

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 05.12.2016

Date of pronouncement: 10.02.2017

CO. APPL. (M) 157/2016

IN THE MATTER OF:

GRM METALS PRIVATE LIMITED

...Applicant/Transferor Company No.1

AND

MJR COMPONENTS PRIVATE LIMITED

...Applicant/Transferor Company No.2

WITH

MEHRA METAL COMPONENTS PRIVATE LIMITED

...Applicant/Transferee Company

Through: Mr. Rakesh Kumar and Mr. Aditya
Nayyar, Advocates for the Applicants.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present application has been filed jointly under Sections 391 and 394 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 modifications, the proposed Scheme of Amalgamation (hereinafter referred to as 'scheme') of GRM Metals Private Limited (hereinafter referred to as 'Transferor Company No.1') and MJR Components Private Limited (hereinafter referred to as 'Transferor Company No.2') with Mehra Metal Components Private 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. Transferor Company No.1 was incorporated under the provisions of the Act on 20.04.2012 with the Registrar of Companies, National Capital Territory of Delhi and Haryana. Thereafter, the Company changed its registered office from Haryana to Delhi.

4. The present authorized share capital of Transferor Company No.1 is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of Transferor Company No.1 is Rs.1,50,000/- divided into 15,000 equity shares of Rs.10/- each.

5. Transferor Company No.2 was incorporated under the provisions of the Act on 15.09.1997 with the Registrar of Companies, National Capital Territory of Delhi and Haryana under the name and style of 'Mehra Estates Private Limited'. Thereafter, Transferor Company No.2 changed its registered office

from Delhi to Haryana. Subsequent thereto, Transferor Company No.2 changed its name to its present name and obtained a certificate dated 12.06.2007, from the Registrar of Companies, National Capital Territory of Delhi and Haryana, in this behalf.

6. The present authorized share capital of Transferor Company No.2 is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of Transferor Company No.2 is Rs.7,40,000/- divided into 74,000 equity shares of Rs.10/- each.

7. The Transferee Company was incorporated under the provisions of the Act on 26.03.1998 with the Registrar of Companies, National Capital Territory of Delhi and Haryana.

8. The present authorized share capital of the Transferee Company is Rs.6,00,00,000/- divided into 60,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the Transferee Company is Rs.3,37,62,420/- divided into 33,76,242 equity shares of Rs.10/- each.

9. 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 alongwith the reports of the auditors, of the Applicant Companies, have also been filed on record.

10. 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. It is stated by learned counsel appearing on behalf of the Applicant Companies that *inter alia* the circumstances which justify and/or necessitate the proposed scheme are as follows:

- Through this amalgamation, the existing business of the Transferor Companies would be better synergized and through this added Synergy, the Transferee Company may access larger business opportunities;
- That the Directors of the Transferor Companies as well as the Transferee Company are common, therefore, by amalgamation of the said Transferor Companies into the Transferee Company, the Directors would be able to manage the affairs of the said Companies efficiently and effectively;
- The amalgamation will result in increased financial strength and flexibility and will enhance the ability of the amalgamated entity to undertake large projects, thereby contributing to enhancement of future business potential;
- The amalgamation will lead to pooling of expertise and more efficient use of existing manpower, financial and other resources for the benefits of the shareholders;
- The amalgamation will facilitate operation on broader investment and business decisions and allocation of resources to more productive and profitable uses, which will result in larger earning for the shareholders;
- The amalgamation will strengthen the organizational base and will augment the resource base of the amalgamated entity. It is expected that this will eventually result in higher earnings for the shareholders of the Transferee Company as well as the Transferor Companies;
- For reduction of cost of operation & overhead expenses;
- The amalgamation will help achieve rationalization of the management structure of the Transferee Company and economies of scale for further modernization, growth and expansion of business.

11. So far as the share exchange ratio is concerned, the proposed scheme provides that, upon coming into effect of the proposed scheme, the Transferee Company shall issue and allot shares to the shareholders of the Transferor Company No.1 and Transferor Company No.2, in the following manner, respectively:

“01 (one) share of the Transferee Company, for every 3.49 shares held by the shareholders of Transferor Company No.1 in Transferor Company No.1.”

“01 (one) share of the Transferee Company, for every 1.69 shares held by the shareholders of Transferor Company No.2 in the Transferor Company No.2.”

12. It has been stated in the present application 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.

13. The Board of Directors of the Applicant Companies in their separate meetings held on 25.05.2016 and 03.06.2016 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.

14. Each of the Applicant Companies has 03 equity shareholders. All the equity shareholders of the Applicant Companies have given their written

consent/NOC to the proposed scheme. Their written consent/NOC has been placed on record. They have been examined and found in order.

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

16. There are no secured and unsecured creditors of the Transferor Companies; therefore the question of requirement of convening meetings thereof does not arise.

17. The Transferee Company has 05 secured creditors. All the secured creditors of the Transferee Company have given their written consent/NOC to the proposed scheme. Their written consent/NOC has been placed on record. They have been examined and found in order.

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

19. The Transferee Company has 62 unsecured creditors. 59 out of the 62 unsecured creditors (representing 85% of unsecured debt) of the Transferee Company have given their written consent/NOC to the proposed scheme. Their written consent/NOC has been placed on record. They have been examined and found in order.

20. It is needless to state that this Court has the discretionary power under the provisions of section 391(1) of the Act to dispense with the requirement of convening meetings of creditors/members or a class thereof, in the event their consent to the proposed Scheme has been obtained outside a meeting. (Ref: Decision of this Court in *Co. Appl. (M) 150/2016* titled as '*Adobe Properties Private Limited v. AMP Motors Private Limited*' rendered on 16.01.2017)

21. In view of the foregoing facts and circumstances and in view of the settled position of law, the requirement of convening the 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.

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

FEBRUARY 10, 2017
sb/ap/mk

SIDDHARTH MRIDUL, J