

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

Company Petition CP(CAA) No.687/KB/2017

IN THE MATTER OF:

An Application made under Sections 230 and 232 of the  
the Companies Act, 2013

-And-

IN THE MATTER OF:

EMC Limited, a Company incorporated under the  
Companies Act, 1913 on May, 1953, having its registered  
office at Constantia Office Complex, (South Block), 8<sup>th</sup>  
Floor, 11, Dr. U.N. Brahmachari Street, Kolkata – 700 017,  
West Bengal, within the aforesaid jurisdiction ;

And

EMC Tower Limited, a Company incorporated under the  
provisions of the Companies Act, 1956 on May 28, 2010,  
having is registered Office at 51, Canal East Road,  
Kolkata – 700 085, West Bengal, within the aforesaid  
jurisdiction ;

And

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EMC Forging Limited, a company incorporated under the provisions of the Companies Act, 1956 on May 28, 2010, having is registered Office at 51, Canal East Road, Kolkata – 700 085, West Bengal, within the aforesaid jurisdiction ;

And

EMC Hardware Limited, a company incorporated under the provisions of the Companies Act, 1956 on 22-09-1982, having is registered Office at 51, Canal East Road, Kolkata – 700 085, West Bengal, within the aforesaid jurisdiction ;

And

Enpee Merchants Private Limited, a company incorporated under the provisions of the Companies Act, 1956 on 17-09-1997, having its registered office at Constantia Office Complex, (South Block), 8<sup>th</sup> Floor, 11, Dr. U.N. Brahmachari Street, Kolkata – 700 017, West Bengal within the aforesaid jurisdiction ;

And

Earnmore Fincon Private Limited, a company incorporated under the provisions of the Companies Act, 1956 on 23-03-1993, having its registered office at Constantia Office Complex, (South Block), 8<sup>th</sup> Floor, 11, Dr. U.N. Brahmachari Street, Kolkata – 700 017, West Bengal within the aforesaid jurisdiction ;

And

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EMC Infrastructure Limited, a company incorporated under the provisions of the Companies Act, 1956 on 12-07-2010, having its registered Office at 51, Canal East Road, Kolkata – 700 085, West Bengal, within the aforesaid jurisdiction ;

1. EMC LIMITED
2. EMC TOWER LIMITED
3. EMC FORGING LIMITED
4. EMC HARDWARE LIMITED
5. ENPEE MERCHANTS PRIVATE LIMITED
6. EARNMORE FINCON PRIVATE LIMITED
7. EMC INFRASTRUCTURE LIMITED

.. Petitioners

Judgment delivered on : 09-1-18

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

For the Petitioners:

Mr D N Sharma, Advocate

Mr. Trivikram Khaitan, Advocate

Per V.P. Singh

ORDER

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The object of this petition is to obtain sanction of this Tribunal to a Scheme of Amalgamation of EMC Limited, being the petitioner Company No.1, EMC Tower Limited, being the petitioner Company No.2, EMC Forging Limited, being the petitioner company No. 3, EMC Hardware Limited, being the petitioner company No.4, Enpee Merchants Private Limited, being the petitioner Company No. 5 and Earnmore Fincon Private Limited, being the petitioner company No.6, the Transferor Companies, with EMC Infrastructure Limited, being the petitioner Company No. 7, the Transferee Company, on the terms and conditions fully stated in the Scheme, a copy whereof is annexed with the Petition and marked "A".

It has been stated in the Petition that there are common shareholders and common Directors in the petitioner companies. All the companies belong to common group and common management.

In order to integrate, improve the organization capability, leadership and unfettered access to cash flow generated by the combined business, further improve shareholders' value and in the overall interest of future growth and diversification of the business of the Companies, the Scheme of Amalgamation is proposed to amalgamate EMC, EMC Tower, EMC Forging, EMC Hardware, EMPL and EFPL with the Transferee Company, namely, EMC Infrastructure Limited.

The Scheme of Amalgamation will result in enhancing the scale of operations and reduction in and/or optimization in overheads, costs, administrative, managerial



and other expenditure, operational rationalisation, organisational efficiency and optimal utilization of various resources and also benefiting from economies of scale.

It has been further stated in the Petition that the Scheme of Amalgamation is in the interest of the shareholders, creditors and all other stakeholders of the respective companies and is not prejudicial to the interests of the concerned shareholders, creditors or the public at large.

The Scheme of Amalgamation will result in realizing value of assets and increase in net worth. The Transferee Company will have the ability to optimize on its large assets base, which would facilitate enhancement of the shareholder value.

The Board of Directors of the Transferor Companies and the Transferee Company have, at their respective meetings held on 29-06-2017 and on 30-06-2017, by resolutions passed unanimously, approved the said Scheme of Amalgamation.

It is stated in the petition that the aggregate assets of the petitioner companies are more than sufficient to meet all their liabilities and the Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the petitioner companies in any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due in usual course.

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It is also stated in the Petition that there are no proceedings pending under Sections 206 to 213 of the Companies Act, 2013 against any of the Petitioner Companies.

The Scheme of Amalgamation does not attract the provisions of Competition Commission of India.

There are also no proceedings pending under Sections 241 and 242 of the said Act.

It is stated in the Petition that no one will be prejudiced if the Scheme of Amalgamation is sanctioned and the sanction of the Scheme of Amalgamation will benefit and will be in the interest of the Petitioner Companies, their shareholders, creditors, employees and all concerned.

By an order made in the Company Application No. CA(CAA)/362/KB of 2017 on 06-09-2017, this Tribunal directed convening of meetings of the equity shareholders and unsecured creditors of the Petitioner Companies and convening of meetings of the Secured Creditors of Petitioner Company No.1, namely, EMC Limited.

On 27-10-2017, the said meetings of the Equity Shareholders and the Unsecured Creditors of the Petitioner Companies and the Secured Creditors of the Petitioner Company No.1, namely, EMC Limited had been duly convened in accordance with the said Order of this Tribunal dated 06-09-2017.

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The Equity shareholders of all the Transferor Companies and the Transferee Company, the Secured and the Unsecured Creditors of EMC Tower, EMC Forging, EMC Hardware, EMPL, EMFL and the Transferee Company unanimously passed the resolution approving the Scheme of Amalgamation.

The Unsecured Creditors of EMC Limited, Petitioner Company No.1 approved the Scheme of Amalgamation by requisite majority.

The Secured Creditors of EMC Limited, the Petitioner Company No.1, approved the Scheme of Amalgamation unanimously.

The Chairperson of the said meetings, as appointed by this Tribunal vide Order dated 06-09-2017, has reported the results of the said meetings before this Tribunal. A copy of the said reports are annexed with the Petition and collectively marked "T".

It has also been stated in the Petition that pursuant to the Order dated 06-09-2017 of this Tribunal, notices were also advertised in the "Business Standard" in English and once in the "Pratidin" in Bengali in their respective issues dated 22-09-2017.

Further, as stated by the Petitioner Companies vide Affidavit dated 04-01-2018, notices were served on the Regional Director, Eastern Region, Kolkata, Registrar of Companies, West Bengal, Official Liquidator, Kolkata, Income – Tax Department,

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having jurisdiction of the Petitioner Companies and the Reserve Bank of India on 20-09-2017 and 21-09-2017.

It is further stated by the Petitioner Companies in the said affidavit dated 04-01-2018 that none of the Petitioner companies are registered Non-Banking Financial Companies, registered with Reserve Bank of India and as such no approval-no-objection is required to be obtained from the Reserve of India.

Further, none of the Petitioner Companies are listed Companies and the Sectoral/statutory authorities, namely, SEBI, Stock Exchanges and/or the Competition Commission of India will not be affected or concerned by the Scheme of Amalgamation and accordingly their approvals are also not required.

The Official Liquidator, attached with the Hon'ble High Court, Calcutta, vide his report dated 28-12-2017 has stated that in order to enable the Official Liquidator to make his report and give his opinion, the Official Liquidator appointed Chartered Accountant from the panel of Auditors of the Hon'ble High Court, Calcutta, to examine the Books, papers, records and documents of the above Transferor Company and to make report indicating clearly as to whether in the opinion of the said Chartered Accountant, the affairs of the Transferor Company have been conducted in a manner prejudicial to the interest of its members or to public interest.

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Accordingly, the said Chartered Accountant has examined the books, records and other documents of the Transferor Companies and submitted his report to the Official Liquidator.

The Official Liquidator, attached to the Hon'ble High Court, Calcutta, in his report dated 28-12-2017, has enclosed the said report of the Chartered Accountant and quoted the concluding portion of the report submitted by the said Chartered Accountant wherein it has been written, inter alia, as under :

" Further, on the basis of verification carried out in accordance with the generally accepted auditing practices and conventions including test checks, we are of the opinion that the affairs of the Transferor Companies, have not been conducted in a manner prejudicial to the interest of its members or to public interest."

After such due compliance, the petitioners have made the instant petition bearing No. CP(CAA)/687/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Arrangement and for orders facilitating and giving effect to the same.

Heard the arguments of the Ld. Counsel for the petitioners.

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 of Arrangement and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal and the concerned Assessing Officer along with the Chief Commissioner of Income-Tax



with PAN numbers of the Applicant Companies, through E-mail and by Speed post, both, as also the Official Liquidator having jurisdiction of the transferor and the 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, both, within seven 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 petitioners are to file an affidavit, along with the copy of the notice within seven days regarding service of the notice.

The petitioners are further directed to send notice through e-mail also and file the copies of the 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 the notice with a copy of such representation being sent simultaneously to the petitioners and their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement.

Such notices shall be sent under Section 230(5) of the Companies Act, 2013 in Form No. CAA-3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published one in the English daily, "The Business Standard" and another in the Bengali daily newspaper, "Pratidin", same as was made earlier in 1<sup>st</sup> motion, stating the PAN numbers of all the Petitioner Companies, 10 days before the date fixed for hearing under Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

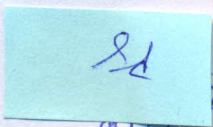
The petition is fixed for hearing on 23-02-2018.

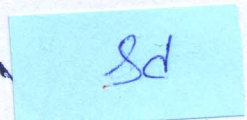
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Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

  
(K.R. Jindan)  
Member(Judicial)

  
(V.P. Singh)  
Member(Judicial)

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