

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 48/2016

Reserved on 21st April, 2016
Date of pronouncement: 30th May, 2016

In the matter of

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

And

**Application under Sections 391 to 394 of the
Companies Act, 1956 read with Rules 6 & 9 of
the Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Great Learning Management Private Limited

Applicant/Transferor Company

WITH

Beacon Higher Education Services Private Limited

Non-Applicant/Transferee Company

**Through Mr. A.S. Gyani and Mr. Vikram
Shah, Advocates for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Sections 391 to 394 of the Companies Act, 1956 read with Rules 6 & 9 of the Companies (Court) Rules, 1959 by the applicant/transferor company seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Great Learning Management Private Limited (hereinafter referred to as the transferor company) with Beacon Higher

Education Services Private Limited (hereinafter referred to as the transferee company).

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

3. The applicant/transferor company was incorporated under the Companies Act, 1956 on 17th March, 2011 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the applicant/transferor company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2015, along with the report of the auditors, and the unaudited balance sheets, as on 22nd March, 2016 of the transferor and transferee companies 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 application and the accompanying affidavit. It is submitted by the applicant that the transferor company is a wholly owned subsidiary of the transferee company. It is claimed that the proposed amalgamation will enable better leverages of facilities, infrastructure and human resources, better management control and running of the business by the transferee company. It is further claimed that the proposed amalgamation will result in reduction of similar overheads, administrative, managerial and other expenditure, and bring about operational rationalization, and organizational efficiency and synergy.

7. So far as the share exchange ratio is concerned, the Scheme provides that since the entire share capital of the transferor company is held by the transferee company, therefore upon the Scheme becoming effective, neither any consideration shall be paid or shares shall be issued/allotted by the transferee company to the shareholders of the transferor company and the entire shares of the transferor company held by the transferee company shall stand extinguished/cancelled.

8. It has been submitted by the applicant that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and applicable

provisions of the Companies Act, 2013 are pending against the applicant/transferor company.

9. The Board of Directors of the applicant/transferor company and the transferee company in their separate meetings held on 20th 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 applicant/transferor company and the transferee company have been placed on record.

10. The applicant/transferor company has 02 equity shareholders and 01 unsecured creditor. Both the equity shareholders and the sole unsecured creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditor of the applicant/transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the applicant/transferor company, as on 22nd March, 2016.

11. The transferee company has 02 equity shareholders and 04 unsecured creditors, who have given their consents/no objections in writing to the proposed Scheme of Amalgamation, which are placed on record. There is no secured creditor of the transferee company. It has been submitted by the applicant that the transferor company is a wholly owned subsidiary of the transferee company and the rights of neither the shareholders nor the creditors of the transferee company are being affected since no shares are issued as consideration by the transferee company, therefore, the transferee company is not required to file a petition seeking sanction of the Scheme of Amalgamation. The applicant, therefore, seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956. In support of his submission, learned counsel placed reliance on the judgments of this various High Courts, including this court, in **Auto Tools India Pvt. Ltd.** (CA(M) 41/2012) **Sharat Hardware Industries Pvt. Ltd.** (1978), 48 Com. Cas 23 (Delhi); **Mahaamba Investments Ltd. & Anr.** (2001) 105 Com. Cas. 16 (Bom.); and **Andhra Bank Housing Finance Ltd.** (2004) 118 Com.Cas. 295 (AP), wherein it has been held that there is no requirement to file a separate or joint application on behalf of the transferee company for sanction of the Scheme.

12. I have carefully considered the aforesaid case law cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of this settled legal position and considering the Scheme, 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 is dispensed with.

13. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

May 30, 2016