

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 56/2016

Reserved on 18th April, 2016
Date of pronouncement: 16th May, 2016

In the matter of

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

And

**Application under Section 391(1) of the
Companies Act, 1956**

Scheme of Amalgamation of:

Stratford Academy Limited

Applicant/Transferor Company

WITH

FIITJEE Limited

Applicant/Transferee Company

**Through Mr. Rajeev K. Goel, Advocate
for the applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Section 391(1) of the Companies Act, 1956 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Stratford Academy Limited (hereinafter referred to as the transferor company) with FIITJEE Limited (hereinafter referred to as the transferee company).

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

3. The transferor company was originally incorporated under the Companies Act, 1956 on 13th December, 2004 with the Registrar of Companies, Madhya Pradesh and Chattisgarh under the name and style of Stratford Academy Private Limited. Thereafter, the company shifted its registered office from the State of Madhya Pradesh to Delhi and obtained a certificate in this regard from Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 31st January, 2013. The company changed its name to Stratford Academy Limited and obtained the fresh certificate of incorporation on 7th October, 2015.

4. The transferee company was incorporated under the Companies Act, 1956 on 13th October, 1997 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

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

6. The present authorized share capital of the transferee company is Rs.62,55,00,000/- divided into 5,84,50,000 equity shares of Rs.10/- each aggregating Rs.58,45,00,000/-; 40,00,000 Series 'A' equity shares of Rs.10/- each aggregating Rs.4,00,00,000/-; and 1,00,000 compulsorily

convertible preference shares of Rs.10/- each aggregating Rs.10,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.42,52,99,270/- divided into 3,86,63,570 equity shares of Rs.10/- each aggregating Rs.38,66,35,700/-; and 38,66,357 Series 'A' equity shares of Rs.10/- each aggregating Rs.3,86,63,570/-

7. 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, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. 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 affidavits. It is submitted by the applicants that the transferor company is a wholly owned subsidiary of the transferee company and the proposed amalgamation would result in business synergy, consolidation and pooling of their resources. It is claimed that the proposed amalgamation would provide synergistic linkages besides economies in costs and other benefits resulting from the economies of scale, by combining the business and operations of the transferor and transferee companies.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall not be required to issue and allot any shares since the transferor company is a wholly owned subsidiary of the transferee company.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under the corresponding sections of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 18th March, 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.

12. The transferor company has 07 equity shareholders and 01 unsecured creditor. All 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 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 transferor company, as on 24th February, 2016.

13. The transferee company has 11 equity shareholders and 01 Series 'A' equity shareholder. 10 out of 11 equity shareholders, being 90.91% in number and 94.95% in value, and the sole series 'A' equity shareholder 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, including series 'A' equity shareholder, of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

14. So far as the secured and unsecured creditors of the transferee company are concerned, the transferee company has not provided the list of its secured and unsecured creditors. However, it was pleaded by learned counsel for the applicants that since the transferor company is a wholly owned subsidiary of the transferee company; the applicant companies are not proposing any arrangement with their shareholders and creditors; and no new shares will be issued on amalgamation,

therefore, the rights of the secured and unsecured creditors of the transferee company will not be affected. Hence, their consents/NOC are not required to be obtained for the proposed amalgamation. It is further submitted by learned counsel for the applicants that, post amalgamation, the transferee company will continue to pay its creditors and other liabilities in the normal course of its business. In support of his submission, learned counsel placed reliance on the judgment of this court passed in CA(M) 9/2016, wherein under similar circumstances and relying on the judgment of this court passed in CA(M) 117/2009, the requirement of convening the meetings of the shareholders and creditors of the transferee company was dispensed with.

15. I have carefully considered the aforesaid case law cited at the Bar. In view of the submissions made at the bar, the settled law on the subject, and considering the Scheme of Amalgamation, the requirement of convening and holding the meetings of the secured and unsecured creditors of the transferee company, to consider and if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation, is dispensed with.

16. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

May 16, 2016