

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III**

Coram: DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

DR. V.K. SUBBURAJ, MEMBER (TECHNICAL)

CA (CAA) -100/ND/2018

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT,
2013**

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013
read with Companies (Compromises, Arrangements, and Arrangements) Rules,
2016.

AND

In the matter of Scheme of Amalgamation

OF



EVERSHINE IT INFRASTRUCTURE PRIVATE LIMITED

(TRANSFEROR COMPANY/APPLICANT NO. 1)

WITH

SILVERTONE INFRASTRUCTURE PRIVATE LIMITED

(TRANSFeree COMPANY/APPLICANT NO. 2)

MEMO OF PARTIES:

1. EVERSHINE IT INFRASTRUCTURE PRIVATE LIMITED

C-4, RAKSHA KUNJ, PASCHIM VIHAR,

NEW DELHI-110063

...TRANSFEROR COMPANY/APPLICANT NO.1

AND

2. SILVERTONE INFRASTRUCTURE PRIVATE LIMITED

E-93, IIIRD FLOOR,

GREATER KAILASH ENCLAVE-I,

NEW DELHI-110048

...TRANSFeree COMPANY/COMPANY NO. 2



For the Applicants: Mr. Rajesh Agarwal (Advocate)



ORDER

Delivered on: .09.2018

1. This is an application which is filed by the applicant companies herein, Evershine IT Infrasoftware Private Limited (“Transferor Company”), with Silvertone Infrastructure Private Limited (for brevity “Transferee Company”) jointly under sections 230-232 of Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the “Scheme”) proposed between the applicants. The said Scheme is also annexed as Annexure A/18 to the application. The applicants above named have preferred the instant application seeking orders/directions for dispensing with the convening and holding of meeting of shareholders, secured creditors and unsecured creditors of the Applicant companies for the purpose of considering and if thought fit approving with or without modification, the proposed Scheme of amalgamation and arrangement whereby the entire business and undertaking comprising the entire assets and liabilities of the Transferor Company would be transferred, vested and amalgamated with the Transferee Company with effect from the Appointed Date as defined in the Scheme, as a going concern on the terms and conditions set forth in the Scheme.



2. Affidavits in support of the above application sworn for and on behalf of the Transferor Company by one Mr. Rahul Chaudhary and for the Transferee Company by one Mr. Rajesh Chaudhary, being the Directors of the respective Companies along with the application have been filed. Ld. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Arrangements) Rules 2016 and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and the Registrar of Companies, NCT, New Delhi.
3. In relation to Evershine IT Infrasoftware Private Limited being the Transferor Company, in the Scheme marked as Annexure A/18, it is represented that it has 02 Equity Shareholders (one of which is a nominee shareholder) and both of them have given their consents by way of affidavits. It is further represented by the counsel for Applicants that the Transferor Company has no Secured Creditor and only one Unsecured Creditor as on 31.03.2018. In relation to the secured and unsecured creditors of the Transferor Company, seeks dispensation from convening and holding of the meetings in view of the reason that there is only one unsecured creditor who has given consent by way of affidavit.

4. In relation to Silvertone Infrastructure Private Limited being the Transferee Company in the Scheme marked as Annexure A-18, Learned Counsel represents that the Transferee Company has 5 Equity Shareholders and all the five have given their consent by way of affidavit (constituting 100% of the shares). It is further represented by the counsel for Applicants that the Transferee Company has NIL Secured and 5 Unsecured Creditors as on 31.03.2018. All the 5 Unsecured Creditors have given their consent by way of affidavit. In relation to the equity shareholders, secured creditors and unsecured creditors of the Transferee Company convening and holding of the meetings is sought to be dispensed with.
5. Learned Counsel for the Applicants also represents that the provisions of Section 233 of the Companies Act 2013 will not apply.
6. We have perused the joint application and the connected documents/papers filed therewith including the Scheme of Arrangement contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that Transferor Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 30.06.2005 with the name Evershine IT Infrasoftware Private Limited vide CIN no. U72200DL2005PTC138167.



8. The authorized share capital of the Transferor Company is Rs.1,00,00/- (Rupees One Lakh Only) divided into 10,000 (Ten Thousand Only) Equity Shares of Rs.10/- (Rupees Ten only) each. The present issued, subscribed and paid-up share capital of the Transferor Company is Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000 (Ten Thousand Only) Equity Shares of Rs.10/- (Rupees Ten only) as on the date of filing.
9. From the certificate of incorporation filed, it is evident that the Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 17.12.2004, vide CIN: U45201DL2004PTC131374, with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "Silverstone Infrastructure Private Limited".
10. The authorized share capital of the Transferee Company is Rs.11,00,000/- (Rupees Eleven Lakhs Only) divided into 1,10,000 (One Lakh Ten Thousand Only) equity shares of Rs.10/- (Rupees Ten only) each. The present issued, subscribed and paid-up share capital of the Transferee Company as on date is Rs.11,00,000/- (Rupees Eleven Lakh Only) divided into 1,10,000 (One Lakh Ten Thousand) equity shares of Rs.10/- (Rupee Ten only) each fully paid up as on the date of filing.

11. All the applicants have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last available audited financial statements for the year ended 31.03.2018.
12. The Board of Directors of the Transferor Company and the Transferee Company vide meeting held on 09.04.2018, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereon have been placed on record by the respective companies.
13. The appointed date as specified in the Scheme is 1st April, 2018 subject to the directions of this Tribunal.
14. The Applicant companies have stated in the petition that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.
15. That the Applicant Companies have complied with the proviso to Section 230 (7) and Section 232 (3) by filing the certificate of the statutory auditor of the Company in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013.

16. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this Tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the Equity Shareholders, Preference Shareholders, Secured and Unsecured Creditors, or dispensing with the same as well as issue of notices including by way of paper publication as follows:

A) In relation to the Transferor Company:

(i) With respect to equity shareholders:

Since it is represented by the Transferor Company there are 2 equity shareholders in the company, whose consents have been obtained by way of affidavits and are placed on record, the necessity of convening and holding a meeting of the shareholders to consider and if thought fit, to approve the scheme is dispensed with.

(ii) With respect to secured creditors:

Since it is represented by the Transferor Company that there is no secured creditor in the company, the necessity of convening a meeting does not arise.

(iii) With respect to unsecured creditors:

Since it is represented by the Transferor Company that there is only 1 unsecured creditor in the Company and it has given his consent by way of affidavit the necessity of convening a meeting is dispensed with.

B) In relation to Transferee Company:

(i) With respect to equity shareholders:

Since it is represented by the Transferee Company that there are 5 equity shareholders in the company and all the five have given their consent by way of affidavit which have been placed on record, the necessity of convening and holding a meeting of shareholders to consider and if thought fit, to approve the scheme is dispensed with.

(ii) With respect to secured creditor:

Since it is represented by the Transferee Company that there is no secured creditor in the company, the necessity of convening a meeting does not arise.

(iii) With respect to unsecured creditors:

Since it is represented by the Transferee Company that there are 05 unsecured creditors in the company whose consents have been obtained and are placed on record, the necessity of convening and holding a meeting of unsecured creditors to consider and if thought fit, to approve of the scheme is dispensed with.

The application stands allowed on the aforesaid terms. Let the application for approval of the scheme of Amalgamation be filed within a period of seven days from the date of this order



(Dr. V. K. SUBBURAJ)

MEMBER (TECHNICAL)



(Dr. DEEPTI MUKESH)

MEMBER (JUDICIAL)

Deepak