

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT NEW DELHI**

**Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT**

**& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**COMPANY PETITION NO. 666/ 2016**

**CONNECTED WITH**

**COMPANY APPLICATION (MAIN) No.39 OF 2016**

**(Transferred from the file of Hon'ble High Court of Delhi)**

**IN THE MATTER OF SECTION 391 & 394 OF**

**THE COMPANIES ACT, 1956**

**(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)**

**AND**

**IN THE MATTER OF SCHEME OF ARRANGEMENT**

**BETWEEN**

**FIITJEE LIMITED**  
Having its registered office at  
29-A, ICES House,  
Sarvapriya Vihar, Kalu Sarai,  
NEW DELHI – 110016

**PETITIONER No.1 /**  
**( DEMERGED COMPANY)**

**AND**

**Edfora Edtech Pvt. Limited**

**PETITIONER No.2/**

Having its registered office at  
29-A, ICES House,  
Sarvapriya Vihar, Kalu Sarai,  
NEW DELHI – 110016

(RESULTING COMPANY)

ADVOCATE FOR THE PETITIONERS: Mr.Rajeev K. Goel, Advocate  
Mr.Ajay Garg, Advocate  
Mr. Praveen K Bharti, Advocate

FOR REGIONAL DIRECTOR,(NR), MCA: Mr.C.Baloni, Company Prosecutor

**ORDER**

1) This is a joint Petition which was initially filed before the Hon'ble High Court of Delhi under the provisions of Section 391 read with Section 394 as well as under Sections 100 and 104 all relating to Companies Act, 1956 seeking the following reliefs:

- a. Sanction the Scheme of Arrangement for De-merger of Tech Business of FIITJEE Ltd. into Edfora Edtech IPvt. Ltd. and Reorganization /reduction of Share Capital of the Resulting Company –Edfora Edtech Pvt. Ltd. as per Annexure:A-1 and declare the same to be binding with effect from the commencement of business on the 1<sup>st</sup> day of April, 2015 on the Petitioner Demerged Company and the resulting



Company, their Shareholders, Creditors and all concerned without any further act, deed or thing; and

- b. Pass such other/further order(s) as this hon'ble Court may deem fit and proper ;and
- c. Meanwhile, notice of this Petition may be directed to be served on the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs. Moreover, notice of the hearing of this Petition may be directed to be advertised in "Business Standard" (English, Delhi Edition) and "Business Standard" (Hindi, Delhi Edition) newspapers.

2) The Hon'ble High Court of Delhi in relation to Application No. (M) 39 of 2016 connected with the above Company Petition in the First Motion stage was pleased to dispense with the requirement of convening of meetings of equity shareholders, Series A equity shareholders, secured and unsecured creditors of the Demerged Company as well as in relation to the shareholders of the Resulting Company. Since the Resulting Company did not have any secured or unsecured creditors, the convening of the respective meeting did not arise. Subsequent to the order of dispensation as detailed above passed by the Hon'ble High Court on 27.07.2016, this Company Petition has been filed and Hon'ble High Court vide order dated 09.08.2016 had issued notice to the Regional Director in relation to the

same and as evidenced from the order, the Assistant Registrar of the Companies had accepted the notice and entered appearance on behalf of the Regional Director. Further vide the above said order dated 09.08.2016, directions were issued to carry out newspaper publication in Business Standard, both in English and Hindi returnable, on 08.12.2016. The compliance affidavit dated 07.10.2016 filed on behalf of the Petitioner companies discloses that the publication in newspapers directed as above have been complied with by having the notice of hearing published on 29.10.2016.

3) However, in view of the Notification Regd.No.D.L-33004/1999 dated 07.12.2016 issued by the Ministry of Corporate Affairs and in particular clause 3 thereof the Hon'ble High Court had transferred the above Company Petition for the consideration of this Principal Bench, National Company Law Tribunal, New Delhi.

4) In view of the above as well the provisions of Sections 230-232 having been notified which vests this Tribunal with the power to consider the Scheme of Arrangement and the like, as envisaged in the present Petition and the accompanying Scheme, the same is taken for consideration.



5) Learned Counsel for the Petitioner represent that the Demerged Company is primarily engaged in the business of preparing the students who are in pursuit of higher education in the field of engineering and the company also provides the above services through its web portal and other IT based and mobile applications and in the circumstances the Company has two distinct business streams, namely 'Conventional Education Business' and 'Tech Business'. Learned Counsel for the Petitioner states that under the Scheme, 'Tech Business', is sought to be demerged from the Demerged Company and is proposed to be vested in the Resulting Company and that the 'Tech Business' will thereby be the 'demerged undertaking' as defined in the Scheme. Learned Counsel for the Petitioner also represents that hive-off of 'Tech Business' from De-merged Company into another independent company, namely Resulting Company would be fully owned by the shareholders of the De-merged Company in the manner and proportion in which their own share holding in the De-merged Company are and as part of the Scheme it is also envisaged that the existing share capital of the Company and the Resulting Company will be reduced. The salient features of the Scheme of Arrangement by way of demerger is represented to be as follows:

- a. All assets and liabilities including Income Tax and all other statutory liabilities, if any, of Demerged Undertaking of the Demerged Company will be transferred to and vest in the Resulting Company.

- b. All the employees of the Demerged Company employed in the activities relating to the Demerged Business, in service on the Effective Date, if any shall become the employees of the Resulting Company on and from such date without any break or interruption in service and upon terms and conditions not less favorable than those applicable to them in the Demerged Business of the Demerged Company, on the Effective Date.
- c. Appointed Date for de-merger will be 1<sup>st</sup> April,2015 or such other date, as the Hon'ble High Court(s) may approve.
- d. The Resulting Company will issue 17 (seventeen) Equity Shares of Rs.10 each, credited as fully paid-up, to the Equity Shareholders of the Demerged Company for every 723 (seven hundred twenty three) Equity Shares of Rs.10 each held in the Demerged Company.
- e. The Resulting Company will issue 17 (seventeen) Series 'A' Equity Shares of Rs.10 each, credited as fully paid-up, to the Equity Shareholders of the Demerged Company for every 723 (seven hundred twenty three) Series 'A' Equity Shares of Rs.10 each held in the Demerged Company.
- f. The existing paid-up equity share capital of the Resulting Company comprising 10,000 equity shares of Rs.10 each, fully paid up, aggregating to Rs. 1,00,000 will be cancelled and extinguished by



payment of Rs.10 per equity share in full and final settlement thereof.

- g. Further, consequent to the demerger coming into effect and issuance of Resulting Company New Shares (as defined in the Scheme) to shareholders of the Demerged Company, 90,910 Resulting Company New Series A Equity Shares that would be held by the Identified Investor aggregating to Rs.9,09,100 will be cancelled and extinguished by payment of Rs.10 per Resulting Company New Series A Equity Share in full and final settlement thereof.

6. It is represented in the Petition that the assets of the De-merged Company and of the Resulting Company are sufficient to meet all their liabilities and that the Scheme as proposed will not adversely affect the rights of any creditor of the Demerged Company and of the Resulting Company in any manner whatsoever.

7. Upon notice to the Central Government through the Regional Director, it is seen that the Regional Director has filed his representation dated 06.12.2016 before the Hon'ble High Court of Delhi and in view of the transmission of records to this Tribunal, the same is also taken for consideration. In the representation it is stated that on 08.09.2016, a letter

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has been sent by the Office of Regional Director to the Principal Commissioner, IT and responses to the said communication has also been received dated 21.09.2016 as well as 21.10.2016 from the Assistant Commissioner of Income Tax, Central Sector-06, New Delhi. On a perusal of the same which discloses it is represented by the Regional Director that the Petitioner/Demerged Company has made provisions for doubtful receivables to the extent of Rs.2,56,46,601/- under the head Trade Receivables for the year 31.3.2015 and further a sum of Rs.29,80,90,992/- has been made as provisions for doubtful advances made and in the circumstances it is represented by the Income Tax Office that the transfer of debtor/loans and advances if any to the Resulting Company should be transferred only net of provisions of doubtful debts as otherwise the interests of revenue would be affected if the amount is allowed as expenditure to the De-merged Company and recoverable by the Resulting Company subsequently, as there would not be in such a case any tax liability to the Resulting Company. It is also pointed out by the Income Tax Department brought through the representations of the Regional Director that the De-merged Company is under scrutiny for assessment under Section 143(3) of the Income Tax Act, 1961 for the assessment years 2014-15, 2015-16. In the circumstances, the interest of the revenue needs to be protected in case of any tax liability arising there from. In addition, the Demerged Company has claimed losses to the extent of Rs.23,92,67,843 for



the previous years and for which also the interest of the revenue is required to be protected. Other than the above observations as extracted by the Regional Director from the objections of IT Department, it is submitted in the representation that the office of Regional Director does not have any objection to the proposed Scheme of Arrangement.

8. Learned Counsel for the Petitioner was queried about the above objections as raised by the Income Tax Department in relation to the Scheme and it was represented to us by the Learned Counsel that the Petitioners have filed a detailed reply dated 08.12.2016 in which the following explanations have been given at paragraph 5 of the said reply in relation to the observations of the Income Tax Department and the same are extracted hereunder:

a. In reply to Para 6(i) to Para 6(iii) of the Affidavit of the Regional Director, I undertake to this Hon'ble Court that the above referred debtors/loans and advances and related provisions for doubtful debt or advances do not form part of the Demerged Undertaking proposed to be transferred from the Demerged Company to Resulting Company. Hence, the said trade receivables and loans and advances (including the related provisions) would not be transferred to the Resulting Company, pursuant to the approval of the Scheme of Arrangement.



b. In reply to Para 6(iv) of the Affidavit of the Regional Director I undertake to this Hon'ble Court that the Demerged Company shall be duly liable in respect of any tax liability which is assessed and payable by the Demerged Company. We would further like to submit that none of the provisions made in the Scheme shall prejudice the interest of income-tax dues as assessed in accordance with the income tax laws.

c. In reply to Para 6(v) of the Affidavit of the Regional Director, I undertake to this Hon'ble Court that above referred tax losses of the Demerged Company do not form part of the Demerged Undertaking and would not be transferred to the Resulting Company. Said tax losses of the Demerged Company would be dealt with and subject to all the applicable provisions of the Income Tax Act, 1961.

9. Apart from the above undertakings given to assuage the apprehensions of the revenue, the Petitioners were also directed to file the Proforma Balance sheet and the Petitioners have also filed a further reply stated to be the 2<sup>nd</sup> reply/ affidavit on the representation/affidavit filed by the Regional Director in which the Petition has filed as annexures, Proforma Balance sheets of the 'Tech Business' as well as Board Resolution and a certificate from the Chartered Accountants confirming that the various

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amounts/accounting entries as suggested by the Income Tax Department do not form part of the Demerged Business and will be retained with the Petitioner Demerged Company. The above affidavit alongwith annexures is also taken on record.

10. However, taking into consideration the peculiar circumstances as pointed out by the revenue wherein it has been brought to our notice that scrutiny assessments are pending for the assessment years 2014-15 and 2015-16 and the appointed date as stated in the scheme being 01.04.2015 coinciding with said period we consider in the fitness of things and in the interest of the revenue and the petitioners that the appointed date is ordered to be fixed as 01.04.2017 rather than 01.04.2015 which is quite remote and it is implied that all the attendant consequence arising out of such a change will follow. While approving the Scheme and the reliefs prayed for save as otherwise provided above in relation to appointed date, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.





11. 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 will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons including the Petitioners, Directors and officials of the Petitioners.

THIS TRIBUNAL DO FURTHER ORDER:

That in terms of the Scheme,

(1) That the whole of the 'Tech Business' (Demerged Undertaking), shall pursuant to the provisions contained in Sections 391 to 394 of the Companies Act, 1956 (presently Sections 230-232 of the Companies Act, 2013) and all other applicable provisions, if any, of the Companies Act, 1956, and/or the Companies Act, 2013, and without any further act, deed, matter or thing, stand transferred to and vested in and/or be deemed to be transferred to and vested in the Resulting Company on and from 01.04.2017 being the Appointed Date specified herein so as to vest in the Resulting Company all rights, titles and interests pertaining to the Demerged Undertaking as an ongoing concern basis subject nevertheless to all charges now effecting the same; and

(2) That In terms of the Scheme, all the debts, liabilities, contingent liabilities, secured and unsecured loans, duties and obligations of

every kind, nature and description of the Demerged Company pertaining to Demerged Undertaking shall also, under the provisions of Sections 391 to 394 of the Companies Act, 1956 and all other applicable provisions, if any, of the Companies Act, 1956 and/or the Companies Act, 2013, and without any further act, application, instrument, deed matter or thing stand transferred to and assumed by and/or be deemed to be transferred to and assumed by the Resulting Company, so as to become from the Appointed Date as specified in order being 01.04.2017 the debts, liabilities, contingent liabilities, secured and unsecured loans, duties and obligations of the Resulting Company.

(3) That all proceedings now pending by or against the Demerged Undertaking of the Petitioner/Demerged Company be continued by or against the Petitioner/Resulting company; and

(4) That Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration;

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(5) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

12) The Petitioner Companies herein to pay Rs.20,000/- to the office of the Regional Director, Northern Region, Delhi to defray the incidental costs and expenses within four weeks from the date of the order.

18.05.2017

Sd/-  
**(CHIEF JUSTICE M.M.KUMAR)**  
**PRESIDENT**

Sd/-  
**(R.VARADHARAJAN)**  
**MEMBER (JUDICIAL)**

CP No.666/2016  
FIITJEE Limited and Edfora Edtech Pvt. Limited

U.D.Mehta