

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 93/2016

Reserved on 27th July, 2016
Date of pronouncement: 29th August, 2016

In the matter of

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

And

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

Scheme of Amalgamation of:

APPL Polymers Private Limited

Applicant/Transferor Company

WITH

APPL Industries Limited

Applicant/Transferee Company

Through Mr. Anil Kumar Aggarwal,
Advocate for the applicant

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 APPL Polymers Private Limited (hereinafter referred to as the transferor company) with APPL Industries 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 originally incorporated under the Companies Act, 1956 on 4th June, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Sanskriti Callnet Private Limited. The company changed its name to APPL Polymers Private Limited and obtained the fresh certificate of incorporation on 16th April, 2012.

4. The transferee company was incorporated under the Companies Act, 1956 on 22nd January, 2001 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The present authorized share capital of the transferor company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.25,00,00,000/- divided into 2,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.22,90,03,320/- divided into 2,29,00,332 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, 2015, along with the report of the auditors, of the transferor and transferee companies 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 submitted by the applicants that as a measure of corporate restructuring and to develop potential for future growth and to achieve the object of carrying on the business more smoothly and profitably, rationalization of management and financial structure, and for better and more profitable utilization of combined resources of both the companies, it has been proposed to amalgamate the transferor company into the transferee company.

9. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company is a wholly owned subsidiary of the transferee company, therefore, the transferee company shall not be required to issue any shares or pay any consideration to the shareholders of the transferor company.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 206 to 229 of the Companies Act, 2013 are pending against the transferor and transferee companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 16th May, 2016 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 02 equity shareholders and 02 unsecured creditors. Both the equity shareholders and both 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 transferor 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 transferor company, as on 30th April, 2016.

13. So far as the equity shareholders, secured and unsecured creditors of the transferee company are concerned, the transferee company has not provided the list of its equity shareholders, secured and unsecured creditors. However, it was pleaded by learned counsel for the applicants that since the transferor company is a wholly owned subsidiary of the transferee company; the applicant companies are not proposing any arrangement with their shareholders and creditors; and no new shares will be issued on amalgamation, therefore, the rights of the equity shareholders of the transferee company will not be affected. It is further submitted that the present Scheme does not envisage any compromise or arrangement by the transferee company with their creditors and that the assets of transferee company are more than sufficient to meet its liabilities towards its creditors, therefore, the rights of the creditors of the transferee company will not be adversely affected. Hence, their consents/NOC are not required to be obtained for the proposed amalgamation.

14. In support of his submissions, learned counsel placed reliance on the judgment of this Court in CA(M) 137/2015 titled as **Convergys Stream Private Limited & anr.** wherein this court under similar circumstances, and relying on the judgments of several High Courts including this Court in many cases such as **eMeter India Pvt. Ltd.;** (CA(M) 179/2012) **Auto Tools India Pvt. Ltd.** [CA(M) 41/2010], **Sharat**

Hardware Industries Pvt. Ltd. (1978), 48 Com.Cas 23 (Delhi), **Mahaamba Investments Ltd. V. IDI Limited** (2001) 105 Com Cas. 16 (Bom.), **Andhra Bank Housing Finance Ltd.** (2004) 118 Com.Cas. 295(AP) and **Prosell Field Marketing Pvt. Ltd.** [CA(M) 63/2012], had dispensed with the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation.

15. I have carefully considered the proposed Scheme and the case law cited at the Bar. In view of the submissions made at the bar, the settled law on the subject and considering the Scheme of Amalgamation, I do not think convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferee company would serve any purpose, and, accordingly, the necessity of holding the meetings of the equity shareholders, secured 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.

16. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

August 29, 2016