

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

C.A.(CAA) No.545/KB/2018

Coram: Mr. Jinan K.R., Member (Judicial)

In the matter of:

An application under Section 230 to 232 of the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

In the matter of:

ADARSH HEIGHTS PRIVATE LIMITED, a Private Limited Company incorporated under the Companies Act, 1956, having its registered office at Gulmohar Co-Operative Housing Society Ltd, 6C Middleton Street, Kolkata-700071 in the state of West Bengal within the aforesaid jurisdiction;

....Applicant/Amalgamated Company

And

In the matter of :

ARROWLINE REALESTATE PRIVATE LIMITED, a Private Limited Company incorporated under the Companies Act, 1956, having its registered office at Jhalda Main Road, P.O. Jhalda, Jhalda, WB-723202 in the state of West Bengal within the aforesaid jurisdiction;

....Applicant/Amalgamating Company

And

In the matter of :

1. ADARSH HEIGHTS PRIVATE LIMITED
2. ARROWLINE REAL ESTATE PRIVATE LIMITED

..... Petitioners

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COUNSEL ON RECORD :

Mr. Deepak Kumar Khaitan, Practising Company Secretary]
Ms. Siddhi Dhandharia, Practising Company Secretary]
Ms. Shruti Singhania, Practising Company Secretary] For the
Ms. Sonam Agarwal, Practising Company Secretary] Petitioners.

Date of pronouncement of order: 13th September 2018.

ORDER

1. The object of this Application is to obtain an order for convening and/or dispensing meetings of the shareholders and creditors of the Applicants to consider a Scheme of Amalgamation proposed to be made between Arrowline Realestate Private Limited, being the Transferor/ Amalgamating Company and Adarsh Heights Private Limited, being the Transferee/ Amalgamated Company and their respective shareholders whereby and whereunder it is proposed for transfer and vesting of the Amalgamating Company into and with the Amalgamated Company and the consequent dissolution without winding up of the Amalgamating Company pursuant to Sections 230 to 232 and other relevant provisions of the Act in the manner and on the terms and conditions stated in the Scheme, a copy whereof is annexed with the application and marked as '**Annexure A**'.

2. It is stated in the Application that the amalgamation will result in emergence of a single entity positioned to provide more extensive and integrated services and consolidation of the businesses presently being carried on by the Amalgamating Companies and shall create greater synergies between the business operations of both the companies and better alignment,

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coordination and streamlining of day to day operations of both the companies and creation of a larger asset base and facilitating access to better financial resources.

3. The Board of Directors of Applicant Company – Arrow line Real Estate Private Limited has, pursuant to its Board Meeting held on 5th February 2018, approved the Scheme and filing thereof. The extracts from the Board Resolution dated 5th February 2018 is annexed with the application and marked as Annexure-D.

4. The Board of Directors of the Adarsh Heights Private Limited has, pursuant to its Bord meeting held on 5th February 2018, approved the Scheme and filing thereof. The extracts from the Board Resolution dated 5th February 2018 is annexed with the application and marked as Annexure-E.

5. It is stated in the Application that the Scheme will have beneficial results for the said Companies, their shareholders and all concerned. It is also stated that there are no proceedings pending under Sections 235 and 250A of the Companies Act, 1956 or applicable provisions of the Companies Act, 2013 against the Applicant Companies.

6. The Auditors of the Applicants have confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The Certificate issued by the Auditors of the Applicant Companies are annexed with the application collectively marked '**Annexure L**'.

7. It has been stated in the Application that the Amalgamating Company and the Amalgamated Company have very few shareholders i.e. 2 and 5 respectively. All the shareholders of both the Applicant Companies have agreed in writing to the proposed Scheme by way of affidavits which are annexed with the Application and marked as '**Annexure G-1 to G-2**' and '**Annexure I-1 to I-5**' respectively.

8. The list of shareholders of the Applicants certified by Chartered Accountants are annexed with the Application and marked as '**Annexure F**' and '**Annexure H**'.

9. It is also stated in the application that the Scheme does not contemplate any compromise or arrangement with the Creditors of the Applicant Companies and that the Scheme does not provide or contemplate any variation in the rights of the Secured and Unsecured Creditors of the Applicant Companies. It is submitted that the Creditors of the Applicant Companies are not in any manner adversely or prejudicially affected by the Scheme.

10. The Amalgamating Company has NIL secured creditor and 1(one) unsecured creditor. The Certificate of the Chartered Accountant in this regard is annexed with the application and marked as '**Annexure N**'. The only 1 unsecured creditor of Applicant Company No.1 has agreed in writing to the proposed Scheme by way of affidavit which is annexed with the Application and marked as '**Annexure O**'.

11. The Amalgamated Company has 2 (two) secured creditors and 6 (six) unsecured creditors. The Certificate of the Chartered Accountant in this regard is annexed with the application and marked as '**Annexure Q**'. All the 6(six) unsecured creditors of Amalgamated Company have agreed in writing to the proposed Scheme by way of affidavit which is annexed with the Application and marked as '**Annexure R1 to R6**'. The Amalgamated Company has already sent intimation to the 2(two) secured creditors by way communications which are annexed with the Application and marked as '**Annexure S**' but no response has been received from the aforesaid secured creditors till date.

12. In the facts and circumstances, the applicants submitted that convening and holding of separate meetings of the shareholders and creditors be dispensed with as prayed for.

Heard the arguments of the Ld. Pr. C.S. for the Petitioner Companies. Order with the following directions is passed:

ORDER

- (a) Meetings of shareholders of the Amalgamating Company and Amalgamated Company are dispensed with in view of all such shareholders having already considered and given their written consent to the Scheme by way of affidavits.
- (b) Since the Amalgamating Company does not have any Secured Creditor, so convening and holding of meeting of Secured Creditors of Amalgamating Company does not arise.

- (c) Meeting of Unsecured Creditor of the Amalgamating Company is dispensed with in view of that creditor having already considered and given the written consent to the Scheme by way of affidavit.
- (d) Meeting of Unsecured Creditor of the Amalgamated Company is dispensed with in view that all the Unsecured Creditors having already considered and given their written consent to the Scheme by way of affidavits.
- (e) A meeting of Secured Creditors of Amalgamated Company shall be held at the registered office of the said Amalgamated Company at Gulmohar Co-Operative Housing Society Ltd., 6C Middleton Street, Kolkata – 700071 on Saturday, 3rd November, 2018 at 12.30 P.M. for the purpose of considering and if thought fit, approving, with or without modification, the said Scheme.
- (f) The notice of the aforesaid meeting shall be advertised in Form No. CAA.2, in one English newspaper being 'Business Standard' and in one Bengali newspaper being 'Aajkal' not less than 30 days before the date fixed for the meetings as per Rule 7 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations, as may be required.
- (g) That in addition, 30 (thirty) clear days before the meeting to be held as aforesaid, a notice convening the said meeting together with copy of the Scheme and statement as required under the Companies Act, 2013 disclosing necessary details and the prescribed form of proxy shall be sent to each of the Secured Creditors of Applicant No.2 Company by registered post or by speed post or by courier or by email or through hand delivery at

their respective last known addresses, as per Rule 6 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(h) That notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the Scheme and the statement as required under the Companies Act, 2013 disclosing necessary details be served on the Central Government, through the Regional Director (Eastern Region) - Ministry of Corporate Affairs, Kolkata and the Registrar of Companies, West Bengal, Official Liquidator and the concerned Income Tax Authority having jurisdiction over the Applicant Companies indicating the PAN numbers of the respective Applicant Companies by sending the same by registered post or by speed post or by courier or by email or through hand delivery, forthwith after notices are sent to creditors, as per Rule 8 of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorised Representative of the Applicant Companies. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No.CAA3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations.

- (i) That since there are only 2(two) Secured Creditors for the aforesaid meeting and the Quorum for such meeting shall be one member quorum, whether by person or by proxy. However, if the quorum is not present on the scheduled date and time, the Chairman may adjourn such meeting to any date/time as he may think fit and proper. If the quorum is not present even at the adjourned meeting, it shall be presumed that the Secured Creditors have no objection to the Scheme.
- (j) Mr. Udit Agarwal, Advocate, having mobile number 9681337160 is appointed as the Chairperson for the aforesaid meetings of Secured Creditors of the Amalgamated Company at a consolidated remuneration of Rs.50,000/- (Rupees Fifty Thousand only). Since there are only 2(two) Secured Creditors hence there is no requirement of a separate Scrutinizer and Chairperson is directed to act as the Scrutinizer.
- (k) The Chairperson appointed for the aforesaid meeting shall issue the notice of the aforesaid meeting. The said Chairperson shall have all powers under The Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 in relating to 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).

- (l) The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting to report this Tribunal that the direction regarding the issue of notice and the advertisement of the applicant company and all other directions given in this Order have been duly complied with as per Rule 12 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (m) The value of each Secured Creditor of Amalgamated Company shall be in accordance with the respective book values as mentioned in '**Annexure Q**' of this application, as present and voting at the meeting and wherein there is any dispute, the Chairman shall determine the value for the purpose of the meetings.
- (n) The business of the meeting may be transacted accordingly. The resolution for approval of the Scheme shall, if passed by majority representing three-fourth in value of votes casted by creditors present and voting by person or by proxy, shall be deemed to have been duly passed at the said meeting. The Chairman do report to this Tribunal the results of the said meetings within four weeks from the date of the conclusion of the said meetings and respective reports shall be in Form No. CAA4 as per Rule 14 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by his affidavit.
- (o) Parties and Chairperson to act on the Order.

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The Company Application being CA (CAA) No. 545/KB/2018 is disposed of accordingly.

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

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9/13/18
(Jinan K.R.)
Member (J)

Signed this day of 13th September 2018.

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