IN THE HIGH COURT OF DELHI

COMPANY APPLICATION (MAIN) NO. 27/2015

Reserved on 25th February, 2015
Date of pronouncement: 17th March, 2015

In the matter of
The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Application under Sections 391 & 394 of the Companies Act, 1956

Scheme of Amalgamation of:

M/s. Almondz Re-Insurance Brokers Private Limited
Applicant/Transferor Company
WITH

M/s. Almondz Insurance Brokers Private Limited
Applicant/Transferee Company

Through Mr. Satwinder Singh and Mr.N.P.S. Chawla, Advocates for the applicants

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391 and 394 of the Companies Act, 1956 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of M/s. Almondz Re-Insurance Brokers Private Limited (hereinafter referred to as the transferor company) with M/s. Almondz

Insurance Brokers Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was incorporated under the Companies Act, 1956 on 27th December, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 27th March, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of ASL Insurance Brokers Private Limited. The company changed its name to Almondz Insurance Brokers Private Limited and obtained the fresh certificate of incorporation on 23rd January, 2007.

5. The present authorized share capital of the transferor company is Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.2,50,00,000/- divided into 25,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.1,80,00,000/- divided into 18,00,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. 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 affidavit. It is claimed by the applicants that the proposed amalgamation will provide integration of capabilities, streamlining of administration, effective management system, greater financial strength, and operational flexibility of the amalgamated entity, which would result in maximizing overall shareholder value. It is further claimed that the Scheme will also provide increased competitive size, scale, better leverages in operational planning and process optimization and higher efficiency in use of available resources and will build up a larger capital base for the future

growth and continuous development of the amalgamated entity, establishing proper organization machinery and smooth process of integration.

9. So far as the share exchange ratio is concerned, the Scheme provides that, since the transferor company is a wholly owned subsidiary of the transferee company, all the equity shares held by the transferee company and its nominees in the transferor company shall be cancelled and extinguished. Accordingly, there will be no issue and allotment of equity shares of the transferee company to the members of the transferor company upon coming into effect of this Scheme.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 10th November, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 07 equity shareholders and 01 secured creditor. All the equity shareholders and the only secured creditor have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and secured creditor of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

13. As on 15th December, 2014, the transferor company has 28 unsecured creditors holding unsecured debt of Rs.18,73,56,949/-. The applicants have placed on record a certificate issued by M/s. Pawan Shubham & Co., Chartered Accountants certifying that out of 28 unsecured creditors, 17 unsecured creditors holding unsecured debt of Rs.17,62,64,545/- have been paid off fully/partly by the company, as on 30th January, 2015. Learned counsel for the applicants has submitted that the transferor company is a wholly owned subsidiary of the transferee company and since it is an amalgamation of the wholly owned subsidiary company with its holding company, therefore, rights of unsecured creditors of the applicant companies will not be affected adversely. He further submitted that the Scheme does not contemplate any variation of the rights of the unsecured creditors, nor does it

contemplate extinction or reduction of liability to any creditor. Learned counsel has also submitted that on amalgamation of the transferor company with the transferee company, the post amalgamation net worth of the transferee company will be Rs.22,19,15,399/- as compared to its pre-amalgamation net worth of Rs.11,31,05,228/-. He has placed on record a certificate issued by M/s. Pawan Shubham & Co., Chartered Accountants, showing the pre and post amalgamation net worth of the transferor and transferee companies. He, therefore, prays that the requirement of convening and holding the meeting of the unsecured creditors of the transferor company may kindly be dispensed with.

14. In support of his submissions, learned counsel placed reliance on the judgment of this court in the matter of **HCL Comnet Systems & Services Limited & Anr. [CA (M) 187/2012];** and **O.C. Denims and Special Finishes Limited & Anr. [CA (M) 86/2013]** wherein this court, under similar circumstances, has dispensed with the requirement of convening and holding the meetings of the creditors of the applicant companies.

15. The unsecured creditors of the transferor company are running creditors who are paid-off in the normal course of the business of the company. A perusal of the audited balance sheet of the transferor company, as on 31st March, 2014, reveals that the company has

reserves and surplus of Rs.10,88,10,171/-. As per the certificate issued by M/s. Pawan Shubham & Co., Chartered Accountants, the post-amalgamation net worth of the transferee company will enhance to Rs.22,19,15,399/- as compared to its pre-amalgamation net worth of Rs.11,31,05,228/-. In addition, the applicants have placed on record the certificate issued by M/s. Pawan Shubham & Co., Chartered Accountant, determining the liquidity position of the companies, which shows that the liquid assets (including cash and bank balance) of the transferor company, pre-amalgamation, are to the tune of Rs.37,18,61,504/- whereas the liquid assets (including cash and bank balance) of the transferee company, post-amalgamation, are to the tune of Rs.41,31,76,317/-. Therefore, the rights of the unsecured creditors of the transferor company are not likely to be affected and the transferee company will be in a position to discharge all its liabilities, upon sanction of the Scheme of Amalgamation. In view of the above and the settled law on the subject, the requirement of convening and holding the meeting of the unsecured creditors of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

16. The transferee company has 08 equity shareholders and 03 unsecured creditors. All the equity shareholders and all the unsecured creditors have given their consents/no objections in writing to the

proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferee company, as on 15th December, 2014.

17. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

March 17, 2015