

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24.12.2016

CO. APPL. (M) 127/2016

IN THE MATTER OF:-

MARUTI INSURANCE BUSINESS AGENCY LIMITED

...Applicant/Transferor Company no.1

AND

MARUTI INSURANCE DISTRIBUTION SERVICES LIMITED

...Applicant/Transferor Company no.2

AND

MARUTI INSURANCE AGENCY NETWORK LIMITED

...Applicant/Transferor Company no.3

AND

MARUTI INSURANCE AGENCY SOLUTIONS LIMITED

...Applicant/Transferor Company no.4

AND

MARUTI INSURANCE AGENCY SERVICES LIMITED

...Applicant/Transferor Company no.5

AND

MARUTI INSURANCE AGENCY LOGISTICS LIMITED

...Applicant/Transferor Company no.6

AND

MARUTI INSURANCE BROKER LIMITED

...Applicant/Transferor Company no.7

WITH

MARUTI SUZUKI INDIA LIMITED

...Applicant/Transferee Company

Through: Mr. Anirudh Das, Mr. Kamaljeet Singh
and Mr. Vikram Shah, Advocates for
the Applicants.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. This joint application has been filed under Section 391 of the Companies Act, 1956 (hereinafter referred to as 'the Act') read with Rule 9 of the Companies (Court) Rules, 1959 by the Applicant Companies seeking directions of this Court to dispense with the requirement of convening the meetings of their equity shareholders and creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation (hereinafter referred to as 'proposed scheme') of Maruti Insurance Business Agency Limited (hereinafter referred to as 'Transferor Company no.1'), Maruti Insurance Distribution Services Limited (hereinafter referred to as 'Transferor Company no.2'), Maruti Insurance Agency Network Limited (hereinafter referred to as 'Transferor Company no.3'), Maruti Insurance Agency Solutions Limited (hereinafter referred to as 'Transferor Company no.4'), Maruti Insurance Agency Services Limited (hereinafter referred to as 'Transferor Company no.5'), Maruti Insurance Agency Logistics Limited (hereinafter referred to as 'Transferor Company no.6') and Maruti Insurance Broker Limited (hereinafter referred to as 'Transferor Company no.7') with

Maruti Suzuki India Limited (hereinafter referred to as 'Transferee Company'). Dispensation is further sought on behalf of the Transferee Company from the requirement of filing of the company petition or any further application seeking sanction to the proposed scheme.

2. The registered offices of the Applicant Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The Transferor Company no.1 was originally incorporated under the Act on 14.01.2002 with the Registrar of Companies, National Capital Territory of Delhi and Haryana under the name and style of Maruti Insurance Brokers Limited. The name of the Transferor Company no.1 was thereafter changed to its present name and a fresh certificate of incorporation dated 22.05.2007 was issued in this regard by the Registrar of Companies, National Capital Territory of Delhi and Haryana.

4. The authorized share capital of the Transferor Company no.1 as on 31.03.2015 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company no.1 as on 31.03.2015 is Rs.15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each.

5. The Transferor Company no.2 was incorporated under the Act on 14.01.2002 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

6. The authorized share capital of the Transferor Company no.2 as on 31.03.2015 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company no.2 as on 31.03.2015 is Rs.15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each.

7. The Transferor Company no.3 was incorporated under the Act on 01.06.2004 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

8. The authorized share capital of the Transferor Company no.3 as on 31.03.2015 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company no.3 as on 31.03.2015 is Rs.15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each.

9. The Transferor Company no.4 was incorporated under the Act on 01.06.2004 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

10. The authorized share capital of the Transferor Company no.4 as on 31.03.2015 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company no.4 as on 31.03.2015 is Rs.15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each.

11. The Transferor Company no.5 was incorporated under the Act on 17.07.2006 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

12. The authorized share capital of the Transferor Company no.5 as on 31.03.2015 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company no.5 as on 31.03.2015 is Rs.15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each.

13. The Transferor Company no.6 was incorporated under the Act on 18.10.2007 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

14. The authorized share capital of the Transferor Company no.6 as on 31.03.2015 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferor Company no.6 as on 31.03.2015 is Rs.15,00,000/- divided into 1,50,000 equity shares of Rs.10/- each.

15. The Transferor Company no.7 was incorporated under the Act on 19.04.2010 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

16. The authorized share capital of the Transferor Company no.7 as on 31.03.2015 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/-

each. The issued, subscribed and paid-up share capital of the Transferor Company no.7 as on 31.03.2015 is Rs.50,00,000/- divided into 5,00,000 equity shares of Rs.10/- each.

17. The Transferee Company was incorporated under the Act on 24.02.1981 with the Registrar of Companies, National Capital Territory of Delhi and Haryana under the name and style of Maruti Udyog Limited. The name of the Transferee Company was thereafter changed to its present name and a fresh certificate of incorporation dated 17.09.2007 in this regard was issued by the Registrar of Companies, National Capital Territory of Delhi and Haryana.

18. The authorized share capital of the Transferee Company as on 31.03.2015 is Rs.18,72,00,00,000/- divided into 3,74,40,00,000 equity shares of Rs.5/- each. The issued, subscribed and paid-up share capital of the Transferee Company as on 31.03.2015 is Rs.1,51,04,00,300/- divided into 30,20,80,060 equity shares of Rs.5/- each.

19. Copies of the Memorandum and Articles of Association of the Applicant Companies have been filed on record. The audited balance sheets, as on 31.03.2015, of the Applicant Companies, along with the reports of the auditors, have also been filed.

20. A copy of the proposed scheme has been placed on record and the salient features thereof have also been incorporated and set out in detail in the

present application and the accompanying affidavits. It is submitted by learned counsel appearing on behalf of the Applicant Companies that the Transferor Companies are wholly owned subsidiaries of the Transferee Company and that the proposed scheme will result in economisation and reduction of administrative and managerial costs; alignment, coordination and streamlining of day to day management of all the companies; and creation of better synergies across the group and optimal utilisation of resources.

21. So far as the share exchange ratio is concerned, clause 4.1 of the proposed scheme provides that, upon coming into effect of the proposed scheme, no consideration shall be payable by the Transferee Company to the equity shareholders of the Transferor Companies, since the Transferor Companies are the wholly owned subsidiaries of the Transferee Company.

Clause 4.1 of the proposed scheme reads as hereunder: -

“4.1 Cancellation of shareholding

4.1.1 Upon this Scheme becoming effective and upon transfer and vesting of all assets and liabilities of the Amalgamating Companies into and with the Amalgamated Company in accordance with Part - III of this Scheme, no consideration shall be payable by the Amalgamated Company, since the Amalgamated Company (itself and through its nominee shareholders) is the only shareholder in each of the Amalgamating Companies, and accordingly, no shares shall be allotted by the Amalgamated Company either to itself or to any of its nominee shareholders holding shares in such Amalgamating Companies.

4.1.2 Upon this Scheme becoming effective, in the (consolidated/merged) balance sheet of the

Amalgamated Company, investments of the Amalgamated Company being shares held in the Amalgamating Companies (either held in its own name or through its nominee shareholders) shall stand cancelled in their entirety.”

22. It has been stated on behalf of the Applicant Companies that no proceedings, as on the date of filing of the present application, under Sections 235 to 250A of the Act or the applicable provisions of the Companies Act, 2013, are pending against the Applicant Companies.

23. The Board of Directors of the Applicant Companies in their separate meetings held on 27.10.2015 have unanimously approved the proposed scheme. Copies of the resolutions passed at the meetings of the Board of Directors of the Applicant Companies have been placed on record.

24. Each of the Transferor Companies has 7 equity shareholders. All the equity shareholders of the Transferor Companies have given their written consents/NOC to the proposed scheme. Their written consents/NOC have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the Transferor Companies to consider and, if thought fit, approve, with or without modification, the proposed scheme is dispensed with. There are no secured and unsecured creditors of the Transferor Companies.

25. In so far as the equity shareholders of the Transferee Company are concerned, it is submitted on behalf of the Transferee Company that in the present case, there is no arrangement or compromise between the Transferee

Company and its shareholders within the meaning of Section 391(1)(b) of the Act. It is also submitted that since the Transferor Companies are wholly owned subsidiaries of the Transferee Company, upon the proposed scheme being sanctioned, no shares of the Transferee Company shall be issued and allotted and therefore, the rights of the equity shareholders of the Transferee Company pre and post amalgamation shall not be affected in any manner. Learned Counsel for the Transferee Company therefore submits that there is no requirement for the convening of meeting of the equity shareholders of the Transferee Company, to consider the proposed scheme. In support of these submissions, reliance is placed on the decision in **Sharat Hardware Industries Private Limited reported as (1978) 48 Comp Cases 23 (Delhi)** and order of this Court in **Company Application (M) no.12 of 2014** titled '**Bharti Airtel Limited**'; and **Company Application (M) no.60 of 2016** titled '**Augere Wireless Broadband India Private Limited with Bharti Airtel Limited**'.

26. So far as the creditors of the Transferee Company are concerned, it is submitted on behalf of the Transferee Company that the proposed scheme does not contemplate any compromise or arrangement, within the meaning of Section 391(1)(a) of the Act, with the creditors of the Transferee Company nor is there any variation of the rights of the creditors of the Transferee Company. The proposed scheme therefore will not adversely affect the interests of the creditors of the Transferee Company. Therefore, it is submitted

that neither the convening meetings of the creditors of the Transferee Company, for the purpose of considering the proposed scheme is necessary nor the written consents/NOC thereof are required to be obtained for the proposed scheme. In support of his submission, learned counsel relies on the decision of this Court in ***Bharti Airtel Limited (supra)***.

27. I have perused the facts of the present case and the aforesaid decisions relied on by the learned counsel for the Applicant Companies in support of his prayers made in the present application. In view thereof, the requirement of convening and holding the meetings of the equity shareholders and creditors of the Transferee Company, to consider and if thought fit, approve, with or without modification, the proposed scheme, is dispensed with.

28. Learned counsel for the Applicant Companies does not press prayer clause (iii) of the present application, seeking dispensation with the requirement of filing of the company petition or any further application by the Transferee Company for sanction to the proposed scheme. The said prayer clause (iii) of the present application is therefore dismissed as not pressed.

29. The application stands allowed in the aforesaid terms.

SIDDHARTH MRIDUL, J

DECEMBER 24, 2016

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