



एण्ड्रू यूल एण्ड
कम्पनी लिमिटेड
(भारत सरकार का उद्यम)

ANDREW YULE & COMPANY LIMITED

(A GOVERNMENT OF INDIA ENTERPRISE)

'YULE HOUSE', 8, DR. RAJENDRA PRASAD SARANI, KOLKATA-700 001
POST BOX : 150, TELEPHONE : 2242-8210, 2242-8550, FAX : 91-033-2242-9770
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CIN No. L63090WB1919GOI003229

আব্দ্রু ইউল অ্যান্ড
কোম্পানী লিমিটেড
(ভারত সরকারের একটি সংস্থা)

Ref : AY/Sectl/2A

4th May, 2021

The General Manager
Corporate Relationship Department
BSE Limited,
P. J. Towers,
Dalal Street, Fort,
Mumbai – 400 001

Dear Sir(s),

Sub.: Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended

Pursuant to Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended, we wish to inform you that the National Company Law Tribunal, Kolkata bench has issued the order of merger of Hooghly Printing Co. Ltd. with its holding Company, Andrew Yule & Co. Ltd. on 3rd May, 2021 (copy enclosed).

This is for your kind information and records.

Yours faithfully,
For Andrew Yule & Company Limited

(Sucharita Das)
Company Secretary

Encl.: As above.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CA (CAA) No. 65/KB/2020

In the matter of:

An application u/s. 233(5) of the Companies Act, 2013;

and

In the matter of:

Andrew Yule & Company Ltd (CIN: L63090WB1919GOI003229), Yule House, 8
Dr. Rajendra Prasad Sarani, Kolkata 700001;

...Transferee Company

and

Hooghly Printing Company Limited (CIN: U22219WB1922SGC004390),
Yule House, 8, Dr. Rajendra Prasad Sarani, Kolkata 700001

...Transferor Company

1. Andrew Yule & Company Ltd.

2. Hooghly Printing Company Limited...

Petitioning Companies

Date of Hearing: 27.01.2021

Order pronounced on: 03.05.2021

Coram:

Shri Rajasekhhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearance (through video conferencing):

1. Mr. Jishnu Chowdhury, Advocate] For Petitioning Companies

2. Mr. Vikash Singh, Advocate]

1. Mr. Channakeshava, Asstt. Director] For RD(ER), MCA, Kolkata

ORDER

Per: Rajasekhhar V.K., Member (Judicial)

1. This is an application filed under sub-section (5) of section 233 of the Companies Act, 2013 referring a Scheme of Amalgamation of Hooghly

Printing Company Limited (**Transferor Company**) with Andrew Yule & Company Limited (**Transferee Company**) under the overarching Scheme of section 233 of the Companies Act, for considering granting of approval of the Scheme as if it was filed u/s. 232 of the Companies Act, 2013.

2. The matter has a chequered history. Originally, since both the Companies are Government Companies, the Regional Director (Eastern Region), Ministry of Corporate Affairs, Kolkata had issued a letter dated 08/07/2019 to the Ministry of Corporate Affairs, New Delhi, requesting them to examine and give necessary instructions as to whether such types of scheme would fall within the jurisdiction of the Regional Director u/s. 233 of the Companies Act, 2013.
3. In response, the Ministry of Corporate Affairs vide letter No. 51/03/2019-CL.III dated 01/08/2019, addressed to the Regional Director stated that since no public interest is involved in the application, the present case falls u/s. 230-232 of the Companies Act, 2013 and as such advised the Regional Director not to entertain such application in future.
4. Thereafter, by another letter No.51/03/2019-CL.III dated 13/09/2019, the Ministry of Corporate Affairs advised the petitioners to file appropriate application in terms of section 230-232 of the Companies Act, 2013 with the Central Government. Subsequently vide letter of even number dated 21/10/2019, the Ministry reversed its stand and observed that section 233(1) of the Companies Act, 2013 does not restrict Government Companies from merging wholly owned subsidiaries with themselves and, therefore, directed the Regional Director to deal with the application in terms of Section 233 of the Companies Act, 2013.
5. Thereafter information was sought for from the Petitioning Companies through various letters. Reports were also sought for from the Official Liquidator, High Court, Calcutta and the Registrar of Companies, West Bengal, Kolkata. The Official Liquidator has stated in his report dated

05/07/2019 that there was no objection to the proposed Scheme of Amalgamation and that the Scheme is not unfair and also not prejudicial to the interest of the members or to the general public.

6. The Registrar of Companies, West Bengal *vide* his report dated 15/07/2019, inter alia, stated while no proceedings are pending, no complaints have been received and no enquiry or inspection is proposed/claimed to be carried out against the companies involved in the Scheme, there were some observations, which relates to the unsecured creditors.
7. After examining the Scheme, the Regional Director made certain observations, which are as follows:-
 - (a) The 'Appointed Date' in the Scheme had been defined to mean the 'Effective Date'. This appears to be in violation of Circular No. 7/12/2019-CL.I dated 21/08/2019 issued by the Ministry of Corporate Affairs in which it has been clarified that the 'Appointed Date' can be either a specific date or may be tied to the occurrence of an "event" such as grant of licence by competent authorities, etc. It is the view of the Regional Director that filing for the order of the Scheme with the authorities concerned would not constitute such an "event". Further, the appointed date cannot be different subsequent to the order of Tribunal approving the Scheme.
 - (b) In regard to the approval u/s. 233(1)(d) of the Companies Act, 2013, the companies involved in the Scheme submitted the List of Creditors, both secured and unsecured, as on the date of creditors' meeting held on 14/05/2019. As per the said list, the total value of Secured Creditors (4 in numbers) is Rs.49,53,38,791/- and the total value of Unsecured Creditors (running into hundreds) is Rs.50,21,53,140/-. However, at the meeting held in respect of the Secured Creditors only one Secured Creditor having value of Rs.15.5496 Crores voted in favour of the resolution and 9 (nine) Unsecured Creditors having value of Rs.22.85 Crores voted in favour of the resolution. Therefore, it is the Regional Director's view that the requirements of section 233(1)(d) of the Act requiring consent of 90% or more of the total value of the creditors for approval of the Scheme does not appear to have been complied with. As

a result, in the Regional Director's view the Scheme appears to have "lost its merit"

- (c) Further the amount of Secured Creditors as on 14/05/2019 of the Transferor Company is stated to be 'nil', whereas in the List of Charges on the MCA Portal, the Transferor Company have Secured Creditors of a value of Rs.380.70 Crores and as per the Balance Sheet as at 31/03/2019 filed with the Registrar of Companies, West Bengal the amount of the Secured Creditors is Rs.149.63 Crores. No satisfaction of charge appears to have been filed with the Registrar of Companies subsequent to 31/03/2019. Therefore, again there appears to be non-compliance of the provisions of section 233(1)(d) of the Companies Act, 2013 in the matter.
8. The Regional Director, therefore, has opined that since the requirements of section 233(1)(d) of the Companies Act, 2013 have not been complied with fully, the Scheme is not in the interest of its creditors and, therefore, the Regional Director is not to accord the Scheme in terms of section 233 of the Companies Act. The Regional Director has, therefore, referred the matter to the Tribunal in terms of section 233(5) of the Companies Act, 2013, for passing necessary orders.
9. Mr. Jishnu Chowdhury, Ld. Counsel appearing on behalf of the petitioning companies before the Regional Director and made the following submissions:

With regard to the definition of 'Appointed Date' not being in terms of section 233(6) of the Companies Act, 2013 from the Circular dated 21/08/2019:-

- (a) Mr. Jishnu Chowdhury, Ld. Counsel appearing for the petitioning companies submitted that in the Circular dated 21/08/2019 only indicates that the appointed date should be a specific date or that it may tied to the occurrence of an 'event'. In his view there is no reason why this definition of "event" could preclude the obtaining and filing of certified copies, which is the event that will make the Scheme operative. Further, in so far as section 233(6) of the Companies Act, 2013 is

concerned, requirement is not that Scheme should clearly indicate an 'Appointed Date' from which it shall be effective. The bar created by this provision is that the Scheme should not be effective on a date subsequent to the 'Appointed Date'. In the present case, the Scheme is effective from the appointed date and, therefore, section 230(6) of the Act is duly complied with.

- (b) The 'Appointed Date' is the date from which the Scheme comes into operation for all practical purposes. The 'Effective Date' is a date, on which the terms and conditions of the Scheme can be made effective. There is no embargo under any law which prohibits the 'Appointed Date' and the 'Effective Date' to be the same.
- (c) IAS-103, paragraph 9 is only a guideline which provides that the date when the Transferee obtains control of the Transferor is generally the date when the Transferor legally transfers its assets and liabilities. This can only be the date when the certified copy of the scheme is filed with the authorities u/s. 230(7) of the Act.

With regard to No approval from the requisite number of creditors:

- (a) The meeting of the creditors was held on 14/05/2019. The report of the Scrutiniser reveals that only one Secured Creditor having value of Rs.15.5 Crore voted in favour of the resolution. The total value of the secured debt is Rs.50.0 Crore. The other Secured Creditors did not attend the meeting. In so far as the unsecured creditors are concerned, 9 (nine) unsecured creditors having a total value of Rs. 22.85 Crores attended the meeting as against the unsecured debt of Rs.51.43 Crores. The other unsecured creditors did not attend the meeting. The objection of the Regional Director is that approval of 90% or more of the total value of the creditors was not obtained in terms of section 233(1)(d) of the Act.
- (b) Mr. Jishnu Chowdhury, Ld. Counsel for the petitioning companies submits that section 233(1)(d) of the Companies Act only states that the Scheme should be approved by majority representing 9/10th in value of the creditors indicated in a meeting convened by the company.

- (c) Mr. Jishnu Chowdhury contends that the meaning of this clause should be interpreted to mean that the Scheme should be approved by majority of 9/10th in value of the creditors who are present and voting. If the meaning was that Scheme should be approved by majority representing 9/10th in value of the total debt of the creditors, then the clause should have worded as follows:

“The Scheme is approved by majority representing 9/10th in total value of the creditors or class of creditors of the respective companies indicated in a meeting”

Such has not been the case here. The literal and logical meaning that ought to be given is that at the meeting itself the Scheme should be approved by 9/10th majority not with reference to the total amount of debt.

On Non-satisfaction of charge:

- (a) Mr. Jishnu Chowdhury Ld. Counsel for the petitioning companies contends that as on 25/04/2019 the total amount payable to United Bank of India was paid, thus satisfying the charges. However, the requisite documents were not filed with the Registrar of Companies, West Bengal by the Bank for which companies should be blamed.
- (b) Be that as it may, on 20/03/2020, the necessary documents have been filed by the Bank with the Registrar of Companies, West Bengal, which shows satisfaction of charges. The document of satisfaction of charge has also been filed with this Tribunal.
- (c) Mr. Jishnu Chowdhury, Ld. Counsel for the petitioning companies urged this Tribunal to overrule all the three objections and grant sanction of the Scheme.
10. We have considered the application, the submissions made by Mr. Channakeshava, Asstt. Director in the Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the applicant herein, and Mr. Jishnu Chowdhury, Ld. Counsel appearing for the petitioning companies.

11. In so far as the objection in regard to the 'Appointed Date' are concerned, we are satisfied that there is no bar either u/s. 232(6) of the Companies Act, 2013 or the MCA Circular dated 21/08/2019, which creates specific bar that the 'Appointed Date' cannot be 'Effective Date'. Moreover, such scheme wherein the 'Appointed Date' has been defined to be the 'Effective Date' on which the certified copy of the order sanctioning the Scheme is filed with the Registrar of Companies has been sanctioned by various High Court and, therefore, the matter is no longer *res integra*. The filing of certified copies of the Scheme duly sanctioned by the Tribunal or as the case may be, the original direction can be an "event" within the meaning assigned to it under the MCA Circular dated 21/08/2019. Further, in terms of s. 232(6) of the Companies Act, 2013, the bar is only that the Scheme cannot be effective from a date subsequent to the 'Appointed Date'. In other words, there is no bar to the 'Appointed Date' itself being a 'Effective Date'. Therefore, the Regional Director's objections in this regard are hereby overruled.

12. In so far as the with regard to approval by 9/10th majority is concerned, Ld. Counsel for the petitioning companies led us through the judgment of the Hon'ble Punjab & Haryana High Court, as follows:-

(a) In *Swift Formulations Pvt. Ltd.* decided on 31/03/2024¹ – In this case the question arose as whether the arrangement had been approved by the requisite majority as prescribed in section 391(2) of the Companies Act, 1956 or not. It was contended therein since the arrangement had been approved by a majority representing 3/4th in value of the creditors/shareholders present and voting at the respective meetings, the requirement of section 391(2) of the Act stood fulfilled. However, the Hon'ble company Judge noticed that in one of the companies to the Scheme the 3/4th majority was not fulfilled in as much as the majority should have been for the total value of the shareholders/creditors and not merely of the value of shareholders/creditors present and voting at the meeting. The matter was referred for consideration by a larger Bench

¹ 2004 121Comp Cas 27 (PH) : (2004) 3 Comp LJ 280 (PH) : 2004 53 SCL 433 Punj Har

for resolving the question whether majority in number as envisaged in 391(2) of the Companies Act, 1956 should represent 3/4th in value of total creditors/shareholders, namely, present and voting in the meeting. In this matter after analysing various treaties of Company Act by Buckley and Professor Robert R Pennington and Palmer's Companies Law and Gower's Principles of Modern Company Law (sixth edition) and various English judgments and also the judgments delivered by various High Courts, it was finally held that words and phrases employed in section 391(2) would clearly show that the requirement of 3/4th majority relates to the value of shares/credit represented by the shareholders or members who are present and voting and not of the total value of shares/credit of the company. According to the larger bench of the Hon'ble High Court this was the only interpretation that can be ascribed to the words "present and voting". In that matter it was also held that contrary view can be reached only if the words "3/4th in value" are read as "3/4th in total value" and the words "present and voting" are ignored. The Hon'ble High Court stated that such an approach militates against the well settled rules of construction as it entails importing of the word "total" not used in the provision.

13. Two other judgments of Co-ordinate Bench of NCLT, Principal Bench dated 22/12/2017² and the second by Chandigarh Bench dated 15/10/2019³ were also submitted for our considerations.
14. In the case of *Satva Jewellery and Design Limited vs. KDDL Limited*,³ the NCLT Chandigarh Bench has taken the view in the case that section 233(1)(b) of the Companies Act, 2013 requires the scheme is approved by majority representing 9/10th in value of the creditors (para 9 of the order). A similar view has been taken by the Principal Bench of NCLT in *CMI Limited* (Transferor Company) and *CMI Energy India Private Limited*² (Transferee Company).

² 2017 SCC OnLine NCLT 13056

³ MANU/NC/9067/2019

15. In the present case, we are in respectful agreement with a view of the larger bench of the Hon'ble Punjab & Haryana High Court in Swift Formulation Private Limited (*supra*). We also find merit in the contentions of Mr. Jishnu Chowdhury, Ld. Counsel for the petitioning companies that the literal and logical meaning of section 233(1)(d) can only be that the scheme should be approved by majority representing 9/10th in value of the creditors present in such meeting, and not 9/10th of the total value of debt.
16. In any case, while that question as to the true meaning of section 233(1)(d) and the majority requirements contemplated therein may be decided by an appropriate bench of this Tribunal at a later date, in the fact and circumstances of the present application, we are empowered to consider sanction of the Scheme as if it was a Scheme, in terms of section 233(6) of the Companies Act, 2013.
17. Since in the present case all that requirements have been completed in the form of meeting of shareholders and creditors and the only question was whether the requirement of 9/10th majority was satisfied for the purpose of section 233, we proceed to examine whether we can grant sanction for the proposed Scheme of Amalgamation in terms of section 232 of the Companies Act, 2013.
18. We notice from the documents placed on record that the shareholders of the companies have accorded approval and there is no dispute in so far as approval of shareholders is concerned. In so far as secured creditors is concerned, the lone secured creditors who attended the meeting has voted in favour of the Scheme. All the Nine unsecured creditors, who have attended the meeting, have also voted in favour of the resolution. There is no objection from any quarter or any other irregularity or Statutory Authorities with regard to the Scheme. However, we also know from the report of the Registrar of Companies, West Bengal that there is no prosecution, no complain received and no enquiry or inspection contemplated against the petitioning companies by the Registrar of

Companies. The Official Liquidator, High Court, Calcutta in his report dated 05/07/2019 has also submitted that there is no objection to the proposed Scheme and that the Scheme is not unfair and not prejudicial to the interest of its members or to the general public.

19. The only other objection to be answered is with reference to 'Appointed Date'. The Ministry of Corporate Affairs' circular dated 21/08/2019 only states that the 'Appointed Date' has to be a specific date or that it may be tied to occurrence of 'event'. In terms of section 233(6) *ibid*, the requirement is only that the Scheme should clearly indicate an 'Appointed Date' from which it shall be effective and that such date cannot be a date subsequent to the 'Appointed Date'. In other words, there is no statutory bar on the 'Appointed Date' being the same as the 'Effective Date' and the bar is only 'Effective Date' being post the 'Appointed Date'. We find in the present case that the 'Appointed Date' has been defined to be the 'Effective Date' and 'Effective Date' has been defined to be the date on which the certified copy of the order of the Regional Director shall be filed with the Registrar of Companies. Since, this is a merger of wholly owned subsidiary with that of its parent company, there will be no issue of shares and the entire shareholding of the Transferor Company shall stand extinguished (Clause 6 of the Scheme). Moreover, there is no business operation in the Transferor Company after the closure date pursuant to the directions of the Cabinet Committee on Economic Affairs (CCEA) and there is only the discharge of existing contractual obligation, if any, by the Transferee Company on behalf of the Transferor Company. Therefore, there is no harm if the 'Appointed Date' is allowed to be the 'Effective Date' as defined in clause 1.1.6 of the Scheme. The objections in this regard raised by the Regional Director are hereby overruled in view of the facts and circumstances obtaining herein.
20. Therefore, we deem that the requirements contemplated in terms of section 232 of the Companies Act, 2013 are fulfilled. There are no other circumstances that militate against according sanction to the Scheme propounded by the petitioning companies.

21. Since all requisite compliance has been fulfilled, the following orders are passed:
- (a) The Scheme of Amalgamation being **Annexure "B"** herein be sanctioned by this Tribunal to be binding with effect from the **"Effective Date"** being the **"Appointed Date"** as defined in clause 1.1.6 of the Scheme, on their respective shareholders and all concerned including those mentioned in the Scheme of Amalgamation;
 - (b) Pursuant to section 230 to 232 of the Companies Act, 2013, all properties, rights, powers, interests, assets and undertakings of the Transferor Company with effect from **"Effective Date"** being the **"Appointed Date"** as defined in clause 1.1.6 in the Scheme, be transferred without any act deed or thing to the Transferee Company;
 - (c) Pursuant to Section 230 to 232 of the Companies Act, 2013, all liabilities and duties of the Transferor Company with effect from **"Effective Date"** being the **"Appointed Date"** as defined in clause 1.1.6 of the Scheme, be transferred without any act deed or thing to the Transferee Company;
 - (d) All suits and/or appeals and/or any proceedings, of whatsoever nature now pending by or against the Transferor Company, if any, be continued by or against the Transferee Company;
 - (e) The Transferee Company do within 30 days of the date of obtaining certified copy of the order to be made herein, cause certified copy of the said order to be delivered to the RoC, West Bengal for registration;
 - (f) The RoC, West Bengal upon receiving such certified copy, be directed to place all such documents, papers and records relating to the petitioning companies and the files relating to the petitioning companies shall be consolidated in terms of the scheme of amalgamation;
 - (g) The Transferor Company be dissolved without winding up from the date of filing of the certified copy of this order upon the RoC, West Bengal by them;
 - (h) Leave is given to file the Schedule of Assets of the Transferee Company within four weeks from date of this order;

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

CP (CAA) No. 65/KB/2020.
In re: Andrew Yule & Company Ltd. & Anr.

(i) Any person interested shall be at liberty to apply to this Hon'ble Tribunal in the above matter for such directions as may be necessary.

22. CA (CAA) No.65/KB/2020 is disposed of.

23. Certified copy of the order may be issued upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)
(Judicial)

Rajasekhar V K
Digitally signed
by Rajasekhar V
K
Date: 2021.05.03
14:29:03 +05'30'

Rajasekhar V.K.
Member

Signed this 3rd day of May, 2021

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