

(2017) 01 DEL CK 0372

In the Delhi High Court

Case No : 130 of 2016

ALA FINANCIAL ADVISORS PRIVATE LIMITED

APPELLANT

Vs

MAIR SECURITIES PRIVATE LIMITED

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

[Companies Act, 1956](#), [Section 391](#), [Section 251](#), [Section 394](#), [Section 235](#), [Section 391\(1\)](#) - Power to compromise or make arrangement

Citation : (2017) 01 DEL CK 0372

Hon'ble Judges : Siddharth Mridul

Bench : SINGLE BENCH

Advocate : Manoj Kumar Garg

Judgement

1. The present application has been filed jointly, under Sections 391 & 394 of the Companies Act, 1956, (hereinafter referred to as "the Act") read with Rule 9 of the Companies (Court) Rules, 1959 by ALA Financial Advisors Private limited (hereinafter referred to as "Transferor Company") and Mair Securities Private Limited (hereinafter referred to as "Transferee Company"), seeking directions of this Court to dispense with the requirement of convening the meetings of the equity shareholders, secured creditors and unsecured creditors of the Transferor Company and Transferee Company, to consider and if thought fit, approve, with or without modification, the proposed scheme of amalgamation and arrangement of the Transferor Company with the Transferee Company (hereinafter referred to as "the Scheme").

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 within the National Capital Territory of Delhi, within the jurisdiction of this Court.

4. The Transferor Company was incorporated under the Act vide certificate of

incorporation dated 19.01.2006 issued by the Assistant Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The Transferee Company was incorporated under the Act vide certificate of incorporation dated 06.09.2007 issued by the Assistant Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The Authorized Share Capital of the Transferor Company, as on 31.03.2015, is Rs.10,00,000/-, divided into 1,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Transferor Company, as on 31.03.2015, is Rs.10,00,000/-, divided into 1,00,000 Equity Shares of Rs.10/- each.

7. The Authorized Share Capital of the Transferee Company as on 31.03.2015 is Rs.30,00,000/-, divided into 3,00,000 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.26,84,000/-, divided into 2,68,400 Equity Shares of Rs.10/- each.

8. Copies of 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 on 31.03.2015, of the Applicant Companies along with the Auditors' Reports thereof have also been filed and the same are on record.

9. It has been stated on behalf of the Applicant Companies that there are no proceedings under Sections 235 to 251 of the Act (or under corresponding Sections of the Companies Act, 2013) pending against any of 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 set out in detail in the application and in the affidavit in support of the summons for directions under section 391(1) of the Act. It has been stated in the present application that the proposed Scheme, inter alia, provides for the Amalgamation of the Transferor Company with the Transferee Company and the transfer of the entire business of the Transferor Company to the Transferee Company, as a going concern. It has been stated that the proposed amalgamation would inter alia, aid the Applicant Companies in the following manner:- a) Amalgamating Transferor Company and the Transferee Company will give the consolidated company better finances, facilitate adequate resource mobilization to sustain growth;

b) Strengthening and consolidating the position of the Transferee Company and enabling it post-merger to participate more vigorously and profitably in an increasingly competitive and liberalized market;

c) Enabling better leverage of facilities, infrastructure and human resources and for better administration;

d) Enabling the amalgamated entity to raise funds from the financial institutions

on better terms. The synergy of the amalgamation will improve operational efficiency, integrated management functioning and will enhance the share value for the benefit of shareholders of the existing entities;

e) The merger of Transferor Company into Transferee Company will result in reduction of overheads, administrative, managerial and other expenditure, and bring about operational rationalization, organizational efficiency, and optimal utilization of various resources.

11. So far as Share Exchange Ratio is concerned, 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: "Two (2) Equity Shares of Rs.10/- each of Mair Securities Private Limited/Transferee Company shall be allotted for every one (1) Equity Share of Rs.10/- each of ALA Financial Advisors Private Limited/Transferor Company and fraction to be paid in cash."

12. The proposed Scheme has been approved by the respective Board of Directors of the Applicant Companies, in their separate meetings held on 31.03.2016. 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 05 (Five) Equity Shareholders and all the Equity Shareholders have given their written consents/NOCs to the implementation of the proposed Scheme. The said written consents/NOCs 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. The Transferor Company does not have any secured creditors and therefore, the question of convening their meeting, does not arise.

16. The Transferor Company has 03 (three) unsecured creditors and all of them have given their written consents/NOCs to the implementation of the proposed Scheme. The said written consents/NOCs have been placed on record. The same have been examined and found in order.

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

18. The Transferee Company has 02 (Two) Equity Shareholders and both Shareholders have given their written consents/NOCs to the implementation of the proposed Scheme. The said written consents/NOCs have been placed on record. The same have been examined and found in order.

19. In view of the foregoing, the requirement of convening the 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.

20. The Transferee Company does not have secured creditors and therefore, the question of convening their meeting, does not arise.

21. The Transferee Company has 07 (seven) unsecured creditors and 6 out of 7 unsecured creditors of the Transferee Company have given their written consents/ NOCs to the implementation of the Proposed Scheme. The said written consents/ NOCs have been placed on record. The same have been examined and found in order. "Other expenses payable" have been recorded as the seventh unsecured creditor.

22. In view of the foregoing, 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.

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