

(2016) 10 DEL CK 0094

In the Delhi High Court

Case No : CO. APPL. (M) No. 129 of 2016.

**Idea Mobile Commerce Services Limited - Applicant /Transferor
Company @HASH Aditya Birla Idea Payments Bank Limited - Non-
Applicant /Transferee Company**

Date of Decision : 03-10-2016

Acts Referred:

Companies (Court) Rules, 1959 — Rule 6, Rule 9
Companies Act, 1956 — Section 391, Section 394

Citation : (2016) 234 DLT 249

Hon'ble Judges : R. K. Gauba, J.

Bench : Single Bench

Advocate : None, for the Applicant /Transferor Company; Mr. Rajiv Nayar, Senior Advocate with Mr. Sandeep Singh, Mr. Mahesh Agarwal and Mr. Rajeev Kumar, Advocates, for the Non-Applicant /Transferee Company

Final Decision : Disposed Off

Judgement

Mr. R. K. Gauba, J. - This is a first motion application filed under Sections 391 and 394 of the Companies Act, 1956 read with rules 6 and 9 of the Companies (Court) Rules, 1959 by the applicant company seeking directions of this Court to dispense with the requirement of convening and holding a meeting of the equity shareholders and unsecured creditors of the Transferor company to consider and approve, with or without modifications, the proposed Scheme of Amalgamation of Idea Mobile Commerce Services Limited (hereinafter referred to as the applicant/Transferor company) with Aditya Birla Idea Payments Bank Limited (hereinafter referred to as non-applicant/ Transferee company) and further to dispense with the requirement of the Transferee Company from approaching this Court or to initiate separate proceedings under sections 391 and 394 of the Companies Act, 1956 for seeking sanction of the Scheme of Amalgamation.

2. The registered offices of the Transferor Company is situated at New Delhi, within the jurisdiction of this Court.

3. The Transferor company was originally incorporated under the Companies Act,

1956 on 19th October, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Carlos Towers Limited. Subsequently, the name of the said company was changed to Idea Mobile Commerce Services Limited and a fresh Certificate of Incorporation consequent upon change of name was issued on 4th February, 2011 by the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorised share capital of the Transferor company is Rs.1,00,00,00,000/- divided into 10,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.90,00,00,000/- divided into 9,00,00,000 equity shares of Rs.10/- each.

5. The Transferee Company was originally incorporated under the Companies Act, 1956 on 19th day of February, 2016 with the Registrar of Companies, Maharashtra under the name and style Aditya Birla Idea Payments Bank Limited.

6. The copies of the Memorandum and Articles of Association of the Transferor (Annexure B) and Transferee companies (Annexure O) have been filed and are on record. The audited balance sheet, as on 31.03.2016 of the Transferor Company (Annexure C) along with the reports of the auditors and the unaudited balance sheet as on 31.03.2016 and 31.07.2016 of the Transferee company (Annexure P&Q), have also been filed.

7. A copy of the Scheme of Amalgamation (Annexure A) has been filed and the salient features thereof set out in detail in the application and supported by the accompanying affidavit.

8. The status of the shareholders, secured and unsecured creditors of the Transferor company are declared in the application and supported by documents filed therewith may be tabulated as under:

Company

No. of Shareholders (as per list Vide Annexure Mentioned in the Parenthesis)

Consent given to the Scheme With reference to annexure to petition

No. of secured Creditors

Consent given to the Scheme With reference to annexure to petition

No. of Unsecured creditors

Consent given to The Scheme

Transferor Company

07 (Annexure F)

All (Annexure G)

Nil

NA

345 (Annexure I)

NIL

9. As per the valuation report of the Chartered Accountant (Annexure W) on the issue of the share exchange ratio, the application states and the Scheme of amalgamation provides that 1,16,522 (One Lakh Sixteen Thousand Five Hundred and Twenty Two) equity shares of ABIPBL of Rs.10/- each fully paid up shall be issued for every 1,00,000 (One lakh) equity shares of IMCSL of Rs.10/- each fully paid up.

10. It has been submitted by the applicants that no investigation proceedings under Sections 210 to 224 of the Companies Act, 2013 (corresponding to Section 235 to 251 of the Companies Act, 1956) are pending against the transferor and transferee companies.

11. The Board of Directors of the Transferor Company in their meetings held on 22.07.2016 had unanimously approved the proposed Scheme of amalgamation. Copy of the Resolution passed at the meetings of the Board of Directors of the Transferor Company (Annexure E) had been placed on record.

12. In view of the written consent/NOC given by all the Equity Shareholders of the Transferor Company, the requirement of convening meeting of the Equity Shareholders of the Transferor Company is dispensed with.

13. The transferor Company has no secured creditors. Hence the requirement of convening their meeting does not arise.

14. Learned counsel for the Transferor Company submits that the Transferor Company has 345 Unsecured Creditors as on 31.7.2016 having an outstanding balance of about Rs. 12,43,13,111/-. The said Unsecured Creditors are mainly trade creditors who are paid off in the normal course of business. In addition to the aforesaid, there are further liabilities to the tune of about Rs.15,60,13,464/-, they being the balance monies out of the monies collected by the Transferor Company from the customers against issuance of Prepaid Payment Instruments; the amounts collected from channel partners for issuance of Prepaid Payment Instruments to the customers; security deposits accepted from channel partners; and the amounts which are payable by the Transferor Company to the merchants/aggregators whose services have been availed of by the customers by using Prepaid Payment Instruments. As per the guidelines issued by Reserve Bank of India ("RBI"), the outstanding balance in respect of the said customers are secured by the Transferor Company by depositing the same in an escrow account with Kotak Mahindra Bank Limited, Nariman Point, Mumbai Branch. As on 31.7.2016, an amount of Rs. 10,56,55,409/- was available in the escrow account against the outstanding liability of the said customers and merchant establishments which is to the tune of Rs.10,37,46,973/-. In addition, in terms of the RBI guidelines, a charge of the holders of the Prepaid Payments Instruments

and/or the merchant establishments stands recorded in favour of Kotak Mahindra Bank Limited with the Registrar of Companies, Delhi.

15. The copy of the Scheme, as filed reflects that the outstanding balance in the escrow account along with the charge of Kotak Mahindra Bank Limited would be transferred to the Transferee Company upon it (the Scheme) becoming effective. Even otherwise, the Transferor Company and/or the Transferee Company would be required to secure the interest of the aforesaid customers/Unsecured Creditors by complying with the procedure as laid down in the letter dated 13.6.2016 addressed by RBI to the Transferor Company. Learned Counsel for the Transferor Company further submits that no right of the aforesaid customers/or the merchant establishments including that of Kotak Mahindra Bank Limited (a charge-holder pursuant to the guidelines issued by RBI) are affected by the present Scheme. Kotak Mahindra Bank Limited is neither secured nor unsecured creditor. Balance sheet of the Transferor Company also does not show Kotak Mahindra Bank as creditor. Hence, neither consent of nor any meeting with the Kotak Mahindra Bank is required or to be convened.

16. Learned counsel for the Transferor Company further submits that under the Scheme no compromise is offered to any of the creditors of the Transferor Company and neither any liabilities are being reduced or extinguished. There is no likelihood that any of the creditors of the Transferor Company would lose or be prejudiced as a result of the Scheme being sanctioned. There is an excess of assets over liabilities of about Rs.43.50 crores of the Transferor Company as on 31.7.2016, this in addition to an excess of assets over liabilities of about Rs. 3 crores of the Transferee Company as on 31.7.2016. Further, as on 31.7.2016 besides the amount lying in the aforesaid escrow account, a sum of about Rs.5.99 crores of the Applicant Company, as on 31.7.2016, is lying as cash and bank balance. He, thus, prayed that the meeting of the Unsecured Creditors of the Transferor Company which also includes the customers of the Prepaid Payment Instruments may be dispensed with.

17. In support of his submissions, the learned counsel for the applicant Transferor Company placed reliance on the judgments of this Court in the matter of In Re: Scheme of Amalgamation of O. C. Denims & Special Finishes Limited under CA (M) No.86 of 2013 decided on 9th July, 2013; Scheme of Amalgamation of Unitel Credit Private Limited with Intec Capital Limited under C A (M) No.116 of 2010 decided on 4th June, 2010; In Re: Scheme of Amalgamation of M/s Global Digital Technologies Limited with MVL Industries Limited under CA (M) No.108/2012 decided on 2nd July, 2012; and In Re: Scheme of Amalgamation of Mag Engineering Private Limited and Sandhar Technologies Limited under CA (M) No.19/2013 decided on 4th February, 2013 wherein this Court, under similar circumstances, has dispensed with the requirement of convening and holding the meetings of the Unsecured Creditors.

18. Having regard to the aforesaid submissions and the documents filed in support, following the view taken in identical factual matrix in catena of cases

which have been cited at bar, the requirement of convening and holding the meeting of unsecured creditors of the Transferor Company which includes the customers of the Prepaid Payment Instrument is dispensed with.

19. The application stands disposed of in the aforesaid terms.

20. Dasti.