

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CA (CAA) NO. 766/KB/2018

In the matter of:  
The Companies Act, 2013;

And

In the matter of :

An application under Section 230 to  
232 of the Companies Act 2013

And

In the matter of:

An application under the provisions  
of The Companies (Compromise,  
Arrangement and Amalgamation) Rules  
2016 ;

And

In the matter of:

1. EASTERN AUTO INVESTO PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 67, BENTINCK STREET, Kolkata-700069 within the aforesaid jurisdiction and having CIN No. U65910WB1989PTC047460 and is also

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a Non Banking Financial Company registered under the Reserve Bank of India Act, 1934 and PAN AAACE6147K.

.....Transferee Company/Applicant

And

In the matter of :

2. STATUS HOME & ENCLAVES PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered at, 67 BENTINCK STREET, 1ST FLOOR, KOLKATA-700069 within the aforesaid jurisdiction and having CIN U70200WB1991PTC053000 and PAN AAECs0751K.

3. JASHAN EARTH MOVERS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered at, 216 A J C Bose Road, Unit IF, 1st Floor, Kolkata- 700017 within the aforesaid jurisdiction and having CIN U29248WB1989PTC046181 and PAN AACCA3922A.

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.....Transferor Companies/  
Applicants

For the Applicants:

1. CS MOHAN RAM GOENKA, PCS,
2. CS RAYA PATHAK,

Date of pronouncement of Order : 8/10/2018

**CORAM : Shri Madan B Gosavi, Member(Judicial)**

**ORDER**

**Per : Shri Madan B Gosavi, Member(Judicial)**

1. This application has been filed by the Applicant Companies namely M/s. STATUS HOME & ENCLAVES PRIVATE LIMITED (SHEPL / Transferor Company 1), JASHAN EARTH MOVERS PRIVATE LIMITED (JEMPL / Transferor Company 2), the "Transferor Companies" and EASTERN AUTO INVESTO PRIVATE LIMITED, the "Transferee Company" under Section 230 to 232 of the Companies Act 2013 read with relevant rules, for obtaining sanction of this Tribunal regarding scheme of Amalgamation proposed to be made between the Transferee Company and the Transferor Companies and their respective shareholders. A copy of the Scheme of Amalgamation has been annexed with the Application as "Annexure A-36".

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2. It is stated in the application that the aforesaid Scheme of Amalgamation will be of benefit to all concerned and is not opposed to public policy and the proposed re-alignment will create enhanced value for all stakeholders of the companies as it would facilitate focused strategy, direction and business planning to optimize operational, managerial, financial, technical and marketing capabilities of each business.
  
3. The Applicants have further submitted that the Balance Sheet of the Transferee Company and Transferor Companies, as on 31-03-2017, have been duly audited and the audited balance sheet as on the said date, related statement of profit and loss accounts and the auditor's report thereon are annexed with the application marked "Annexure A-37", "Annexure A-39" and "Annexure A-41". The unaudited Supplementary balance sheet and statement of profit and loss accounts as on 31.01.2018 of the aforesaid Companies are also annexed and marked as "Annexure A-38", "Annexure A-40" and "Annexure A-42".
  
4. The Applicant Companies have also declared that, subsequent to the date of the aforesaid balance sheet there has been no substantial change in the financial position of both the applicant Companies, except those arising or resulting from the normal course of business.



5. It appears from the record that the Board of Directors of the Transferee Company and the Transferor Companies respectively have, at their Board meetings, held on 05.02.2018, unanimously approved the draft Scheme of Amalgamation in order to obtain the approval of the Reserve Bank of India. Further, the Board of Directors of the Transferee Company and the Transferor Companies respectively at their Board Meeting held on 15.05.2018, unanimously approved the said Scheme of Amalgamation as approved by the Reserve Bank of India. Copy of the Board Resolutions of all the applicant companies held on 05.02.2018 and 15.05.2018 are collectively annexed with the application and marked as "Annexure A-43".

6. The applicants further submitted that the assets of all the Applicant Companies are sufficient to meet all its liabilities. The Scheme of Amalgamation does not involve any compromise or composition or arrangement with any of the creditors of the Applicant Companies in any manner whatsoever. The said Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any applicant companies in whatever manner whatsoever and it is nowhere prejudicial to the interest of the creditors, if any, of the Applicant Companies. The Applicant Companies have made due provisions for payment of all liabilities as and when the same will fall due.

7. The applicants also submitted that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring.
8. It appears from the record that the statutory Auditors of the Transferee Company have certified that the Accounting Treatment proposed in terms of clause 8 of PART II of the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The certificate issued by the statutory Auditors is also annexed with the application and marked as "Annexure A-45".
9. The provisions of the Monopolies and Restrictive Trade Practice Act, 1969 are not applicable to the said Scheme of Amalgamation. None of the applicant companies are registered under the provisions of the Monopolies and Restrictive Trade Practice Act, 1969 or are liable to be registered under the provisions of the said Act and the provisions of the said Act will not come into existence upon Amalgamation of the applicant companies.
10. It is submitted in the application that the report determining the number of and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of Transferor companies by the Transferee Company for implementation of the terms of the scheme has been prepared by an reputed firm of Chartered Accountants and such recommendations have, been accepted by the Board of Directors of the respective companies. Copies of such

valuation report is also annexed with the application and marked as "Annexure A-46".

11. EAIPL, the Transferee Company is a NON Banking Financial Company and is registered with Reserve Bank of India. The Transferee Company has made an application to Reserve Bank of India and obtained approval of Reserve Bank of India vide Letter dated 07.05.2018. A Copy of the same is annexed with the application as Annexure-47.

12. It reveals from the record that as on 15.05.2018, the applicant Companies have the following no. of shareholders:

<b>Sr. No.</b>	<b>Name of the Company</b>	<b>No. of Shareholders</b>
1.	EAIPL / Transferee Company	9 (Nine)
2.	SHEPL / Transferor Company 1	2 (Two)
3.	JEMPL / Transferor Company 2	8 (Eight)

13. All the shareholders of the Transferee and Transferor Companies, holding 100% of the shares of the respective Companies, have consented to the Scheme of Amalgamation by way of consent in the form of affidavit to waive off the convening and holding of meeting for consideration and approval of the Scheme of Amalgamation. The Consents given by the shareholders of all the applicant companies in the

form of affidavits are annexed with the application and marked "Annexure A-5", "Annexure A-18" and "Annexure A-28".

14. It reveals from the record that as on 15.05.2018, the applicant Companies have the following no. of secured and unsecured creditors :

Sr. No.	Name of the Company	No. of Secured Creditors	No. of Unsecured Creditors
1.	EAIPL / Transferee Company	1 (One)	3(Three)
2.	SHEPL / Transferor Company 1	NIL	NIL
3.	JEMPL / Transferor Company 2	NIL	1(One)

15. There are NIL Secured Creditors in SHEPL, Transferor Company No. 1 and JEMPL, the Transferor Company No. 2. Thus the question of convening and holding of separate meeting of the Secured Creditors does not arise.

16. There are NIL Unsecured Creditors in SHEPL, the Transferor Company No.1 and therefore the question of convening and holding of separate meeting of the Unsecured Creditors does not arise.

17. The Secured and Unsecured creditors of EAIPL, the Transferee Company and the Unsecured Creditor of JEMPL, the

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Transferor Company No.2 have consented to the Scheme of Amalgamation by way of consent in the form of affidavit to waive the requirement of convening and holding of meeting for consideration and approval of the Scheme of Amalgamation and the said Consents are annexed with the application and marked "Annexure A-9", "Annexure A- 10" and "Annexure A- 32" respectively.

18. The certificate by the statutory auditor of the Transferee and Transferor Companies verifying the List of Shareholders, Secured Creditors, Unsecured Creditors and Debenture Holders of the respective applicant Companies are annexed with the application and marked "Annexure A-13", "Annexure A-23", and "Annexure A-35".

19. Heard the counsels for the applicants, perused the records, documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants the following orders are passed :

- a) In view of the consents given in affidavit form by all the Shareholders of the Transferee and the Transferor Companies, the requirement for convening and holding the meeting of shareholders of the transferee and transferor companies is dispensed with.
  
- b) In view of the fact that SHEPL, the Transferor Company No. 1 has NIL secured creditors, NIL Unsecured

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Creditors and verified by the Auditor's Certificate, therefore question of holding separate meeting of the Secured and Unsecured Creditors of the Transferor Company No.1 does not arise.

- c) In view of the fact that JEMPL, the Transferor Company No. 2 has NIL secured creditors and verified by the Auditor's Certificate, therefore question of holding separate meeting of the Secured Creditors does not arise.
- d) In view of the consents given in affidavit form by the Unsecured Creditors of JEMPL, the Transferor Company No. 2, the requirement of convening and holding of separate meeting of Unsecured Creditor of the Transferor Company No.2 is dispensed with.
- e) In view of the consents given in affidavit form by all the Secured and Unsecured Creditors of EA IPL, the Transferee Company, the requirement of convening and holding of separate meeting of the Secured and Unsecured Creditors of the Transferee Company is dispensed with.
- f) The Applicant Companies to serve the notice upon the Regional Director - Eastern Region ( Ministry Of Corporate Affairs ) , Registrar Of Companies - West Bengal , and the Assessing Officer of the Income Tax and the Chief Commissioner of Income Tax Department having jurisdiction over the Transferor Companies and Transferee Company

within whose jurisdiction the assessments of the Applicant Companies are made, the Official Liquidator, Reserve Bank of India pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to Waiver of meetings.

- g) If no response is received by the tribunal from the above authorities within 30 days of date of receipt of the notice it will be presumed that such authorities have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- h) Liberty is given to file joint application by Transferee and Transferor Company in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of the period of 30 days as mentioned in Section 230(5) of the Companies Act, 2013.
- i) That an affidavit of Compliance of all the conditions laid down herein along with original proof of service to all authorities to be filed jointly by the Transferee Company and Transferor Company.
- j) If consent affidavits / letters of the members annexed with the application are found to be false / dubious at any stage then necessary action for committing fraud under Section 447 and 448 of the Companies Act, 2013 shall be initiated against the Transferee and Transferor Companies and all its directors for punishment under Section 449 of the Companies Act, 2013.

20. The Company Application being C.A. (CAA) No. 766/KB/2018 is disposed of accordingly.

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21. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

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9/10/2012

(Madan B. Gosavi)  
Member ( Judicial )

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