

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSA NO. 1010 OF 2017

Under the Sections 230 to 232 of the
Companies Act, 2013.

And

In the matter of Scheme of Amalgamation of
Bay Capital Advisors Private Limited
(‘BCAPL’ or ‘the Transferor Company’ or
‘the Applicant Company’) with Indus
Equicap Consultancy Private Limited
(‘ICPL’ or ‘the Transferee Company’) And
their respective shareholders

**BAY CAPITAL ADVISORS PRIVATE LIMITED Applicant/ Transferor
Company**

Order delivered on 13th December, 2017

Coram:

Hon’ble B. S. V. Prakash Kumar, Member (J)

Hon’ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s.
Rajesh Shah & Co., Advocate for the Petitioner.

Per: B.S.V. Prakash Kumar, Member (J)

ORDER:

UPON the application of the Applicant Company above named by a Company
AND UPON HEARING Mr. Rajesh Shah alongwith Mr. Ahmed M Chunawala i/b
M/s. Rajesh Shah & Co, Advocates for the Applicant Company, **AND UPON**
READING the Affidavit dated 16th day of November, 2017 of Mrs. Sushma Amin,
Director of the Applicant Company, in support of the Application and the Exhibits
therein referred to, **IT IS ORDERED THAT:**

1. The meeting of the Equity Shareholders of the Applicant Company be convened and held at 305, Marine Chambers, New Marine Lines, Mumbai – 400020 on Monday, 29th January, 2018 at 1:00 pm for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation between Bay Capital Advisors Private Limited ('BCAPL' or 'the Transferor Company') with Indus Equicap Consultancy Private Limited ('ICPL' or 'the Transferee Company') and their respective shareholders.
2. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company or can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the offices of its Advocates, Rajesh Shah and Co, 16, Oriental Building, 30, Nagindas Master Road, Flora Fountain, Fort, Mumbai- 400001 and shall also be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi.
3. The Applicant Company undertakes to:
 - i. issue Notice convening meeting of the Equity shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
 - ii. issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
 - iii. issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and

- iv. advertise the Notice convening meeting of Equity Shareholders as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

4. That Mr. Nikunj Doshi, Director of the Applicant Company, and failing him, Mrs. Sushma Amin Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Applicant to be held at 305, Marine Chambers, New Marine Lines, Mumbai – 400020 on Monday, 29th January, 2018 at 1:00 pm or any adjournment or adjournments thereof. The Scrutinizer for the meeting shall be Mr. Praveen Sethia & Associates, Chartered Accountants and the fees shall be Rs. 10,000/-.
5. The Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
6. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
7. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicant Company at their Registered Offices not later than 48 hours before the aforesaid meeting. Registered Office of Applicant Company is situated at 305, Marine Chambers, New Marine Lines, Mumbai – 400020.
8. That the value and number of the shares of each shareholder shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

9. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
10. The Chairman to report to this Tribunal, the result of the aforesaid meeting within thirty days of the conclusion of the meeting as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
11. That there are no Secured Creditors of the Applicant Company as stated in paragraph 16 of the Application.
12. The Learned Counsel for the Applicant Company further submits that since the Scheme is an amalgamation between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
13. The Applicant to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
14. The Applicant to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations)

Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Applicant to serve the notice upon the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Chartered Accountant, M/s Saket Shantilal Jain & Associates with remuneration of Rs. 25,000/- for the services. If no response is received by the Tribunal from the Official Liquidator within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. The Applicant to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
17. The Applicant to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)