

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 02.12.2016

Date of pronouncement: 07.02.2017

CO. APPL. (M) 163/2016

IN THE MATTER OF:

IMA PRIVATE LIMITED

...Transferor/Applicant Company No.1

WITH

SKYROOF BUILDERS LIMITED

...Transferee/Applicant Company No.2

Through: Mr. Samrat Sengupta, Advocate for the
Applicants

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present application has been filed jointly under Sections 391(1) and 393 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 shareholders and creditors to consider and if thought fit, approve, with or without modification, the proposed Scheme of Arrangement

(hereinafter referred to as 'proposed scheme') of amalgamation of IMA Private Limited (hereinafter referred to as 'Transferor Company') with Skyroof Builders Limited (hereinafter referred to as 'Transferee Company').

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

3. The Transferor Company was incorporated under the provisions of the Act on 30.03.1985 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

4. The authorized share capital of the Transferor Company as on 31.03.2016 is Rs.10,00,000/- divided into 10,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the Transferor Company as on 31.03.2016 is Rs.5,00,000/- divided into 5,000 equity shares of Rs.100/- each.

5. The Transferee Company was incorporated under the provisions of the Act on 31.01.2005 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

6. The authorized share capital of the Transferee Company as on 31.03.2016 is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Transferee Company as on 31.03.2016 is Rs. 2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum of Association and Articles of Association of the Applicant Companies have been filed on record. The audited balance sheets as on 31.03.2016, of the Applicant Companies, alongwith the reports of the auditors have also been filed on record.

8. A copy of the proposed scheme has been placed on record and the salient features thereof have also been incorporated and detailed in the present application. It is stated by learned counsel appearing on behalf of the Applicant Companies that the circumstances which justify and/or necessitate the proposed scheme have been set out in detail in the present application and the same have been reproduced as follows:-

- a) The Transferor Company is a wholly owned subsidiary of the Transferee Company. As on 31st March, 2016, the entire issued, subscribed, paid up share capital of the Transferor Company is held by the Transferee Company and its nominees.
- b) The Scheme of Arrangement and Amalgamation proposes the transfer of the undertaking of the Transferor Company to the Transferee Company which will result in consolidation of the business carried on by the Transferor Company and the Transferee Company into one entity i.e. the Transferee Company for optimum mutual benefit.
- c) The Transferor Company has been conducting its business under the umbrella of the Transferee Company and has no separate business of its own. Thus, the parent Transferee Company intends to integrate and consolidate its subsidiary Transferor Company to achieve greater integration, greater financial strength and flexibility

to maximize overall shareholder value and to achieve cost savings from more focused operational and business processes.

- d) The consolidation of activities of the Transferor Company and the Transferee Company by way of amalgamation will provide for better economic operations and pooling of managerial and financial resources of the Transferor Company and the Transferee Company. The amalgamation will result in economy of scale, reduction in overhead expenditure, organizational efficiency and optimal utilisation of resources.
- e) The amalgamation will also cause a significant reduction multiplicity of legal and regulatory compliances which are required at present to be carried out by both the Transferor Company and the Transferee Company separately.
- f) The creditors of the companies, if any, are not adversely affected by the proposed amalgamation as their loans and dues will be maintained. The increased assets of the Transferee Company will have better financial viability which would be in the interest of all the creditors, including the creditors of the Transferor Company, if any.
- g) The Scheme will lead to better control and management of the Companies. The Scheme will have beneficial results for both the Companies, their shareholders and all stakeholders concerned, and is proposed to their advantage.

9. So far as the share exchange ratio is concerned, clause 4 of the proposed scheme provides that, upon coming into effect of the proposed scheme, there shall not be allotment or issuance of the shares of the Transferee Company to the equity shareholders of the Transferor Company, since the Transferor Company is the wholly owned subsidiaries of the Transferee Company.

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

11. The Board of Directors of the Applicant Companies in their separate meetings held on 30.07.2016 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.

12. Both the Applicant Companies have 07 equity shareholders each. All the equity shareholders of each of the Applicant Companies have given their written consent/NOC to the proposed scheme. Their written consent/NOC have been placed on record. They have been examined and found in order.

13. In view thereof, the requirement of convening meetings of equity shareholders of each of the Applicant Companies, to consider and, if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

14. There are no secured creditors of any of the Applicant Companies. Therefore the question of the requirement of convening meetings thereof does not arise.

15. There are no unsecured creditors of the Transferor Company, therefore the question of the requirement of convening meeting thereof does not arise.

16. The Transferee Company has 02 unsecured creditors. All the unsecured creditors of the Transferee Company have given their written consent/NOC to the proposed scheme. Their written consent/NOC have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening meeting of unsecured creditors of the Transferee Company to consider and, if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

17. Consequently, the application is allowed in the aforesaid terms and is accordingly disposed of.

FEBRUARY 07, 2017
ap/mk

SIDDHARTH MRIDUL, J