

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (CAA) No.594/KB/2018

CA (CAA) No.3/KB/2018

In the matter of:

An application under Sec.230 and Sec.232 of the Companies Act, 2013 read with Companies (Compromise, Arrangement and Amalgamation) Rules, 2016.

And

In the matter of:

Aerial Tower Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered at 8/5A, Jamir Lane near Bharat Seva Ashram, Ballygunge, Ground Floor, Kolkata 700 019, West Bengal.

And

In the matter of:

Linkstar Homes Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 9A & 9B, Sri Nath Roy Lane, 2nd Floor, Kolkata-700 007, West Bengal.

And

In the matter of:

Muchmore Hirise Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 9A & 9B, Sri Nath Roy Lane, 2nd Floor, Kolkata-700 007, West Bengal.

And

In the matter of:

Optimax Homes Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered at 8/5A, Jamir Lane near Bharat Seva Ashram, Ballygunge, Ground Floor, Kolkata 700 019, West Bengal.

And

In the matter of:

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|------------------------------------|-------------------------|
| 1. Aerial Tower Private Limited | : (Transferee Co.) |
| 2. Linkstar Homes Private Limited | : (Transferor Co. No.1) |
| 3. Muchmore Hirise Private Limited | : (Transferor Co. No.2) |
| 4. Optimax Homes Private Limited | : (Transferor Co. No.3) |

.....Applicant/Petitioners

Order Delivered on 26th September 2018

For the Petitioners : 1. Mrs. Sneha Khaitan, PCS
2. Mrs. Raya Pathak, PCS

For the Regional Director
(Eastern Region)
Ministry of Corporate Affairs : Mrs. Ishani Pandya, AROC

ORDER

Per Madan Gosavi, Member (Judicial)

This application has been filed by the Applicant Companies, namely, (1) Linkstar Homes Private Limited, (2) Muchmore Hirise Private Limited and (3) Optimax Homes Private Limited [hereinafter referred to as the Transferor Companies] with Aerial Tower Private Limited [hereinafter referred to as the Transferee Company] under Section 230 to 232 of the Companies Act, 2013 and their respective shareholders 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-1 at page 58 to 94.

2. The object of this application is to ultimately obtain sanction of this Tribunal to a Scheme of Amalgamation proposed to be made between the applicant companies and their respective shareholders under the Scheme of Amalgamation whereby and whereunder all the properties, assets, rights and claims whatsoever of the Transferor Companies and their entire undertakings together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee Company with effect from 1/4/2017.

3. It is submitted in the application that the Board of Directors of the applicant companies at their respective Board meeting held on 9/10/2017, unanimously approved the Scheme of Amalgamation of the Transferor Companies with the Transferee Company. A copy of the resolution passed by the

Board of Directors is annexed with the company application as Annexure A-24 page 320 to 327.

4. It appears from the record that vide order of the Tribunal dated 14/2/2018 in CA (CAA) No.3/KB/2018, the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of all the petitioner companies were dispensed with in view of the written consents, by way of affidavits, to the Scheme of Amalgamation. A copy of the order of the Tribunal is annexed with the application as Annexure A-35 page 352 to 362. Relevant part of the order of the Tribunal dated 14/2/2018 is quoted below: -

1. *"In view of the fact that all the equity shareholders of the Transferee Company and the Transferor Companies duly consented in writing by way of affidavits, to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the equity shareholders of the Transferee Company and the Transferor Companies, are dispensed with;*
2. *In view of the fact that there are no secured creditor of the Transferee Company, as certified by the respective Auditors, convening and holding of separate meeting of the secured creditors of the Transferee Company, does not arise.*
3. *In view of the written consents, by way of affidavits, given by the unsecured Creditor of the Transferee Company, convening and holding of separate meeting of the Unsecured creditors of the Transferee Company, is dispensed with.*

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4. *In view of the fact that there are no secured and the unsecured creditor of the Transferor Companies, as certified by the respective Auditors, convening and holding of separate meeting of the secured and the unsecured creditors of the Transferor Companies, does not arise.”*

5. It reveals from the record that the petitioner companies, in compliance of order dated 14/2/2018 of this Tribunal, served notice in Form CAA-3 along with the Scheme of Amalgamation, explanatory statement as required under Section 230 of the Companies Act, 2013 upon the Central Government through Regional Director, ROC, West Bengal, the Official Liquidator and the Income Tax Department. A copy of Affidavit of Service have been annexed to the petition as Annexure A-37 page 372 to 375.

6. Pursuant to the order of this Tribunal dated 14/2/2018, the Official Liquidator attached to the Hon'ble High Court, Calcutta appointed Mr. Abhijit Dutta, a panel Auditor of the Hon'ble High Court and Chartered Accountant to examine the books, papers, records and documents of the above Transferor Companies and to make report indicating clearly as to whether in the opinion of the said Chartered Accountant, the affairs of the Transferor Companies have been conducted in a manner prejudicial to the interest of its members or to public interest.

7. Accordingly, the Chartered Accountant has submitted his report dated 10/4/2018, inter alia, concluding as under :-

“(g) In the circumstances stated above and as appear from the scrutiny; my opinion is that the affairs of the above mentioned transferor companies have not been conducted in a manner prejudicial to the interests of their members and to the public interest.”



8. The Official Liquidator has submitted his report dated 31/7/2018 by concluding his observations as under:

“(5) That after scrutiny of the report submitted by the Chartered Accountant and other relevant papers and records etc. submitted by the Representative of the Petitioner, the Official Liquidator is of the opinion that the affairs of the above noted Transferor Companies namely Linkstar Homes Private Limited, Muchmore Hirise Private Limited and Optimax Homes Private Limited have not been conducted in a manner prejudicial to the interest of their members or to public.”

9. Further, the Regional Director, Ministry of Corporate Affairs, Eastern Region has submitted in his affidavit affirmed on 24/8/2018, the observations on Central Government on the scheme as under:

“(a) That it is submitted that on examination of the report of the Registrar of Companies, West Bengal dated 12/3/2018 it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up-dated in filing their statutory returns. It is further submitted that on examination of the proposed scheme of amalgamation, it appears that the proposed scheme is not prejudicial to the interest of its members/shareholders and/or public. The Central Government has, therefore, decided that the instant petition/scheme need not be opposed.

(b) That it is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the

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scheme was forwarded to the Income Tax Department on 27/02/2018 with a request to forward their comments/observations/objections, if any. However, said authority has not forwarded their report to this Directorate till date."

10. Ld. Counsel for the applicant submitted that in compliance with section 230 (7) of the Act, Statutory Auditor of the transferee company has certified that the Accounting Treatment is in conformity with the Accounting Standards under section 133 of the Act. A copy of the said certificate is annexed with the application as Annexure A-22 page 311.

11. Ld. Counsel for the applicant companies further submitted that the exchange ratio of shares of the Transferor Company and the Transferee Company has been fixed at a fair and reasonable basis and the valuation of shares have been certified by the Statutory Auditor. A copy of the Valuation Report is annexed with the application as Annexure A-23 page 312 to 319.

12. Ld. Counsel further submitted, the Scheme of Amalgamation will be for the benefit of the applicant companies and their shareholders, creditors, employees and all concerned.

13. Heard Ld. Counsel for the applicant companies and authorized representative of Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata. In view of absence of any objection and since all the requisite compliance has been fulfilled, the following order is passed: -

ORDER

- i. The Scheme of amalgamation, being Annexure A-1, is sanctioned by this Tribunal to be binding on all the equity shareholders of the petitioner companies and all concerned with effect from 1st April 2017.

- ii. All the properties, rights and interest of the Transferor Companies is transferred to and vested in without further act or deed to Transferee Company and become the assets and vest in the Transferee Company with all the estate and interest of Transferor Companies pursuant to Sec.232 read with Sec.230 of the Companies Act, 2013 but subject nevertheless to all charges, now affecting the same.
- iii. All the liabilities and duties of the Transferor Companies is transferred without further act or deed to Transferee Company and accordingly the same shall become liabilities and duties of Transferee Company pursuant to Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
- iv. All the proceedings and/or suit/appeals now pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- v. The Transferee Company do issue and allot shares to the shareholders of Transferor Companies as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital.
- vi. Post dissolution of the transferor companies, the fee paid by the transferor companies on their Authorized Share Capital to be set off against the fee payable by the Transferee Company on its authorized share capital subsequent to the amalgamation.
- vii. Leave is granted to the petitioner Companies to file schedule of assets of the transferor Companies within 60 days from the date of this order.
- viii. The Transferor Companies shall stand dissolved from the appointed date, without winding up.

- ix. The Transferee Company and the Transferor Companies shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein, cause certified copies of this order to be delivered to the Registrar of Companies/ West Bengal for registration respectively;
- x. That, any person interested be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;
14. The Company Petition being C.P. (CAA) No.594/2018 connected with C.A (CAA) No.3/KB/2018 is disposed of accordingly.
15. There shall be no order as to costs.
16. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Sd/- 26/9/2018

Madan Gosavi
Member (J)

Signed on 26th September 2018