

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

CA (CAA) No. 22/Chd/Hry/2017

**Under Sections 230 to 232
of the Companies Act, 2013**

In the matter of scheme of amalgamation between:

PLANET EDU EXAMS PRIVATE LIMITED

(CIN: U74900HR2011PTC042837)

having its registered office at 3rd Floor,
Park Centra, Sector 30, NH-8, Gurugram,
HARYANA – 122001

... Applicant Company No.1-Transferor
Company No. 1.

PLANET EDU LEARN PRIVATE LIMITED

(CIN: U80903HR2008PTC068501)

having its registered office at 3rd Floor,
Park Centra, Sector 30, NH-8, Gurugram,
HARYANA – 122001

... Applicant Company No.2-Transferor
Company No. 2.

PLANET EDU SERVE PRIVATE LIMITED

(CIN: U80904HR2007PTC068502)

having its registered office at
3rd Floor, Park Centra, Sector 30, NH-8,
Gurugram, HARYANA – 122001

... Applicant Company No.3-Transferor
Company No. 3.

PLANET EDU TECH PRIVATE LIMITED

(CIN: U74999HR2012PTC045104)

having its registered office at 101, First Floor,
Greenwood Plaza, Greenwood City,
Gurugram, HARYANA – 122001

... Applicant Company No.4-Transferor
Company No. 4.

PLANET EDU GROUP (E) PRIVATE LIMITED

(CIN: U74140HR2001PTC035410)

having its registered office at 101, 1st Floor,
Greenwood Plaza, Greenwood City,
Gurgaon, HARYANA – 122001

... Applicant Company No.5-Transferor
Company No. 5

With

PLANET EDU NETWORK PRIVATE LIMITED
(CIN: U74999HR2011PTC043284)
having its registered office at 3rd Floor,
Park Centra, Sector 30, NH-8, Gurugram,
HARYANA – 122001

... Applicant Company No.6-Transferee
Company.

Judgment delivered on:08.01.2018

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)

For the Petitioners : 1. Mr. Kanav Dev Sharma, Advocate
2. Mr. Barinder Singh Maur, Practicing Company
Secretary.

JUDGEMENT

This is a joint First Motion application filed by the applicant companies herein, namely Planet Edu Exams Private Limited, Transferor-Company No. 1 (for brevity, "A-1 Company"), Planet Edu Learn Private Limited, Transferor- Company No. 2 (for brevity, "A-2 Company"), Planet Edu Serve Private Limited, Transferor-Company No. 3 (for brevity, "A-3 Company"), Planet Edu Tech Private Limited, Transferor-Company No. 4 (for brevity, "A-4 Company") and Planet Edu Group E Private Limited, Transferor-Company No. 5 (for brevity, "A-5 Company") for amalgamation with Planet Edu Network Private Limited, Transferee-Company (for brevity, "A-6 Company"), jointly described as "Applicant-Companies" under Sections 230 and 232 of the Companies Act, 2013 (for brevity, the "Act") read with Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the "Rules") as per the proposed Scheme of Amalgamation Annexure 7 (Page No. 571-630)(for short, the "Scheme")of the Applicant- Companies as supported by the affidavits of the Authorized Representative of the Applicant-Companies for seeking appropriate orders /direction for calling and

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convening meetings and for dispensing with some of the meetings. The joint application is maintainable in terms of Rule 3(2) of the Rules. The Memo of Parties has been filed with the additional affidavit dated 13.12.2017.

2. The learned counsel represented that the Board of Directors of the applicant-companies unanimously approved the "Scheme" by passing Board Resolution dated 24.03.2017 subject to sanctioning of the same by this Tribunal. All the applicant-companies authorized Mr. Sanjay Malaviya, Director to sign, file, submit or present necessary applications, petitions, supplementary applications/petitions etc. and to swear affidavits or execute bonds for the merger and to do such acts and deeds as are necessary and incidental with regard to the Scheme. These Board Resolutions are at Annexures 1.3, 2.3, 3.3, 4.3, 5.3 and 6.3.

3. It was represented by the learned counsel for the Applicant-Companies that as per the Memorandum of Association, Annexure 1.2 (Page Nos. 92-113), the objects of A-1 Company are to provide secure services in the field of examination and test management of pen and paper based computer based assessment and training services etc.

4. It was submitted that as per the Certificate of Incorporation of A-1 Company at Page 92 (Annexure 1.2), A-1 Company was incorporated on 03.05.2011. The Authorized Share Capital of A-1 Company is ₹ 5,00,000/- (Rupees five lakhs only) divided into 50,000 (Fifty thousand only) Equity Shares of ₹10/- each. The issued, subscribed and paid-up capital of A-1 Company is ₹1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) equity shares of ₹ 10/- each.

5. It was also represented further that as per the Memorandum of Association of A-2 Company, Annexure 2.2 (Page Nos. 239-260), the objects of A-2 Company are to provide technology enabled teaching learning support and

products, including educational content design and development, examination and test design and development, class room teaching and training, online training and support etc.

6. It was further submitted that as per the Certificate of Incorporation of A-2 Company at Page 239 (Annexure 2.2), A-2 Company was incorporated on 30.04.2008. The authorized share capital of A-2 Company is ₹ 5,00,000/- (Rupees five lakhs only) divided into 50,000 (Fifty thousand only) equity shares of ₹ 10/- each. The issued, subscribed and paid-up capital of A-2 Company is also ₹1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) equity shares of ₹10/- each.

7. As per the Memorandum of Association of A-3 Company, Annexure 3.2 (Page Nos. 304-325), the main objects of A-3 Company are to provide advisory and counselling services to students desirous of pursuing education in schools, colleges, universities and educational institutions abroad etc.

8. As per the Certificate of Incorporation of A-3 Company at Page 304 (Annexure 3.2), A-3 Company was incorporated on 27.12.2007. The authorized share capital of A-3 Company is ₹ 5,00,000/- (Rupees five lakhs only) divided into 50,000 (Fifty thousand only) equity shares of ₹10/- each. The issued, subscribed and paid-up capital of A-3 Company is ₹ 1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) equity shares of ₹ 10/- each.

9. As per Memorandum of Association of A-4 Company, Annexure 4.2 (Page Nos. 368-389), the main objects of A-4 Company are to provide services and solutions in the field of education and allied sectors using information and communication technology, computer software, web and internet technology, mobile technology, learning management systems, e-portfolio system, back office

solutions and services, customized software, application and solutions development and services, help desk and call center services.

10. As per the Certificate of Incorporation of A-4 Company at Page 368 (Annexure 4.2), A-4 Company was incorporated on 14.02.2012. The authorized share capital of A-4 Company is ₹1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) equity shares of ₹10/- each. The issued, subscribed and paid-up capital of A-4 Company is ₹ 1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) equity shares of ₹ 10/- each.

11. As per the Memorandum of Association of A-5 Company, Annexure 5.2 (Page Nos. 436-463), the main objects of A-5 Company are to provide technical and management services in India or elsewhere. Further, to carry on the business of providing Conference/ Exhibition/ Management Services, Promote Conferences and Exhibitions in India and elsewhere independently or in partnership. Further to provide web hosting consultancy for network management services and learning services etc. in India or elsewhere etc.

12. As per the Certificate of Incorporation of A-5 Company at Page 436 (Annexure 5.2), A-5 Company was incorporated on 18.06.2001. The authorized and issued share capital of A-5 Company is ₹1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) equity shares of ₹10/- each.

13. As per Memorandum of Association of A-6 Company, Annexure 6.2 (Page Nos. 517-538), the main objects of A-6 Company are to carry on the business of acting as coordinator and facilitator for entities engaged in the field of education and testing and to create a network of such entities.

14. As per the Certificate of Incorporation of A-6 Company at Page 517 (Annexure 6.2), A-6 Company was incorporated on 27.06.2011. The authorized

share capital of A-6 Company is ₹ 1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) equity shares of ₹10/- each and ₹ 2,50,00,000/- (Rupees two crore fifty lakh only) divided into 25,00,000 (Twenty five lakh only) 0% Convertible Redeemable Preference Shares of ₹100/- each i.e. ₹2,51,00,000/- as retrieved from the Master Data. The issued, subscribed and paid-up capital of A-6 Company is ₹ 1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) equity shares of ₹10/- each and ₹1,95,00,000/- (Rupees one crore ninety five thousand only) divided into 2,43,750 0% Convertible Redeemable Preference Shares of ₹ 100/- each (Rupees 80/- paid up).

15. The registered offices of all the applicant-companies is situated at Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The learned counsel for applicant-companies represented that the Applicant Companies are private limited companies.

16. The lists of Directors of A-1 Company (Annexure 1.4, Page 115), A-2 Company (Annexure 2.4, Page 262), A-3 Company (Annexure 3.4, Page 324), A-4 Company (Annexure 4.4, Page 391), A-5 Company (Annexure 5.4, Page 465) and A-6 Company (Annexure 6.4, Page 540) are attached to suggest that Mr. Sanjay Malaviya is a director in all the Applicant Companies having major shareholding with the other shareholder having very small shareholding. However, the shareholder pattern shows that A-1 company holds the entire preference shareholding in A-6 company.

17. Learned counsel for applicants represented that the applicant does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the companies Act, 2013. It is also stated in the affidavit that no

investigation or proceedings are pending against the companies involved in the merger.

18. When the matter was listed on 01.12.2017, applicant-companies were directed to file Master Data in respect of all the companies and the consolidated chart in respect of the creditors and shareholders of each of the company. The learned counsel was further directed to have instructions with regard to filing of no objection affidavits with regard to all the unsecured creditors of the company. The same was placed on record supported by the affidavit of Mr. Sanjay Malaviya, Director of the applicant-companies, but the affidavits of other shareholders of the applicant-companies though holding small shares are not filed. The affidavit of no objection of one of the unsecured creditor namely Mr. Lakshay Babbar who owes ₹3,55,699/- as on 31.08.2017 has been filed.

19. The Applicant Companies have made the prayers in the joint application for the following directions:-

“(a) Issuing necessary directions for the convening of meeting of unsecured creditors of the Applicant Company No. 1- Transferor Company on the date, time and place as mentioned in para 82 and 83 of the application or to be held at such other place or places as may be determined by this Hon’ble Tribunal may direct, including directions for issue and publication of notice for the same.

(b) Dispensing with the requirement of convening of meetings of the unsecured creditors of Applicant No. 2- Transferor-Company i.e. Planet Edu Learn Pvt. Ltd., Applicant No. 3 – Transferor-Company i.e. Planet Edu Serve Pvt. Ltd., Applicant No. 4/Transferor-Company i.e. Planet Edu Tech Pvt. Ltd., Applicant No. 5 – Transferor-Company i.e. Planet Group E Pvt. Ltd. and

Applicant No. 6 – Transferee Company i.e. Planet Edu Network Pvt. Ltd., in view of the unsecured creditors of the respective applicant-companies being over 95% in value having given their consents to the Scheme of Merger in writing, including directions for dispensing with the issue and publication of notices for the same.

(c) Dispensing with the requirement of convening of meetings of the equity shareholders of Applicant No.1- Transferor-Company i.e. Planet Edu Exams Pvt. Ltd., Applicant No.2 – Transferor-Company i.e. Planet Edu Learn Pvt. Ltd., Applicant No.3- Transferor-Company i.e. Planet Edu Serve Pvt. Ltd., Applicant No.4- Transferor-Company i.e. Planet Edu Tech Pvt. Ltd., Applicant No.5 – Transferor-Company i.e. Planet Group E Pvt. Ltd. and Applicant No.6- Transferee-Company i.e. Planet Edu Network Pvt. Ltd., in view of all the equity shareholders of the respective Applicant-Companies having given their consents to the Scheme of Merger in writing, including directions for dispensing with the issue and publication of notices for the same.

(d) Dispensing with the requirement of convening of meetings of the preference shareholders of Applicant No. 6 – Transferee-Company i.e. Planet Edu Network Pvt. Ltd., in view of the sole preference shareholder of the Applicant No.6 – Transferee-Company having given its consent to the Scheme of Merger in writing, including directions for dispensing with the issue and publication of notice for the same.

(e) Direct the appointment of Chairman/Alternate Chairman and Scrutinizer for the meetings to be so held and terms of appointment and remuneration for the Chairperson.

(f) *Pass any other order(s) which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case."*

20. Learned counsel for the applicants has further submitted that as on 31.12.2016, A-1 Company had 2 equity shareholders as per the list attached at Annexure 1.5 (Page No. 116). In A-2 Company, there are 2 equity shareholders as on 31.12.2016 as per the list attached at Annexure 2.5 (Page No. 263). In A-3 Company, there are 2 equity shareholders as on 31.12.2016 as per the list attached at Annexure 3.5 (Page No. 328). In A-4 Company, there are 2 equity shareholders as on 31.12.2016 as per the list attached at Annexure 4.5 (Page No. 392). In A-5 Company, there are 2 equity shareholders as on 31.12.2016 as per the list attached at Annexure 5.5 (Page No. 466) and in A-6 Company, there are 2 equity shareholders and one preference shareholder as on 31.12.2016 as per the list attached at Annexure 6.5 (Page No. 541). It was also submitted by the learned counsel for the Applicants that there has been no change in the shareholding pattern after 31.12.2016.

21. It was further represented by the learned counsel for the Applicant-Companies that there are no secured creditors in any of the Applicant- Companies. In this regard, Certificate of Statutory Auditors viz. J.P. Kapur & Uberai, Chartered Accountants as on 31.08.2017 is at Page No. 78-103 of Volume 3, for A-1 Company; Certificate of Statutory Auditors viz. Uberoi Sood and Kapoor, Chartered Accountants as on 31.08.2017 is at Page No. 20-21 of Volume 3, for A-2 Company; Certificate of Statutory Auditors viz. Uberoi Sood and Kapoor, Chartered Accountants as on 31.08.2017 is at Page No. 8-9 of Volume 3, for A-3 Company; Certificate of Statutory Auditors viz. J.P. Kapur & Uberai, Chartered Accountants as on 31.08.2017 is at Page No. 59-60 of Volume 3, for A-4 Company; Certificate of

Statutory Auditors viz. Uberoi Sood and Kapoor, Chartered Accountants as on 31.08.2017 is at Page No. 31-32 of Volume 3, for A-5 Company and Certificate of Statutory Auditors viz. J.P. Kapur & Uberai, Chartered Accountants as on 31.08.2017 is at Page No.45-47 of Volume 3, for A-5 Company.

22. It was further submitted that there are 931 unsecured creditors of A-1 Company as on 31.08.2017 and the amount outstanding was ₹15,91,65,759/-. The list of unsecured creditors is at Page Nos. 79-103 of Volume 3.

23. It was also submitted that there are 3 unsecured creditors of A-2 Company as on 31.08.2017 and the amount outstanding was ₹87,33,779/- . The list of unsecured creditors is at Page No.21 of Volume 3.

24. There are 2 unsecured creditors of A-3 Company as on 31.08.2017 and the amount outstanding was ₹ 37,59,235/-. The list of unsecured creditors is at Page No. 9 of Volume 3.

25. Further that there are 6 unsecured creditors of A-4 Company as on 31.08.2017 and the amount outstanding was ₹ 9,73,311/-. The list of unsecured creditors is at Page No. 60 of Volume 3.

26. A-5 company has 3 unsecured creditors as on 31.08.2017 and the amount then outstanding is ₹ 14,00,492/-. The list of unsecured creditors is at Page No. 32 of Volume 3.

27. The learned counsel further submitted that there are 15 unsecured creditors of the A-6 Company as on 31.08.2017 and the amount outstanding was ₹ 1,16,52,426/-. The list of unsecured creditors is at Page Nos. 46-47 of Volume 3.

28. The learned counsel for the Applicant-Companies further submitted that as on 04.12.2017, 2 (two) unsecured creditors of A-2 Company, 1 (one) unsecured creditor of A-3 Company, 4 (four) unsecured creditors of A-4 Company,

1 (one) unsecured creditor of A-5 Company and 10 (Ten) unsecured creditors of A-6 Company were paid off in full.

29. It was further submitted that after paying off the unsecured creditors on 04.12.2017, the remaining unsecured creditors in case of A-1 company are 931 1(one) unsecured creditor in A-2 Company, 1 (one) unsecured creditor in A-3 Company, 2 (two) unsecured creditor in A-4 Company, 2 (two) unsecured creditor in A-5 Company and 5 (five) unsecured creditors in A-6 Company. It was represented that the affidavits of the remaining unsecured creditors of A-2, A-3, A-4, A-5 and A-6 Companies giving their no objection to the Scheme and consent to dispense with the meetings are at Annexure -2 (Colly) (Pages 8 to 56) of Volume 4.

30. The learned counsel further submitted that meetings of unsecured creditors of A-1 company may be directed to be convened in terms of the Act and the Rules. It was further submitted that meetings of unsecured creditors in respect of Applicant-Companies A-2 to A-6 may be dispensed with in view of having obtained from the unsecured creditors, affidavits giving no objection to the Scheme and consent to dispense with the meetings.

31. The learned counsel further represented that meetings of equity shareholders of all the Applicant-Companies may be dispensed with in view of having obtained their consents to the Scheme of Merger in writing. It is further submitted that meetings of preference shareholders of A-6 Company may be dispensed with in view of having obtained no objection to the Scheme of Merger in writing.

32. The certificates of the Statutory Auditors of the Transferor and Transferee-Companies to the effect that the accounting treatment proposed in the

scheme of Merger is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 are attached as Annexure-8 (colly).

33. The learned counsel submitted further that A-1, A-2, A-3, A-4, A-5 and A-6 Companies are private limited and closely held companies and are not listed on Stock Exchange.

34. I have heard the learned counsel for the applicant-companies and have perused the records and the supporting documents/papers filed along with the "Scheme" contemplated between the Applicant-Companies with the assistance of learned counsel for the applicants.

35. The rationale of "Scheme" of arrangements is given in objective of the "Scheme" at Annexure 7 (Page No. 580). It is highlighted that the Transferor-Companies and Transferee-Company are in the allied fields of education encompassing various services such as advising students in the field of education, use of new educational technologies, organizing conferences, exhibitions and conducting secure examinations for educational bodies. As all the above-mentioned fields have synergies and overlapping functions in several administration and operational areas, the proposed merger will consolidate the business operations of the Transferor-Companies and Transferee-Company while at the same time reducing operational costs thereby enhancing the value of their stakeholders.

36. The valuation report of shares of Applicant-Companies has also been annexed which is at Annexure 9 (Page No. 634-645). On the basis of the aforesaid report, it is revealed that:-

"a) 3399 equity shares of Planet Edu Network Pvt. Ltd. of ₹10/- each fully paid up for every equity share held in Planet Edu Exams Pvt. Ltd. of ₹10/- each fully paid up and any fraction in consideration will be settled in cash.

- (b) *One equity share of Planet Edu Network Pvt. Ltd. of ₹10/- each fully paid up for 9991 equity shares held in Planet Edu Serve Pvt. Ltd. of ₹10/- each fully paid and any fraction in consideration will be settled in cash.*
- (c) *One equity share of Planet Edu Network Pvt. Ltd. of ₹10/- each fully paid up for 9991 equity shares and in Planet Edu Learn Pvt. Ltd. of ₹10/- each fully paid up and any fraction in consideration will be settled in cash.*
- (d) *One equity share of Planet Edu Network Pvt. Ltd. of ₹10/- each fully paid up for 9999 equity shares held in Planet Edu Tech Pvt. Ltd. of ₹10/- each fully paid up and any fraction in consideration will be settled in cash.*
- (c) *873 equity shares of Planet Edu Network Pvt. Ltd. of ₹10/- each fully paid up for every 1000 equity shares held in Planet Edu E Pvt. Ltd. of ₹10/- each fully paid up and any fraction in consideration will be settled in cash.”*

37. The learned counsel for the Applicants further represented that in respect of the applicant-companies, the audited financial statements upto 31.03.2016 and unaudited supplementary accounting statements as on 31.12.2016 are at Annexure 1.1 (Colly) Annexure 2.1 (Colly), Annexure 3.1 (Colly), Annexure 4.1 (Colly), Annexure 5.1 (Colly) and Annexure 6.1 (Colly) of A-6 Company. The unaudited supplementary accounting statements as on 31.08.2017 of all the Applicant-Companies are at page numbers 1-123 of Volume III. The “Scheme” also provides for transfer of liabilities of A-1, A-2, A-3, A-4 and A-5 Companies to A-6 Company.

38. The learned counsel for the Applicants further submits that in respect of A-1, A-2, A-3, A-4, A-5 and A-6 companies, the unaudited supplementary accounting statements as on 31.08.2017 is at Page Nos. 1 to 123 of Volume 3.

39. The Scheme also deals with the interest of the staff, workmen and employees of A-1 Company. It says in Clause 6.1, that upon coming into effect of the Scheme of Merger, all the employees of A-1 shall become the employees of the Transferee Company on terms and conditions not less favourable than those on which they are engaged by the A-1 Company and without any interruption of or break in service. It further states that for the purpose of payment of any compensation, gratuity and other terminal benefits, the past salaries of the employees of A-1 company and such benefits to which the employees are entitled shall also be taken into account (as and when payable) by the Transferee-Company.

40. It says in Clauses 6.2, 6.3, 6.4 and 6.5 of the "Scheme" that A-2, A-3, A-4 and A-5 has no employees on its rolls.

41. Though the prayer was made for dispensing with requirement of holding of the meeting of equity shareholders of all the Applicant-Companies but so far as the second shareholder in each company, though holding minority shareholding, his written consent has not been filed. The petitioners relied upon the written consents given by other shareholders on that account alone, the meeting cannot be dispensed with unless there is affidavit by another shareholder. Therefore, the learned counsel for the Applicant-Companies has prayed for convening and holding of the meeting of shareholders of all the Applicant-Companies.

42. With regard to the unsecured creditors, the learned counsel for the Applicant-Companies has prayed for holding and convening of meeting of unsecured creditors of A-1 Company and so far as the other Companies are concerned, it may be dispensed with. As per the list of creditors of A-2 Company as on 31.12.2016 there were four unsecured creditors including two creditors which

are out of the Applicant-Companies. The other two creditors were M/s Uberoi Sood & Kapoor, Chartered Accountants and the other Mr. Talib Hussain. The affidavit of Mr. Sanjay Malaviya dated 13.12.2017 has been filed with the additional documents stating that these two unsecured creditors have been paid off their dues as on 04.12.2017. So, the prayer to dispense with the meeting of the unsecured creditors of A-2 company can be accepted.

43. As per the list of unsecured creditors of A-3 Company at page 336, there were three unsecured creditors as on 31.12.2016. Along with the additional documents the consolidated chart shows only two unsecured creditors of the company as on 31.08.2017 and as per the affidavit at page 59 of the Paper Book of additional documents, one of the unsecured creditor has been paid off the amount as on 04.12.2017. The other unsecured creditors are Mr. Sanjay Malaviya himself and A-1 Company and there is affidavit of Mr. Sanjay Malaviya giving his consent and along with resolution of A-1 Company itself according approval to the Scheme. So, the meeting of unsecured creditors of A-3 Company is also being dispensed with.

44. In respect of A-4 Company, the list of unsecured creditors as on 31.12.2016 at page 398 of the Paper Book shows six creditors and the consolidated chart also shows six creditors filed with the additional documents Annexure-2 as on 31.08.2017. However, Mr. Sanjay Malaviya Authorized Representative of the Applicant-Companies in his affidavit at page 59 of the Paper Book has stated that as on 04.12.2017, three of the creditors have been paid off. The other three unsecured creditors of A-4 Company are amongst the Applicant-Companies. The meeting of all the unsecured creditors of A-4 Company is also being dispensed with.

45. There were three unsecured creditors of A-5 Company at page 473 of the Paper Book. In respect of amount outstanding as on 31.12.2016, as per the additional affidavit of Mr. Sanjay Malaviya at page 59 of the Paper Book, one of the creditor has been paid off and the other two unsecured creditors are amongst the Applicant-Companies only which have already accorded their approval to this Scheme.

46. As per the consolidated chart Annexure-2 with the additional affidavit, there were 15 unsecured creditors of A-5 Company as on 31.08.2017 but in the affidavit of Mr. Sanjay Malaviya at page 59 of the Paper Book ten of the unsecured creditors have been paid off their dues as on 04.12.2017 and amongst rest of the four unsecured creditors, these are the Applicant-Companies and one is Mr. Lakshay Babbar whose affidavit dated 13.12.2017 has been filed giving his no objection to the Scheme and consent to the dispensation of holding of the meeting of unsecured creditors.

47. However, with regard to the preference shareholding of A-6 Company, there is only one preference shareholder which is applicant No.1 i.e. M/s. Planet Edu Learn Pvt. Ltd. Applicant No.1 itself is part of the Scheme of Amalgamation who has accorded approval to the Scheme for filing of the petition before the Tribunal so the meeting of preferential shareholder of A-1 Company should be dispensed with.

48. In view of the above, following directions are issued with respect to calling, convening and holding of meetings of the shareholders, secured and unsecured creditors or dispensing with the same as well as issue of notices including by way of paper publication which are as follows:

A. In relation to A-1 Company

- a) Meetings of equity shareholders to be convened on 24.02.2018 at 10:00 a.m. at Ahuja Residency, Plot No. B-109 & 110, Near Unitech Signature Towers, South City-1, Gurugram, Haryana 122 001 in the Vista Signature Basement Hall, subject to notice of meeting being issued. The quorum of the meeting of the equity shareholders should be the presence of Mr. Sanjay Malaviya who holds 9999 shares in person or through proxy.
- b) Meeting of secured creditors of Company is dispensed with as there are no secured creditors.
- c) Meetings of unsecured creditors to be convened on 24.02.2018 at 3:00 p.m. at Ahuja Residency, Plot No. B-109 & 110, Near Unitech Signature Towers, South City-1, Gurugram, Haryana 122 001, subject to notice of meeting being issued. The quorum of the meeting of the unsecured creditors shall be 30 in number personally present or minimum 25% in value of the total unsecured debt, whichever is higher.

B. In relation to A-2 Company

- a) Meetings of equity shareholders to be convened on 24.02.2018 at 11:00 a.m. at Ahuja Residency, Plot No. B-109 & 110, Near Unitech Signature Towers, South City-1, Gurugram, Haryana 122 001 in the Vista Signature Basement Hall, subject to notice of meeting being issued. The quorum of the meeting of the equity shareholders shall be the presence of Mr. Sanjay Malaviya who holds 9991 shares in person or through proxy.
- b) Meeting of secured creditors of Company is dispensed with as there are no secured creditors as on 31.08.2017.
- c) Meetings of unsecured creditors is dispensed with as all of them have given their consent by way of affidavit.

C. In relation to A-3 Company

- a) Meetings of equity shareholders to be convened on 24.02.2018 at 12:00 Noon at Ahuja Residency, Plot No. B-109 & 110, Near Unitech Signature Towers, South City-1, Gurugram, Haryana 122 001 in the Vista Signature Basement Hall, subject to notice of meeting being issued. The quorum of the meeting of the equity shareholders shall be the presence of Mr. Sanjay Malaviya who holds 9991 shares in person or through proxy.
- b) Meeting of Secured Creditors of Company is dispensed with as there are "NIL" secured creditors as on 31.08.2017.
- c) Meetings of unsecured creditors is dispensed with as all of them have given their consent by way of affidavit.

D. In relation to A-4 Company

- a) Meetings of equity shareholders to be convened on 24.02.2018 at 2:00 p.m. at Ahuja Residency, Plot No. B-109 & 110, Near Unitech Signature Towers, South City-1, Gurugram, Haryana 122 001 in the Vista Signature Basement Hall, subject to notice of meeting being issued. The quorum of the meeting of the equity shareholders shall be the presence of Mr. Sanjay Malaviya who holds 9999 shares in person or through proxy.
- b) Meeting of secured creditors of Company is dispensed with as there are no secured creditors as on 31.08.2017.
- c) Meetings of unsecured creditors are dispensed with as all of them have given their consent by way of affidavit.

E. In relation to A-5 Company

- a) Meetings of equity shareholders to be convened on 25.02.2018 at 10:00 a.m. at 304, 3rd Floor, Park Centra, NH-8, Sector 30, Gurugram, Haryana 122

001, subject to notice of meeting being issued. The quorum of the meeting of the equity shareholders shall be 2 in number.

b) Meeting of secured creditors of Company are not ordered as there are no secured creditors as on 31.08.2017.

c) Meetings of unsecured creditors are dispensed with as all of them have given their consent by way of affidavit.

F. In relation to A-5 Company

a) Meetings of equity shareholders to be convened on 25.02.2018 at 11:00 a.m. at 304, 3rd Floor , Park Centra, NH-81, Sector 30, Gurugram, Haryana 122 001, subject to notice of meeting being issued. The quorum of the meeting of the equity shareholders shall be the presence of Mr. Sanjay Malaviya who holds 9999 shares, in person or through proxy.

b) Meeting of secured creditors of Company are not ordered as there are no secured creditors as on 31.08.2017.

c) Meetings of unsecured creditors are dispensed with as all of them have given their consent by way of affidavit.

G. In case the required quorum as noted above for the meetings of the Applicant-Companies is not present at the commencement of the meetings, the meetings shall be adjourned by 30 minutes, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy register is properly maintained.

H. It is further directed that where at a meeting majority of persons representing three-fourth in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to the proposed Scheme.

I. Mr. Raktim Gogoi, Advocate, # A-230, 1st Floor, Defence Colony, New Delhi-110024 (Mobile No.9871639549) is appointed as the Chairperson for all the meetings to be called under this order. He shall be paid a consolidated fee of ₹1.50 lacs for his services rendered as the Chairperson.

J. Mr. Naryan Dutt Kaushik, Advocate, 2-A, Civil Lines Enclave, Civil Lines, Gurugram (Mobile No.+919911043408) is appointed as the Alternative Chairperson for all the meetings to be called under this order. He shall be paid a consolidated fee of ₹75,000/- for his services rendered as the Alternative Chairperson.

K. Mr. Ashish Gupta, Company Secretary (CP No. 6859), address A-16, Jitar Nagar, Parwana Road, Delhi – 110 051 is appointed as the Scrutinizer as suggested by the learned counsel for the Applicant-Companies for the above meetings to be called under this order. He shall be paid a lump sum fee of ₹75,000/- for his services as the Scrutinizer.

L. The fee of Chairperson, Alternate chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses for them shall be borne by the “Transferee-Company”.

M. It is further directed that individual notice of the said meetings shall be sent by the “Applicant-Companies” to the equity shareholders of all the Applicant-Companies. Individual notices shall also be issued to the unsecured creditors of A-1 company as on 30.11.2017. Notice shall be sent through registered post or

speed post or through courier or e-mail, 30 days in advance before the schedule date of meeting, indicating the day, date, the place and time as aforesaid, together with a copy of "Scheme", copy of explanatory statement required to be sent under the Companies Act, 2013 and the applicable Rules along with the proxy forms and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

N. It is further directed that along with the notices, copy of the valuation report of A-1, A-2, A-3, A-4, A-5 and A-6 companies relied upon by the Applicant-Companies shall also be sent explaining their effect on the creditors, key managerial personnel, promoters and non-promotor members etc. along with effect of the arrangement for amalgamation on any material interests of the Directors of the Company or the debenture trustees, if any, as provided under sub-section 3 of Section 230 of the Act.

O. It is also directed that the supplementary accounting statement relating to the period ending 31.10.2017 be also circulated for the aforesaid meetings apart from other requirements of sub-section 2 of Section 230 of the Act.

P. That the "Applicant Companies" shall jointly publish with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time of meetings as aforesaid, to be published in the Business Standard (English), Delhi/NCR Edition and Jansatta (Hindi), Delhi/NCR Edition. It is stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the "Act" and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies. The "Applicant Companies" shall also publish the notice on their respective website, if any.

Q. It shall be the responsibility of the respective companies to ensure that the notices are sent under the signature and supervision of the authorized representative of each company on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meetings.

R. Voting shall be allowed on the "Scheme" in person or by proxy through postal ballot or through electronic means as may be applicable to the respective company under the Act and Rules framed thereunder.

S. The Chairperson shall be responsible to report the result of the meetings to the Tribunal in Form No. CAA 4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 07 (seven) days of the conclusion of the meetings. He would be fully assisted by the authorized representative / Company Secretary of each company (as the case may be) and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the reports.

T. The Petitioner/Applicant-Companies shall individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in

Form No. CAA 3 along with a copy of the Scheme, the explanatory statement and the disclosures mentioned in Rule 6 to (i) the Central Government through the Regional Director, Northern Region; (ii) the Registrar of Companies; (iii) Commissioner of Income Tax within whose jurisdiction the Applicant-Companies are assessed by mentioning the PAN numbers of all the companies; (iv) Official Liquidator and other Sectoral Regulators, if any, stating that representations, if any,

to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

U. The Applicant-Companies further shall furnish copy of the Scheme free of charge with 1 day of any requisition for the "Scheme" made by every creditor or member of Applicant-Companies entitled to attend the meetings as aforesaid.

V. The authorized representative(s) of the Applicant-Companies shall furnish respective affidavits of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

W. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the "Rules" as well as the provisions of the Companies Act, 2013 by the Applicants.

49. With the aforesaid directions, this First Motion Petition stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant-Companies who in turn shall supply copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer.

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

Pronounced.
January 08, 2018.
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