

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 02.12.2016

Order delivered on:16.01.2017

CO. APPL. (M) 145/2016

IN THE MATTER OF:

AXIOM COMMODEAL PRIVATE LIMITED

...Transferor Company/Applicant No.1

AND

DANIEL TRADEX LIMITED

...Transferor Company/Applicant No.2

WITH

CARTEL FINANCE & INVESTMENTS PRIVATE LIMITED

...Transferee Company/Applicant No.3

Through: Mr. P.K.Mittal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present is an application filed jointly, under Sections 391 and 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') by Axiom Commodeal Private Limited (hereinafter referred to as 'Transferor Company No.1') and Daniel Tradex Limited (hereinafter referred to as 'Transferor Company No.2') with Cartel Finance & Investments Private Limited

(hereinafter referred to as 'Transferee Company'), in connection with the Scheme of Amalgamation (hereinafter referred to as 'proposed scheme') between Transferor Company No.1, Transferor Company No.2 and Transferee Company.

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

3. The Registered Offices of the Applicant Companies are situated at New Delhi and thus, fall within the jurisdiction of this Court.

4. The Transferor Company No.1 was incorporated under the Act vide certificate of incorporation dated 17.05.2010, issued by the the Deputy Registrar of Companies, West Bengal. Subsequently, the registered office of the Transferor Company No.1 was transferred to N.C.T. of Delhi and a fresh certificate in this behalf was issued on 16.09.2014.

5. The Transferor Company No.2 was incorporated under the Act vide certificate of incorporation dated 09.09.2011 issued by the Registrar of Companies, West Bengal. Subsequently, the Registered office of Transferor Company No.2 was transferred to N.C.T. of Delhi and a fresh certificate in this behalf was issued on 16.09.2014.

6. The Transferee Company was incorporated under the Act, vide certificate of incorporation dated 18.06.1992, issued by the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

7. The Authorised Share Capital of the Transferor Company No.1, as on 31.03.2015, is Rs.34,00,000/-, divided into 3,40,000 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.32,91,170/-, divided into 3,29,117 equity shares of Rs.10/- each fully paid-up.

8. The Authorised Share Capital of the Transferor Company No.2, as on 31.03.2015, is Rs.35,00,000/-, divided into 3,50,000 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.5,00,000/-, divided into 50,000 equity shares of Rs.10/- each fully paid-up. The share application money pending allotment, as on 31.03.2015, is Rs.30,00,000/-.

9. The Authorised Share Capital of the Transferee Company, 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 Transferee Company, as on 31.03.2015, is Rs.34,70,100/-, divided into 3,47,010 Equity Shares of Rs.10/- each fully paid.

10. A copy of the proposed scheme has been filed and the same is on record. The salient features of the proposed scheme have been set out in detail in the summons for directions to convene meetings under Section 391 of the Act. It has been stated therein, that the proposed scheme will result in pooling of the financial, commercial and other resources of the Applicant Companies leading

to economies of scale and reduction of overheads. It has been further stated that with enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility and strength to meet requirements for further growth of business activities. It has been also stated that the proposed scheme would be advantageous to combine the activities of the Transferor Companies and the Transferee Company into a single Company for the benefit for all the Applicant Companies, their Shareholders, Creditors and all concerned.

11. So far as the share exchange ratio the proposed scheme provides that, since 100% share capital of the Transferor Companies is held by the Transferee Company, the same shall stand automatically cancelled and extinguished and therefore, no fresh shares of the Transferee Company shall be issued or allotted upon the proposed scheme becoming effective.

12. Copies of the Memorandum of Association and Articles of Association, latest audited Financial Statements pertaining to the Applicant Companies for the period ended on 31.03.2015, along with the respective Auditors' Reports, have also been enclosed with the present application. The same are on record.

13. It has been stated 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.

14. The proposed scheme has been approved by the respective Board of Directors of the Applicant Companies, vide resolutions dated 01.03.2016. Copies of the Board Resolutions of the Applicant Companies have been filed and the same are on record.

15. The status of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies and the consents obtained therefrom to the proposed scheme, are set out in a tabular form as hereinunder:

Company	No. of Equity Shareholders	Consents	No. of Secured Creditors	Consents	No. of Unsecured Creditors	Consents
Transferor Company No.1	7	All	NIL	N.A.	1	All
Transferor Company No.2	7	All	NIL	N.A.	NIL	N.A.
Transferee Company	15	All	NIL	N.A.	9	All

16. A prayer has been sought in the present Application for dispensation of the requirement of convening meetings of the Equity Shareholder, Secured and Unsecured Creditors of each of the Applicant Companies.

17. The Transferor Company No.1 has 07 equity shareholders. All the equity shareholders have given their written consents/NOC's to the proposed scheme and the same have been placed on record. The said written consents/NOC's have been examined and found in order.

18. In view of the foregoing, the requirement of convening meeting of the equity shareholders of Transferor Company No.1 to consider and, if thought fit, approve, with or without modification the proposed scheme is dispensed with.

19. The Transferor Company No.1 has 01 unsecured creditor. The sole unsecured creditor has given its written consent/NOC to the proposed scheme and the same has been placed on record. The said written consent/NOC has been examined and found in order.

20. In view of the foregoing, the requirement of convening meeting of the unsecured creditor of the Transferor Company No.1 to consider and, if thought fit, approve, with or without modification, the proposed scheme is dispensed with.

21. The Transferor Company No.2 has 07 equity shareholders. All the equity shareholders have given their written consents/NOC's to the proposed scheme and the same have been placed on record. The said written consents/NOC's have been examined and found in order.

22. In view of the foregoing, the requirement of convening meeting of the equity shareholders of the Transferor Company No.2 to consider and, if thought fit, approve, with or without modification the proposed scheme is dispensed with.

23. The Transferee Company has 15 equity shareholders. All the equity shareholders, have given their written consents/NOC's to the proposed scheme.

The said written consents/NOC's have been placed on record. The same have been examined and found in order.

24. In view of 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.

25. The Transferee Company has 09 unsecured creditors. All the unsecured creditors have given their written consents/NOC's to the proposed scheme and the same have been placed on record. The said written consents/NOC's have been examined and found in order.

26. In view of the foregoing, the requirement of convening meeting of the unsecured creditors of the Transferee Company to consider and, if thought fit, approve, with or without modification the proposed scheme is dispensed with.

27. Since the Transferor Company No.2 does not has any unsecured creditor, therefore the question of convening a meeting thereof does not arise. Further, since the Applicant Companies do not have any secured creditors, therefore the question of convening meetings thereof does not arise.

28. Further, a prayer has been sought in the present application for dispensing with the requirement of issuance and publication of notices of the meetings of equity shareholders, secured and unsecured creditors of the Applicant Companies, in the newspapers.

29. In view of the circumstance that the requirement of convening meetings of equity shareholders, secured and unsecured creditors of the Applicant Companies, is dispensed with; the requirement of issuance and publication of notices of the meetings in newspapers, is also dispensed with.

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

JANUARY 16, 2017
sb/mk

SIDDHARTH MRIDUL, J

