

**NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

CP/124/CAA/2018  
MA/142/2018

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

In the matter of Composite Scheme of Amalgamation  
of

**M/s.Softech Ecoworld Private Limited**  
(Petitioner/ Transferor Company-1)

And

**M/s.RMZ Software Parks Private Limited**  
(Petitioner / Transferor Company-2)

With

**M/s.RMZ Infinity(Chennai) Limited**  
(Transferee Company)

and

**Their Respective Shareholders**

Order delivered on: 18.09.2018

**Coram:**

**K. ANANTHA PADMANABHASWAMY, MEMBER (J)**  
**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

*For the Petitioner : Shri.Pawan Jhabakh, Advocate*  
*Shri.K.Manivannan, Authorised Representative for OL*  
*Shri.Rajkumar Jhabakh, For IT Department*

**ORDER**

**Per:S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

Under consideration is a Company Petition in CP Nos.159/CAA/2018 filed under Section 230 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The instant application pertains to the proposed Scheme of Amalgamation by virtue of which **M/s.Softech Ecoworld Private Limited** (Petitioner/ Transferor Company-1), **M/s.RMZ Software Parks**

**Private Limited (Petitioner/ Transferor Company-2) And M/s.RMZ Infinity(Chennai) Limited (Transferee Company).**

- 1) The Authorised and issued, subscribed & paid up share capital of the applicant companies (Transferor Companies and resultant company) and the Transferee Company are as under:

Particulars	Authorized Capital	Issued, subscribed & paid-up Capital	Equity Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company 1	Rs.10,00,000/-	Rs.1,00,000/-	2	1	2
Transferor Company 2	Rs.10,00,000/-	Rs.7,68,770/-	2	Nil	2
Transferee Company	Rs.7,15,00,000/-	Rs.3,87,00,000/-	7	Nil	3

- 2) The Transferor Company 1 is a Private Limited Company, it was incorporated on 20.05.2016 under the provisions of the Companies Act, 2013. The Transferor Company -2 is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 19.01.1993 with the ROC, Kolkata under the name and style of "Sparkle Endeavours and Estate Private Limited" and changed the name to M/s.TCG Software Parks Private Limited and a fresh incorporation certificate was issued on 08.07.2004 and the name was again changed to M/s.RMZ Software Parks Private Limited. The Transferor Company-2 shifted its registered office

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from the state of West Bengal to the state of Tamil Nadu and consequently was issued a new certificate dated 31.05.2017 altering the Memorandum of Association to the extent of the registered office of the Company. The Transferee Company is a Public Limited Company incorporated on 31.08.1984 under the provisions of the Companies Act, 1956 with the ROC, Chennai under the name and style of DEC Engineering & Consultants Limited which was subsequently changed to M/s.W.S.Ceram (India) Limited on 22.12.1997 and further to M/s.W.S.Electric Limited on 20.12.1999 and further the name was changed to M/s.RMZ Infinity (Chennai) Limited and subsequently a fresh incorporation certificate was issued on 29.03.2017. The Transferor Companies 1, 2 and the Transferee Company have their registered office at “RMZ Millenia Business Park”, Campus 1C, 1<sup>st</sup> Floor, Dr.MGR Road (North Veeranam Salai), Perungudi, Chennai-600 096.

- 3) This Bench vide its order dated 07.03.2018 in CA No. 45/CAA/2018 has already issued orders regarding meeting of equity shareholders, secured and unsecured creditors, wherein the meetings have been dispensed with. The Applicant Companies have complied with all the orders passed by the Bench.
- 4) The rationale for the Scheme of Amalgamation is as follows

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- a) Consolidation of like businesses of the group to enhance value to shareholders;
  - b) Transferor Companies and Transferee Company are under the common control and management and operate in the same industry i.e. construction and development of commercial buildings. Hence, the amalgamation seeks to optimize and reduce the operational and other costs associated with running of multiple group companies within the same industry and under the same management. Further, as they operate in the same sector, the amalgamation would bring in synergies in the business operations of the Transferor Companies and the Transferee Company etc.
- 5) In this case as per the provisions of the Companies Act, 2013, notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objections to the scheme under reference. In this case, the applicant companies have filed an affidavit dated 29.08.2018 stating that they are exempted under the Competition Act 2002 and the regulation made there under.
- 6) The Regional Director, Southern Region (In short, 'RD') in their Report Affidavit (for brevity, 'Report') dated 29.08.2018 submitted that as per records of ROC, the applicant companies are

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regular in filing their statutory returns and no investigation is pending against the companies. It is further submitted that as per Clauses 5 of the scheme of the companies provide for the protection of the interest of the employees/staff/workmen of the Transferor Companies and the demerged undertaking.

- 7) In the Report of the RD it is stated that the ROC, Chennai has stated that as per their records the transferor company 2 is having one subsisting charge and the transferee company is having four subsisting charges. In light of the above it is directed that the companies may furnish the consent affidavit from the said creditors, if the charges have been satisfied they are directed to furnish proof of filing the satisfaction of charges with ROC, Chennai. In this regard in the affidavit dated 29.08.2018 it has been stated that there are no secured creditors and that the charges pertaining to certain secured creditors subsist and are reflected with the records of the ROC, Chennai.
- 8) With regard to the charges pertaining to the Transferor Company -2 the petitioner has stated that there exists one subsisting charges of Housing Development Finance Corporation Limited (HDFC) who is a secured creditor of the Transferor Company-1 and that their consent affidavit has been filed. The subsisting charges has been created as the Transferor Company -2 has charged its assets to a

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direct borrowing undertaken by the Transferor Company-1 and that there has been no borrowings undertaken by the Transferor Company-2 from the HDFC. **(Annexure 1 & 2)**

9) With regard to the charges pertaining to the Transferee Company the petitioner has stated that there exists one subsisting charges of Housing Development Finance Corporation Limited (HDFC) who is a secured creditor of the Transferor Company-1 and that their consent affidavit has been filed. The subsisting charges has been created as the Transferee Company has charged its assets to a direct borrowing undertaken by the Transferor Company-1 and that there has been no borrowings undertaken by the Transferee Company from the HDFC. **(Annexure A3)**

10) In the Report the RD has stated that in clause 7.2 of the scheme it is stated that the authorized capital of the Transferor Companies will be merged with the authorized capital of the transferee company. In the said clause of the scheme it has been stated that the transferee company would not be required to pay any fee or stamp duty for the increase in the Authorized capital. In this regard the RD has observed that as provided u/s 232(3) of the Companies Act, 2013 by the transferee has to pay the fees, if any, for the enhanced authorized capital subsequent to the amalgamation after setting off the fees paid by the Transferor Companies and the

petitioners have undertaken to comply with the same vide their affidavit dated 29.08.2018.

11) The Official Liquidator (In short, 'OL') in their report dated 24.08.2018 submitted that **M/s.Jai Kaishin & Arun Associates, Chartered Accountants** appointed by the official liquidator of the Hon'ble High Court, has scrutinized the books and accounts of the applicant companies (Transferor Companies). The Auditor observed that the Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principles and policies in accordance with the requirements of the Companies Act, 2013 and also the affairs of the companies have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest.

12) The OL further submitted that as per Clauses 5 of Part II of the proposed scheme, the interest of all the staff, workmen and employees in the service of the Transferor Companies are safeguarded. As per the Clause 11.1 Part -II of the said Scheme, the entire share capital of the Transferee Company is held by Transferor Company No.1, in other words the Transferor Company is wholly owned subsidiary of the Transferor Company No.1. Also the entire share capital of the Transferor Company No.2 is held by the Transferor Company No.1. Accordingly, pursuant to this

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amalgamation, shares will be allotted by the Transferee Company to the shareholders of the Transferor Company No.1 and no shares of the Transferee Company shall be allotted in respect of Transferor Company No.1. Upon the scheme becoming effective, the entire share capital of the Transferor Companies shall be deemed to have been cancelled and extinguished, without any further act or deed. Further, that as per the Clause 11.2 of part-II of the aforesaid Scheme, upon the Scheme becoming effective, the Transferee Company shall issue and allot shares to each shareholders of the Transferor Company No.1 whose name appears in the Register of Members as on Record Date or to their respective heirs or the successors- in -title as the case may be will be issued and allotted 7,62,340 equity shares of the Transferee Company of INR 10/- each fully paid up. No shares shall be issued in fractional entitlements, if any, by the Transferee Company to the shareholders of the Transferor Company No.1 at the time of issue and allotment of equity shares. The valuation of shares of the Transferor Company No.1 and the Transferee Company have been done by M/s.Vikas Oaswal & Associates, Chartered Accountants, Bangalore, vide report dated 12.12.2017.

- 13) Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting

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standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the Scheme is 01.04.2017.

**14)** The accounting treatment regarding the amount involved due to non-issue of fractional holding has not been fully explained. The total value of the fractional shares shall be taken as a capital reserve in the books of accounts of the Transferee Company. Since the two shareholders of the Transferor Company-1 have consented for the scheme of amalgamation no orders regarding payment to such fractional holdings is being given.

**15)** The Scheme does not require any modification and the said Scheme of Amalgamation appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under the Companies Act, 2013. Taking into consideration all the above, the Company Applications are allowed and the Scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on all the members and shareholders.

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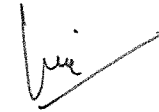
- 16) While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained and compliances that may have to be made as per the mandate of law.
- 17) The Transferee Company is directed to file the amended MoA and AoA with RoC as stated by the RD.
- 18) The applicant companies 1 and 2 shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.
- 19) Upon receiving the certified copy of this order, the RoC is directed to place all documents relating to the 1<sup>st</sup> and 2<sup>nd</sup> Transferor Companies with that of the Transferee Company and the files relating to the 1<sup>st</sup> and 2<sup>nd</sup> Transferor Companies shall be consolidated with the files and records of the Transferee Company.
- 20) The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme. The Petitioner Companies are directed to file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order. /s/

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- 21) The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14<sup>th</sup> December, 2016.
- 22) In this Company Petition, the Application in MA/142/2018 has been filed praying for condonation of delay of 25 days in filing the Company petition. In this regard it is observed that vide the order dated 07.03.2018 this Tribunal has directed the Applicant companies to file the petitions on or before 16.04.2018 but the same was filed before this Tribunal only on 10.05.2018. Accordingly, the Application in MA/142/2018 is allowed and the delay of 25 days is condoned.

In view of the above, the Scheme stands sanctioned and the Application in MA/142/2018 and the Company Petition No. CP/124/CAA/2018 stand disposed of.

  
(S.VIJAYARAGHAVAN)  
MEMBER (TECHNICAL)

  
(K.ANANTHA PADMANABHA SWAMY)  
MEMBER (JUDICIAL)

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