

IN THE HIGH COURT OF DELHI AT NEW DELHI
CO.APPL. (M) 146/2016

IN THE MATTER OF:

PANALFA AUTOMOTIVE PRIVATE LIMITED

.....Applicant / Transferor Company

WITH

UDAYAN BUILDERS PRIVATE LIMITED

.....Applicant/ Transferee Company

Through: Mr. P. Srinivasan, Mr Sanjeev
Jain and Mr Nikhil Swami,
Advocates, for the Applicants.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

ORDER
07.10.2016

1. The present is a first motion application filed jointly, under Sections 391 and 394 of the Companies Act, 1956 read with Rules 9 and 69 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 the equity shareholders, secured creditors and unsecured creditors to consider and approve, with or without modification, the proposed scheme of amalgamation-merger (hereinafter referred to as 'Scheme') of Panalfa Automotive Private Limited

(hereinafter referred to as 'Transferor Company') with Udayan Builders Private Limited (hereinafter referred to as 'Transferee Company').

2. The Transferor Company and Transferee Company are hereinafter collectively referred to as 'Applicant Companies'.

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

4. The Transferor Company was originally incorporated on 4th August, 1994 under the Companies Act, 1956 with the name of Panalfa Investments Private Limited, with the ROC, Delhi and Haryana. Thereafter, the Transferor Company changed its name to Panalfa Automotive Private Limited and obtained fresh certificate of incorporation on 28th August, 2006.

5. The Transferee Company was incorporated on 16th October, 1995 under the Companies Act, 1956 with the ROC, Delhi and Haryana.

6. The authorized share capital of the Transferor Company, as on 31.03.2016, is Rs.10,00,000/- (Rupees Ten Lakh Only), divided into 1,00,000 (One Lakh) Equity Shares of Rs.10/- (Rupees Ten Only) each and the Issued, Subscribed and Paid-Up Share Capital of the Transferor Company as on 31.03.2016, is Rs.5,00,400/- (Rupees Five Lakh Four Hundred Only), divided into 50,040 (Fifty Thousand Forty) Equity Shares of Rs.10/- (Rupees Ten Only) each.

7. The Authorized Share Capital of the Transferee Company as on 31.03.2016, is Rs.10,00,000/- (Ten Lakh only), divided into 1,00,000 (One Lakh) Equity Shares of Rs.10/- (Rupees Ten only) each and the Issued, Subscribed and Paid-Up Share Capital of the Transferee Company as on 31.03.2016 is Rs.1,00,200/- (Rupees One Lakh Two Hundred only), divided into 10,020 (Ten Thousand Twenty) equity shares of Rs.10/- (Rupees Ten Only) each.

8. Copies of the Memorandum of Association and Articles of Association of the Applicant Companies have been filed and the same are on record. The audited balance sheets, as at 31st March, 2016 of the Applicant Companies, along with the report of the auditors and report of directors have also been filed and the same are on record.

9. It has been submitted on behalf of the Applicant Companies that no proceedings under Sections 235 to 251 of the Act or under corresponding provisions of the Companies Act, 2013 are pending against the Applicant Companies as on the date of filing of the present application.

10. A copy of the proposed Scheme has been filed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavits. It has been submitted by the applicant companies that the proposed Scheme, inter alia, provides for the Amalgamation

of the Transferor Company with the Transferee Company and transfer of the entire business of the Transferor Company to the Transferee Company, as a going concern. It is claimed that the proposed amalgamation would provide opportunities for strategic partnership and flexibility for fund raising capability for future growth and expansion of the Transferee Company, and create a structure geared to take advantage of growth opportunities. It is further claimed that the proposed Scheme is expected to offer greater integration by consolidating the operations of the Transferor Company and the Transferee Company, bringing the financial strength of the Transferor Company with that of the Transferee Company and additionally, bringing greater efficiency, reducing the inefficiencies and bringing in flexibility for the Transferee Company, which would result in maximizing the overall shareholder value and improving the competitive position of the Transferee Company.

11. So far as the share exchange ratio is concerned, the shareholders of both the Transferor Company and the Transferee Company are the same. The Scheme provides that, upon coming into effect of this Scheme, the Transferee Company shall issue and allot equity shares to the shareholders of the Transferor Company in the following ratio:

“14 (fourteen) Equity Shares of the face value of INR 10/- (Indian Rupees ten) each in the Transferee Company credited as fully paid-up, for every 9 (nine) Equity Shares of the face value of INR 10/- (Indian Rupees ten) each held in the Transferor Company”

12. The proposed Scheme has been approved by the Board of Directors (hereinafter referred to as 'BOD') of the Transferor Company and the Transferee Company in their separate meetings held on 17th September, 2016. Copies of the Resolutions passed at the meetings of the Board of Directors of the Applicant Companies have been placed on record.

13. The Transferor Company has 02 equity shareholders. Both the equity shareholders have given their consent/no objection in writing to the proposed Scheme. The said consents/no objections have been placed on record. The same have been examined and found in order.

14. In view of the foregoing, the requirement of convening the meeting of the equity shareholders of the Transferor Company to consider and, if thought fit, approve with or without modification, the proposed Scheme is dispensed with.

15. Since there are no secured creditors or unsecured creditors of the Transferor Company as on 30th September, 2016, therefore the question of dispensing with the requirement of convening a meeting or convening a meeting for the secured or unsecured creditors does not arise.

16. The Transferee Company has 02 equity shareholders. Both the equity shareholders have given their consents/no objections in writing to the proposed Scheme. Their consents / no objections have been placed on record. The same have been examined and found in order.

17. In view the foregoing, the requirement of convening meeting of the equity shareholders of the Transferee Company to consider and, if thought fit, approve, with or without modification the proposed Scheme is dispensed with.

18. Since there are no secured creditors or unsecured creditors of the Transferee Company as on 30th September, 2016, therefore the question of dispensing with the requirement of convening a meeting or convening a meeting for the secured or unsecured creditors does not arise.

19. The application stands allowed in the aforesaid terms and is disposed of accordingly.

OCTOBER 07, 2016
r/mk

SIDDHARTH MRIDUL, J