

(2002) 11 DEL CK 0021

In the Delhi High Court

Case No : C.P. 312, 213 and 314 of 2002

**In Re: Feedback Reach Consultancy Services Private Limited (Transferor Company No. I)
 In Re: Feedback Infrastructure Private Limited (Transferor Company No. II)
 In Re: Feedback Ventures Private Limited (Transferee Company)**

Date of Decision : 21-11-2002

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2003) 115 CompCas 897 : (2002) 101 DLT 501 : (2003) 66 DRJ 356 : (2003) 42 SCL 82

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : P.K. Batta, on behalf of RO Manish Lamba, for the Appellant;

Judgement

Vikramajit Sen, J.—These petitioners have been filed u/s 391 to 394 of the Companies Act, praying for sanction to be accorded to the Scheme of Amalgamation of Feedback Reach Consultancy Services Private Limited (Transferor Company No. I), Feedback Infrastructure Private Limited (Transferor Company No. II) with Feedback Ventures Private Limited (Transferee Company).

2. The Registered Offices of both the Transferor Companies and Transferee Company are situated at New Delhi, within the territorial jurisdiction of this Court. In fact they share the same address in respect off their registered Offices.

3. The Board of Directors of the Transferor Companies and the Transferee Company have passed their respective Resolutions approving the Scheme of Amalgamation.

4. The objects and salient features of the Scheme and the circumstances necessitating the amalgamation of the companies have been explained in the petitioners. I find no reason to disagree with the expectations of the Petitioner Companies.

5. Balance Sheets of the Transferor Companies companies and the Transferee

Company have been placed on record together with Resolutions of their respective Board of Directors and shareholders, approving the proposed Scheme of Amalgamation.

6. It has also been submitted that there are no investigations or proceedings pending against any of the above said Petitioner Companies under Sections 235 to 251 of the Companies Act.

7. The Regional Director, Department of Company Affairs, Kanpur pursuant to notices issued to him, has recorded his No Objection to the Scheme of Amalgamation in respect of Transferor Companies I and II, in terms of his Report.

8. In respect of the Transferee Company the objection taken by the Regional Director is that since the Memorandum of the Company (in this case the Transferee Company) does not contain the power to amalgamate with any other company, the proper course to be adopted is for the Transferee Company to first carry out requisite amendments in its Objects clause in the memorandum. This would be achieved by taking recourse to Section 17 of the Companies Act. Learned counsel for the Petitioner, however, submits that this Objection is without merit as the matter stands comprehensively settled by a series of judgments of the Calcutta High Court, and a judgment of the Bombay High Court.

9. In *Hari Krishna Lohia v. Hoolungooree Tea Co. Ltd. and Anr.* (1970) 40 Comp Cas 458, a Division Bench of the High Court of Calcutta held that "the power to amalgamate one company with another may flow from the memorandum or it may be acquired by resorting to the statute which confers a right on a company to alter its memorandum in aid of amalgamation with another company. If a company by virtue of its power in the memorandum desires to amalgamate with another company without coming to a court of law, such amalgamation would be valid". A Single Judge of the Calcutta High Court has adopted this view in *United Bank of India Limited v. United India Credit and Development Co. Limited* (1977) 47 Comp. Cas. 689 and in *Marybong & Kyel Tea Estates Ltd.* (1977) 47 Comp. Cas. 802. The Learned Judge had based his conclusion on the principle that by invoking Sections 391 and 393 of the Companies Act, the statutory powers exercised by the Company Judge had been invoked, and that consequently there are no fetters on the exercise of such powers regardless of whether the power to amalgamate with another company is contained in the Memorandum of the concerned company. This view has also found favor with the High Court of Bombay in *Aimco Pesticides Ltd.* (2001) 103 Comp. Cas. 463. I am in respectful agreement with the views expressed by both the High Courts. It is quite clear that the powers of the court under Sections 391 to 394 are not circumscribed or predicated on the applicant company possessing powers under its Objects clause to amalgamate with any other company. As has been observed by the Division Bench of the Calcutta High Court, if such a power is in fact contained in the Memorandum of the respective companies, those companies need not seek the imprimatur and approval of the Company Judge and may initiate and effect the amalgamation de hors the Company Judge. In these circumstances the objection

raised by the Regional Director is overruled.

10. The Official Liquidator attached to this Court, pursuant to notices issued to him, has also recorded his No Objection to the Scheme of Amalgamation in respect of Transferor Companies I and II and the Transferee Company, in terms of his Report.

11. Vide Orders of this Court dated 8.8.2002, the separate meetings of the Equity Shareholders and Secured and Unsecured Creditors of both the Transferor Companies and the Transferee Company were directed to be dispensed with since all the Equity Shareholders and Secured and Unsecured Creditors of the Transferor Companies and the Transferee Company had granted their consent in writing to the proposed Scheme of Amalgamation.

12. By Orders dated 29.8.2002, in addition to the issuance of notices to the Regional Director and Official Liquidator, citation was also ordered to be published in "Statesman" (English) and "Veer Arjun" (Hindi). These have been duly carried out. In spite of the advertisement of the notice of these petitioners in the newspapers, no one has filed any objection to the grant of sanction to the Scheme. There has also been no appearance before the Court to oppose the prayers contained in the petitioners, or to the said Scheme of Amalgamation.

13. In the circumstances narrated above, and having regard to the averments in the petitions and the materials placed on record, and the respective Reports of the Regional Director and Official Liquidator, I am satisfied that the prayers in the petitions deserve to be allowed. I do not find any legal impediment to the grant of the sanction to the Scheme of Amalgamation. Hence the sanction is hereby granted to the above mentioned Scheme of Amalgamation under Sections 391 to 394 of the Companies Act, 1956. Consequent to the amalgamation of the Companies, which will be deemed to have taken effect from the appointed date, the Transferor Companies I and II, having amalgamated with the Transferee Company shall stand dissolved without the process of winding up.

14. Petitions stand disposed of in the above terms.