

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

Company Application No. (CAA)245/KB/2017

Judgement dated :

Coram : Shri Vijai Pratap Singh, Hon'ble Member(Judicial)
&
Shri Jinan K.R, .Hon.ble Member(Judicial)

In the matter of:

SECTIONS 230 to 232 OF THE COMPANIES ACT, 2013

And

In the matter of Scheme of Amalgamation

BETWEEN

- 1) **Eastern Financiers Limited,**
a company incorporated under the Companies Act, 1956
having its Registered Office at :
14, India Exchange Place, Kolkata-700001
.....Transferee Company / Applicant Company No.1.
- 2) **Active Distributors Private Limited,**
a company incorporated under the Companies Act, 1956
having its Registered Office at :
14, India Exchange Place, Kolkata-700001
.....Transferor Company / Applicant Company No.2.

AND

Their respective Shareholders .

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FOR THE PETITIONER :

1. Mrs. Manju Bhuteria, Advocate
2. Mr. M.K. Maroti, Pr.C.A.

ORDER

Per Shri Vijai Pratap Singh, Hon'ble Member (Judicial)

This is an application filed by the Applicants namely Eastern Financiers Limited (for brevity Transferee Company / Applicant Company No.1) and Active Distributors Private Limited (for brevity Transferor Company / Applicant Company No.2) under section 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 (for brevity the Act) read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity Rules) in relation to the Scheme of Arrangement / Amalgamation (hereinafter referred to as "Scheme") proposed between the Applicants and the said Scheme is also annexed as Annexure 'C' to the application. The Applicants have preferred instant joint application for the following purposes as is evident from the relief sought for in the application namely :-

1. For admission of the application filed by the applicants before the Hon'ble Tribunal for being heard.
2. That the Hon'ble Tribunal pass order for dispensing the meeting of Shareholders of all the Applicant Companies as the Shareholders of the

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Applicant Companies have given their written consent for adopting the Scheme of Amalgamation without modification with request to the bench for dispensing the said meeting.

3. That the Hon'ble Tribunal pass order for dispensing the meeting of secured creditors of all the Transferee Company as the said secured creditors have given their written consent for adopting the Scheme of Amalgamation without modification with request to the bench for dispensing the said meeting.

4. That the Hon'ble Tribunal pass order for dispensing the meeting of unsecured creditors of the Applicant Companies as the unsecured creditors of the Applicant Companies have given their No Objection Certificate for adopting without modification the Scheme of Amalgamation with request to the bench for dispensing the said meeting.

2. An affidavit in support of the above joint application has been sworn in by the Transferor company by Shri Ambrish Agarwal, being the Director of the respective companies. The affidavit has been placed on record along with the application. Consent for the joint application took us through averments made in the application as well as documents annexed therein.

3. Ld. Counsels for the applicants represented that the Scheme does not contemplate with corporate debt restructuring as contemplated under section 230 to 232 and represented that a joint application has filed by the applicants

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which are amenable in view of the rule 3 (sub-clause 2) of the Rules. It is also represented that registered offices of all the applicants are situated within the territorial jurisdiction of this tribunal and falling within domain of Registrar of Companies, Eastern Region, Kolkata.

4. In relation to transferee company, Eastern Financiers Limited, there are 10 equity shareholders and affidavit of the said equity shareholders giving their consent and seeking waiver and dispensing with the meeting of shareholders is annexed to the application and marked as Annexure 'A'.

5. In the General Affidavit Verifying Application, it is stated that there are 4 shareholders in transferor company, Active Distributors Private Limited, and the affidavit of the said equity shareholders giving their consent and seeking waiver and dispensing with the meeting of shareholders of Active Distributors Private Limited is annexed to the application and marked as Annexure 'B'. The Affidavit has been filed through Shri Ambrish Agarwal as Directors of Transferor and Transferee company.

6. It is also stated in the application that there is one unsecured creditor in Transferor company, Active Distributors Private Limited and the affidavit of the said unsecured creditor giving no objection and seeking waiver and dispensing with the meeting of unsecured creditor of Active Distributors Private Limited is annexed to the application and marked as Annexure 'C'.

7. The shareholders of Applicant No. 1/ Transferee Company seek dispensing with convening and holding up of the meeting for the purpose of

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obtaining the approval to the proposed Scheme of Amalgamation, in view of the consent affidavit having been obtained from all equity shareholders. In relation to creditors of Transferor company, Active Distributors Private Ltd. does not have any secured creditor, there is only one unsecured creditor who has given consent for dispensing with the meeting.

8. The shareholders of the Applicant No.1/Transferee Company and Applicant No.2/Transferor Company seek dispensing with convening and holding of the meeting for the purpose of obtaining their approval from the Scheme of Amalgamation in view of the consent affidavit having been obtained from all the equity shareholders. In relation to the secured and unsecured creditors, the requirement for convening meeting does not arise relating to the Applicant Company No. 2, as there is no secured and only one unsecured creditor in the transferor company, who has given consent for dispensing with the meeting.

9. In relation to Applicant No.1/Transferee Company, no petitioner seeks for convening and holding of meeting for the purpose of obtaining the approval to the proposed Scheme of Amalgamation from the secured and unsecured creditors.

10. The above joined application has been filed on 25.04.2017 as having seen from the endorsement register of this Tribunal and therefore, this Tribunal proceeds to entertain the above joint application filed under the 2013 Act. Further, the registered offices of the applicants are situated in Kolkata, West

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Bengal, and subject to the jurisdiction of Registrar of Companies, West Bengal, Kolkata, and hence amenable of the territorial jurisdiction of this Tribunal.

11. We have perused the joint application, connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the applicant companies.

12. From the Certificate of Incorporation filed, it is evident that the Transferee company/Applicant Company No.1 was incorporated under the name and style of "Eastern Financiers Private Limited" on 14th October, 1986 as a private company limited by shares and it was converted into a public company with effect from 13th May, 1994. The objects for which the Transferee company was incorporated will appear from its said Memorandum of Association annexed to the application and marked with the letter 'A'. The transferee company is presently engaged in the business of financial intermediaries apart from investing activities.

13. Transferor company, Active Distributors Private Limited, was originally incorporated on 11th January, 2008 as a private company limited by shares under the provision of the Companies Act, 1956. A copy of the Memorandum and Articles of Association of the transferor company is annexed as Annexure 'B'. The registered office of the Transferor company is situated in Kolkata in the State of West Bengal within the aforesaid jurisdiction. The object for which the Transferor company was incorporated will appear from its said Memorandum of Association annexed to the application and marked with letter 'B'. The authorised capital of the Transferor company is Rs. 1,50,00,000/- divided into

15,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.1,22,50,000/- divided into 12,25,000 equity shares of Rs.10/- each.

14. The accounts of the Transferor company have been audited on 31st March, 2016 and audited accounts has been annexed to the petition as Annexure 'F' and auditors of the Transferor company has not made any adverse remarks / comments on the said report.

15. The Board of Directors of the Applicant No.1/Transferee Company and the Applicant No.2/Transferor Company, vide separate meetings held on 31st January, 2017, unanimously approved the proposed Scheme of Amalgamation and copies of Resolution passed therein have been annexed to the application as Annexure 'H'.

16. Taking into consideration the application filed jointly by the Transferee company and Transferor company and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and unsecured creditors or dispensing with the same as well as issue of notices including proper publication as follows :-

- i) The holding of meeting of equity shareholders of applicant No 1 EASTERN FINANCIERS LIMITED (Transferee Company) is dispensed with as there are only 10(ten) equity shareholders and they have given their consent and their affidavits of consent have been placed on record .

- ii) The holding of meeting of equity shareholders of applicant No 2 ACTIVE DISTRIBUTORS PRIVATE LIMITED (Transferor Company) is dispensed with as there are only 4 (four) equity shareholders and they have given their consent and their affidavits of consent have been placed on record .
- iii) The holding of meeting of unsecured creditor of applicant No.2 ACTIVE DISTRIBUTORS PRIVATE LIMITED (Transferor Company) is dispensed with as there is only 1(one) creditor and the said creditor has given his consent and their affidavit of consent has been placed on record .
- iv) That meeting of Secured creditors of Applicant No. 1 shall be held at the registered office of the **14, INDIA EXCHANGE PLACE KOLKATA- 700001** in the State of West Bengal on Friday, 3rd November, 2017 at 3.00 P.M for the purpose of considering, and if thought fit, approving, with or without modification the said Scheme of Amalgamation.
- v) That meeting of unsecured creditors of Applicant No. 1 shall be held at the registered office of the **14, INDIA EXCHANGE PLACE KOLKATA- 700001** in the State of West Bengal on Friday , 3rd November , 2017 at 4.00 P.M for the purpose of considering , and if thought fit , approving , with or without modification , the said Scheme of Amalgamation .

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- vi) That at least 30 clear days before the date of said meetings of the secured and unsecured creditors of the Transferee Company, an advertisement convening the said meetings at the place, date and time aforesaid and stating that copies of the proposed Scheme of Arrangement and Amalgamation and the statement containing necessary details required to be furnished pursuant to Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and a prescribed form of proxy can be obtained free of charge at the Registered Office of the concerned transferee company shall be published once each in two local Newspapers viz., in the English newspaper "Business Standard" and in Bengali newspaper "Aajkal" having circulation in Kolkata as per requirements of Section 230 of the Companies Act, 2013 in Form No. CAA-2 (Rule 7) of the Companies (Compromises, Arrangements & Amalgamation) Rules, 2016. A joint advertisement for such meetings may be given.
- vii) That, in addition, at least 30 (thirty) clear days before the meetings of the secured and unsecured creditors of the Transferee company to be held as aforesaid, a notice convening the said meetings at the place and time as aforesaid together with a copy of the proposed Scheme, the Statement disclosing necessary details as required to be sent under section 230 of the Companies Act, 2013, and the prescribed form of proxy, shall be sent by Registered Post or Speed Post with Acknowledgement Due Card or by hand delivery through Personal

Messenger or electronic mode addressed to each of the creditors of the concerned Transferee Company at their respective registered or last known addresses / e-mail addresses as per records of the company. The notice convening meetings of creditors shall be as per Form No. CAA-2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- viii) Shri Santinath Sarkar, FCA, (Mob 9331052851) shall be the Chairperson for the said meetings of the secured and unsecured creditors of Applicant No. 1 to be held at the aforesaid address at the aforesaid time.
- ix) The consolidated remuneration of the Chairperson for conducting the said meetings of the creditors is fixed at Rs.40,000/-.
- x) That the quorum for the meetings of the secured and unsecured creditors of the Applicant No. 1 be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
- xi) That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meetings, is filed with the Applicant Company No.1 at its Registered Office not later than forty-eight hours before the meetings. The Chairperson shall have the power to adjourn his meetings, if necessary and to conduct the procedure for the adjourned meetings as deemed necessary.
- xii) That the Chairperson do report to this Tribunal the results of the said meetings of the creditors of the Applicant

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Company No.1 within four weeks from the date of the conclusion of the respective meetings and his reports shall be in Form No. CAA 4 pursuant to Rule 13(2) and 14 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016, verified by his affidavit(s).

17. Accordingly, let notice be served as per requirements of sub-section (5) of section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme and the Statement disclosing necessary details upon the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal and Income Tax department as also the Official Liquidator having jurisdiction over the transferor and transferee companies and such other relevant sectoral regulators / authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by registered post or speed post within 7 days from the date of this order for filing their representation, if any, on the petition within 30 days from the date of notice. The Applicant No.1 is to file affidavit within 7 days regarding service of notice. The Applicant No.1 is further directed to send notice through e-mail also and filed copies of the e-mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of notice with a copy of such representation being sent simultaneously to the Applicant No. 1 and / or their Advocate. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have not representation to make on the Scheme of Amalgamation, as per Rule 8 of the Companies (Compromises, Arrangements & Amalgamation) Rules, 2016.

18. Such notices shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No. CAA-3 (Rule 8) of the Companies (Compromises,

Arrangements & Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

19. The application being C.A.(CAA) No.245/KB/2017 is disposed of accordingly.

20. The Parties and Chairperson shall act on the order.

21. There shall be no order as to costs.

22. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Sd.

(Jinani K.R.)
Member(J)

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(Vijai Pratap Singh)
Member (J)

Signed this *11th* day of October, 2017.