530/- + interest under Section 220 of the IT Act, 1961 is outstanding against the transferor company. Therefore, their office has objection if the amalgamation took place before payment of said outstanding demand. The Regional Director in para 10 of his report has submitted that there is an Audit Qualification in FY 2013 & 2014 regarding non compliance of Section 210 of the Companies Act, 1956 as the financial statements of the year ended 31.03.2012 and 31.03.2013 were not laid before the shareholders in the annual general meeting within the stipulated time.

14. In response to the aforesaid observations, the petitioner/transferor company in the affidavit dated 6th August, 2016 of Mr. Nachiket Mohagaonkar, Director of the petitioner company has submitted that the transferor company has made the payment of Rs.32,530/- on 10th May, 2016 towards the income tax demand. A copy of the challan evidencing payment to the Income Tax Department is also placed on record. With regard to the second observation, the transferee company has undertaken to file the requisite compounding application(s) for violation

committed under Section 166 and 210 of the Companies Act, 1956 in due course without demur or delay, as required under the relevant applicable provisions. It has been further submitted that the transferee company will remain in existence even after the sanction of the Scheme and in case the transferee company fails to file the requisite compounding application, then the ROC may take penal action against the transferee company as provided in law. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

15. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner company, in the affidavit dated 4th August, 2016 of Mr. Nachiket Mohagaonkar, Director of the petitioner company, has submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 11th April, 2016.

16. Considering the approval accorded by the equity shareholders and creditors of the petitioner company to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under

Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation i.e. 1st April, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

17. Learned counsel for the Official Liquidator prays that costs of at least Rs.2,00,000/- should be paid by the petitioner keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 10.08.2016, the petitioner shall deposit a sum of Rs.2,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

18. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 02, 2016