

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 27.09.2016

CO.PET. 465/2016

STRATFORD ACADEMY LTD Transferor Company/ Petitioner
Company No.1

AND

FIITJEE LTD Transferee Company/ Petitioner
Company No.2

Through: Mr. Rajeev K Goel, Advocate for the
petitioners
Ms. Aparna Mudiam, Assistant Registrar
of Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the Official
Liquidator

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J

1. The present is a Second Motion Petition filed jointly by Stratford Academy Ltd. (hereinafter referred to as “Transferor Company”) with FIITJEE Ltd. (hereinafter referred to as “Transferee Company”) under Sections 391(2) and 394 of the Companies Act, 1956 (hereinafter referred to as “the Act”) for

approval of the Scheme of Amalgamation (hereinafter referred to as “the Scheme”).

2. The Transferor Company and the Transferee Company, have been hereinafter, jointly referred to as “Petitioner Companies”.

3. The registered offices of the Petitioner Companies are situated in the National Capital Territory of Delhi, and therefore, this Court has the necessary jurisdiction to adjudicate the present petition.

4. The details of the authorized share capital, issued, subscribed and paid up capital *qua* Petitioner Companies, have been set out in paragraph 6 of the scheme.

5. The transferor company was originally incorporated under the Companies Act, 1956 on 13th December, 2004 with the Registrar of Companies, Madhya Pradesh and Chhattisgarh 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.

6. 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.
7. The authorized share capital of the transferor company as on 31.03.2015 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 transferor company is Rs. 5,00,000/- divided into 50,000 equity shares of Rs.10/- each.
8. The authorized share capital of the transferee company as on 31.03.2015 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 transferee 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/-.
9. It has been averred on behalf of the Petitioner Companies that there are no proceedings pending against them, under Sections 235 to 251 of the Act (including their corresponding sections of the Companies Act, 2013).

10. It has been further submitted on behalf of the Petitioner Companies that the Scheme has been approved by the respective Board of Directors (BOD) of the Petitioner Companies. Copies of the BOD resolutions dated 18.03.2016 have been filed and the same are on record.

11. The Copies of the Memorandum of Association and Articles of Association, of the Petitioner Companies, have been duly filed as Annexures to Company Application (M) No. 56 of 2016 (Application for First Motion), which earlier came to be filed by the Petitioner Companies. The same are on record. The audited financial statements, as on 31.03.2015, alongwith the auditors report, pertaining to each of the Petitioner Companies, have also been duly filed by all the Petitioner Companies and the same are on record.

12. 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 Petitioner Companies 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.

13. 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.

14. To recapitulate, the Petitioner Companies had, in the earlier round, filed an application (i.e. application for the First Motion), being Company Application (M) No. 56 of 2016, whereby a prayer was sought, seeking directions of this court to dispense with the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferor company and equity shareholders, secured creditors and unsecured creditors of the transferee company.

15. Further, this Court, by way of its order dated 16.05.2016, dispensed with the convening of meeting of shareholders, secured and unsecured creditors of the Petitioner Companies.

16. Pursuant to the same, the Petitioner Companies, have filed the instant petition (i.e. Second Motion). Notice in this petition was issued by this Court, by way of order dated 24.05.2016. Notice in the present petition was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD), Northern Region.

17. Furthermore, vide order of this Court dated 24.05.2016, citations were directed to be published. It has been noted that Citations were published, on 06.07.2016, in Delhi Editions of the newspapers, namely, 'Business Standard' (English) and 'Business Standard' (Hindi), in compliance with the order of this Court dated 24.05.2016. An affidavit dated 06.08.2016 demonstrating service of the petition on the Official Liquidator, Registrar of Companies and the Regional Director, Northern Region has been filed and the same is on record.

18. Pursuant to the issuance of notices in the present petition, report of the Official Liquidator (OL) dated 09.09.16 has been filed, wherein, *inter alia*, it has been stated that the OL has not received any complaint *qua* the Scheme from any interested person or party. Further, it has been stated in the said report dated 09.09.2016, that on the basis of information supplied by the Petitioner Companies, it appears, that the affairs of the transferor company have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large.

19. In other words, it has been stated by the OL in the report dated 09.09.2016 that the affairs of the transferor company, do not fall foul of the provisions of the Second Proviso to Section 394(1) of the Act. Thus, it has been averred on behalf of the OL, in effect, that he would have no objections, if this Court were to sanction the Scheme.

20. Further, in response to the notices issued in the Petition, Sh. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs, filed his affidavit dated 16.09.2016 wherein, *inter alia*, it has been stated that he has no objection to the sanction of the proposed Scheme.

21. It has been noted that no objections have been received to the Scheme from any other party. The Petitioner Companies, vide affidavit dated 19.09.2016, have submitted that neither the Petitioner Companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 06.07.2016.

22. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the Official Liquidator attached to this High Court, whereby no objections have been raised to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under section 391(2) and 394 of the Companies Act, 1956. The Petitioner Companies will however, comply with the statutory requirements in accordance with law.

23. A certified copy of the order, sanctioning the scheme, be filed with the ROC, within thirty (30) days of its receipt.

24. Resultantly, it is hereby directed that the Petitioner Companies will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

25. In any event, notwithstanding what has been stated on behalf of the Petitioner Companies hereinabove, the transferee company will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the Transferor company. It is also made clear, that the concerned Statutory Authority will be entitled to proceed against the transferee company *qua* any liability which it would have fastened onto the transferor company for the relevant period, and that, which may arise on account of the scheme being sanctioned.

26. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the petitioner companies.

27. The transferor company shall stand dissolved without being wound up.

28. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

29. Learned counsel appearing on behalf of the Official Liquidator prays that cost of at least Rs.1,00,000/- may be paid by the Petitioner Companies, keeping in view the fact, that the matter called for examination of extensive records and prioritised hearings. Learned counsel appearing on behalf of the Petitioner Companies state that the same is acceptable to them.

30. In view of the foregoing, the petitioners shall deposit a sum of Rs.1,00,000/- in Common Pool Fund of the Official Liquidator by way of costs, with the Official Liquidator, Delhi.

31. Consequently, the petition is allowed and disposed of, in the aforesaid terms.

SIDDHARTH MRIDUL, J

SEPTEMBER 27, 2016

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