

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

C.P. No. 712/KB/2017

connected with

CA (CAA) No. 278/KB/2017

In the matter of:

Sections 232 (3) of the Companies Act,
2013 read with Rule 15 of the Companies
(Compromises, Arrangements and
Amalgamations) Rules, 2016

And

In the matter of:

1. EAST INDIA INVESTMENT COMPANY
PRIVATE LIMITED a company incorporated
under the Companies Act, 1913 and
having its registered office at 9/1, R.N.

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Mukherjee Road, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

2. MAZBAT PROPERTIES PRIVATE LIMITED a company incorporated under the Companies Act, 1956 and having its registered office at 9/1, R.N. Mukherjee Road, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

3. MAZBAT INVESTMENTS PRIVATE LIMITED a Company incorporated under the Companies Act, 1956 and having its registered office at 9/1, R.N. Mukherjee Road, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

4. VARUNENDRA TRADING AND AGENTS PRIVATE LIMITED a Company incorporated under the Companies Act, 1956 and having its registered office at 9/1, R.N. Mukherjee Road, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

And

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1. EAST INDIA INVESTMENT COMPANY PRIVATE
LIMITED

2. MAZBAT PROPERTIES PRIVATE LIMITED

3. MAZBAT INVESTMENTS PRIVATE LIMITED

4. VARUNENDRA TRADING AND AGENTS PRIVATE
LIMITED

- PETITIONERS

CORAM: Shri V. P. Singh, Member (Judicial)

Shri Jinan K.R., Member (Judicial)

For the Petitioners:

1. Ms. Bidisha Achari, PCS

2. Ms. Neha Somani, PCS

Date of pronouncing the order: 18-01-18

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ORDER

Per V.P. Singh, Member (Judicial)

The object of this petition is to obtain sanction of this Tribunal to the Scheme of Amalgamation proposed to be made between the Transferee Company, East India Investment Company Private Limited and the Transferor Companies, namely, Mazbat Properties Private Limited, Mazbat Investments Private Limited and Varunendra Trading and Agents Private Limited and their respective shareholders whereby and where under the entire undertaking of the Transferor Companies as a going concern together with all its assets and liabilities will stand transferred to and vested in the transferee Company with effect from 1st April, 2016 ("Appointed Date") in a manner provided in the Scheme of Amalgamation duly approved by the shareholders of the Petitioner Companies at their meetings vide order dated 04-08-2017 of this Tribunal in Company Application CA (CAA) No. 278/KB/ 2017.

A copy of the Scheme of Amalgamation is annexed with the petition and marked with "A".

It is stated in the Petition that The Reserve Bank of India vide Notification No.DNBS.132/CGM(VSNM)-99 dated April 21, 1999 stipulated the minimum Net Owned Fund ("NOF") requirement for new companies applying for grant of CoR

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to commence business of an NBFC at Rs. 200 lakh. Although the requirement of minimum NOF at present stands at Rs. 200 lakh, the minimum NOF for companies that were already in existence before April 21, 1999 was retained at Rs. 25 lakh. Since the Transferor Companies and Transferee Company were companies in existence before April 21, 1999, the minimum NOF requirement for them was Rs. 25 lakh only. However, the Reserve Bank of India vide notification No. RBI/2014-15/299 DNBR (PD) CC. No. 002/03.10.001/2014-15 dated November 10, 2014, has stipulated that it shall be mandatory for all NBFCs to attain a minimum NOF of Rs. 200 Lakh by the end of March, 2017.

In view of the above RBI Notifications and to comply with the minimum NOF requirement, it is proposed to merge MPPL, MIPL and VTAAPL (Transferor Companies) in EICPL (Transferee Company) leading to increase in the post-merger net owned funds of Transferee Company, EICPL to Rs. 377.90 Lakh

It is further stated in the Petition that the proposed scheme shall result in consolidation of the business in one entity and strengthen the position of the merged entity, by enabling it to harness and optimize the synergies of the Applicant Companies. Accordingly, it would be in the best interests of the shareholders of the Transferor Companies and Transferee Company.

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All the Applicant Companies belong to the same Group and are managed and controlled by the same management, thus the proposed amalgamation shall not lead to any change in the management and control of Transferee Company. The amalgamation of Transferor Companies with the Transferee Company would lead to a more efficient utilization of capital for future growth of the amalgamated entity.

The amalgamation will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources. It will prevent cost duplication and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure and facilitate resource mobilization and achieve better cash flows. The synergies created by the amalgamation would increase the operational efficiency and integrate business functions.

The amalgamation will provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capabilities, experience and infrastructure of the companies. The amalgamation will also reduce the managerial overlaps involved in operating different entities, ease and increase operational and management efficiency, integrate business

functions, and eliminate duplication and rationalization of administrative expenses.

Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value.

Improved organizational capability and leadership arising from the pooling of human capital that has diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement; and synchronizing of efforts to achieve uniform corporate policy.

It is further submitted in the petition that the aggregate assets of the Petitioner Companies are sufficient to meet all their liabilities and said scheme 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.

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Vide order dated 04-08-2017 made in the Company Application CA (CAA) No. 278/KB/ 2017 passed by this Tribunal, all the petitioner Companies were directed to convene meetings of the equity shareholders at the Registered Office for the purpose of considering and if thought fit, approving with or without modification, the scheme of amalgamation.

However, vide Order dated 09-05-2017 of this Tribunal, the requirement of convening meeting of creditors of the Petitioner Companies was dispensed with in view of their written consent, by way of affidavit, to the Scheme of Amalgamation.

List of creditors as on date of order of this Tribunal dated 04-08-2017 and affidavit from each of the creditors were filed as per the order.

In compliance of the said order dated 04-08-2017 of this Tribunal, the Petitioner Companies served notices of the said meetings individually by hand delivery on each of the equity shareholders of the Petitioner Companies together with a copy of the Scheme of Amalgamation and the statement required under section 230 of the Companies Act, 2013 along with the form of proxy.

Further, in compliance with the said order dated 04-08-2017, the notice of the meeting was also advertised by the Petitioner Companies, once in "Aajkal"

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Bengali Newspaper and once in "The Business Standard", English Newspaper on 24-08-2017.

In terms of the said order dated 04-08-2017, Notice in form CAA.3 was duly served upon the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, the Registrar of Companies, West Bengal, the Official Liquidator attached to the Hon'ble High Court, Calcutta, the Reserve Bank of India and the Income Tax Department having jurisdiction over the Transferee and the Transferor Companies.

In compliance with Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the Petitioner Companies filed an affidavit of service to this Tribunal.

On 08-10-2017, respective meetings of equity shareholders of the Petitioner Companies 1, 2, 3 and 4 were duly held at the registered office of the Petitioner Companies and the Equity Shareholders of all the Petitioner Companies unanimously approved the Scheme of Amalgamation.

The chairman appointed for the meetings has duly filed his report on the results of the meetings with the Tribunal.

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After such due compliance, the petitioners have made the instant petition bearing C.P. No. 712/KB/2017, before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation.

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 Amalgamation on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal and the concerned Assessing Officer along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies, by hand delivery through personal messenger or by Speed post, E-Mail, both and also on the Official Liquidator attached to the High Court, Calcutta and Reserve Bank of India, having jurisdiction over the Transferor and Transferee Companies.

The Petitioner Companies shall file an affidavit, along with the copy of the notice within 7 days regarding service of the notice.

The petitioner Companies shall send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any

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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 Amalgamation.

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 once in the English daily, "The Business Standard" and in the Bengali daily, "Aajkal" same as was earlier made in first motion, stating the PAN numbers of all the petitioner companies, at least 10 days before the date fixed for hearing in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The Petition is fixed for hearing on: 06/03/2018.

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

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(Jinan K. R.)
Member(Judicial)

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(V.P.Singh)
Member(Judicial)

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