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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.APPL.(M) 15/2016**

**IN THE MATTER OF
EROS FABRICATORS PRIVATE LIMITED**

... Non-applicant/Transferor Company No. 1

AND

**LAKSHYA RESEARCH & DEVELOPMENT
PRIVATE LIMITED**

... Non-applicant/ Transferor Company No.2

WITH

**ALLENGERS GLOBAL HEALTHCARE PRIVATE LIMITED
.. Applicant/ Transferee Company**

Through: Mr Mukesh Sukhija & Mr Yashpal
Gupta, Advs.

**CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

ORDER

% **29.01.2016**

1. This is a first motion application, which has been moved by Allengers Global Healthcare Private Limited (i.e. applicant/transferee company) (hereafter referred to as the transferee company) under Section 391 and 394 of the Companies Act, 1956 (in short the Act).

1.1 By this application, the transferee company seeks dispensation of the requirement to convene meeting of its shareholders, secured and unsecured creditors.

1.2 The captioned application is accompanied by a proposed scheme of

amalgamation which envisages merger of : Eros Fabricators Private Limited (i.e. Transferor Company No. 1) and Lakshya Research & Development Private Limited (i.e. Transferor Company No.2) (hereafter collectively referred to as the transferor companies).

1.3 To be noted, transferor companies and transferee company will collectively be referred hereafter as the companies.

2. Pertinently, the registered office of the transferor companies is outside the territorial jurisdiction of this court, while the registered office of the transferee company is situate in the National Capital Territory of Delhi and, therefore, this court has the necessary jurisdiction to deal with the captioned application.

3. The affidavit filed in support of Judge's summons articulates, in paragraph 22, the justification and the necessity for proposing an amalgamation among the companies referred to above. The benefits which the proposed scheme is likely to provide, to the companies are set forth in the said affidavit. In particular, the salient features of the scheme are provided in paragraph 26 of the affidavit, which are broadly as follows :-

“...(i) That all the assets including movable, immovable, tangible, intangible and actionable claims and all the liabilities including Income Tax and other Statutory liabilities of the Transferor Companies shall be transferred to and vest in the Transferee Company.

(ii) That all the employees in the service of the Transferor Companies, if any; immediately preceding the Effective Date shall become employee of the Transferee Company on the basis that:

(a) their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer.

(b) the terms and conditions of service applicable to

employees after such transfer shall not in any way be less favourable to them than applicable to them immediately preceding the transfer.

(iii) That the appointed date for the purpose of Scheme of Amalgamation is 01.04.2015 and the Scheme will be effective on the following dates or such other date as the Hon'ble Court of Punjab & Haryana at Chandigarh and/ or Hon'ble Court at New Delhi may direct, the date on which the last of the certified copy of the order, under section 394 of the Act, of the Hon'ble Court of Punjab & Haryana at Chandigarh and New Delhi sanctioning the Scheme of Amalgamation are filed with the Registrar of Companies, Chandigarh and New Delhi respectively.

(iv) That the Shareholders of each of the Transferor Companies will be allotted share(s) in the Transferee Company in the agreed exchanged ratio..."

4. Furthermore, proposed scheme has been unanimously approved by the Board of Directors (BOD) of the companies referred to above.

4.1 The resolution passed by the BOD of transferor company no.1 is dated 03.11.2015 while the resolution passed by the BOD of transferor company no.2 is dated 03.11.2015. More particularly, the resolution passed by the BOD of the transferee company is dated 05.11.2015.

4.2 The resolutions passed by the companies are in order.

5. There is also an averment to the effect, in paragraph 14 of the application, that no proceedings under Section 235 to 351 of the Act are pending against the transferee company as on date.

6. The position with regard to the consents given by the equity shareholders, secured and unsecured creditors of the transferee company, are indicated in paragraph 9 of the application. For the sake of convenience, the same are extracted hereinbelow:

Company	No. Of equity Shareholders	Consent given	No. Of secured creditors	Consent given	No. Of unsecured creditors	Consent given
Transferee Company	4	ALL	1	ALL	18	ALL

7. A prayer has been made to dispense with the requirement of convening the meetings of the equity shareholders and the creditors (i.e. the secured and unsecured creditors) of the transferee company. The letters of consent submitted by the shareholders have been seen and examined. They are found in order. Similarly, letters of consent issued by the creditors (i.e. secured and unsecured) have been seen and are found in order.

8. Given the fact that all shareholders and creditors (i.e. the secured and unsecured creditors) of the transferee company have given their consent and/or No Objection (NOC) to the proposed scheme, there shall be no requirement to convene the meetings, as prayed.

9. The application stands allowed in the aforesaid terms.

10. Dasti.

RAJIV SHAKDHER, J

JANUARY 29, 2016

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