

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**CP(CAA).No.30/BB/17**

**Under Section 230 to 232 of Companies Act, 2013**

**IN THE MATTER OF  
HOMEWARD RESIDENTIAL CORPORATION INDIA PRIVATE LIMITED  
(TRANSFEROR COMPANY)**

**Order delivered on:20<sup>th</sup> February,2018**

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)  
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s)           1. Shri.Saji.P.John, Advocate  
  2. Smt.Prema Hatti, Central Gov. Standing Counsel  
  3. Shri.Pramod, Assistant, Official Liquidator

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 14.7.2017, 24.7.2017, 2.8.2017, 8.8.2017, 11.9.2017, 11.10.2017, 8.11.2017,  
27.11.2017, 18.12.2017, 4.1.2018, 12.1.2018, 17.1.2018

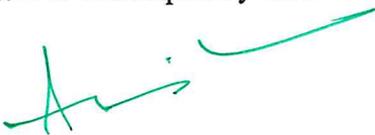
**ORDER**

These Company Petition is filed on behalf of the Petitioner Company under Section 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 praying to order for sanctioning the scheme of Amalgamation of the Transferor Company with the Transferee Company and shall be binding upon all the Shareholders and Creditors of the Company.

The averments made in the Company Petition are briefly described hereunder:-

The Petitioner Company seeks an order for sanctioning the Scheme of Amalgamation of Homeward Residential Corporation India Private Limited (Transferor Company) with Ocwen Financial Solutions Private Limited (Transferee Company). The Scheme of Amalgamation is shown as **Annexure-A**.

The Transferor Company was incorporated on 21<sup>st</sup> December, 2005 under the name, Option One Mortgage Corporation (India) Private Limited with the Registrar of Companies, Maharashtra. Subsequently on 3<sup>rd</sup> December, 2008 the name of the company was changed to



American Home mortgage Servicing India Private Limited. Again on 13<sup>th</sup> April, 2012 the name of the company was changed to Homeward Residential Corporation India Private Limited. Subsequently on 8<sup>th</sup> March, 2016 the registered office of the company was shifted from the State of Maharashtra to the State of Karnataka. The Registered office of the Transferor Company is situated at Pritech Park, Block-12, Unit 2,5B & 6A Floors, Bellandur Village, Sarjapur, Marathahalli Ring Road, Bengaluru-560103.

The main objects of the Transferor Company is to provide information technology enabled services, business process outsourcing services and other services relating to back office operations and all kinds of business support services, including but not limited to operation support services, corporate function services, corporate support service, database services, information management services, telecom services, contact center services, consultancy services, document services, data processing services, data management services, activities for collating, accounting, managing, processing, analyzing, distributing, development and storing documents, information and data, information technology support services, financial control support services, administration support services, professional/legal support, human resources support services, payroll support services, correspondence management services, online support services, financial and revenue accounting. A Copy of Memorandum and Articles of Association of the Transferor Company is shown as **Annexure-B**.

The authorised share capital of the Transferor Company as on 31<sup>st</sup> March, 2017 is Rs.500,000,000/- divided into 50,000,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.337,803,260/- divided into 33,780,326 equity shares of Rs.10/- each. The Audited Balance Sheet of the Transferor Company is shown as **Annexure-C**.

As per audited balance sheet made up to 31<sup>st</sup> March, 2016 summarised position of assets and liabilities of the Petitioner Company as follows:

Liabilities	Rs.	Assets	Rs.
Share Capital	33,78,03,260	Non-Current Assets	25,87,21,174
Reserves and Surplus	20,70,94,710	Current Assets	44,11,98,092
Non-Current Liabilities	3,10,73,148		
Current Liabilities	12,39,48,148		

<b>Total</b>	<b>69,99,19,266</b>	<b>Total</b>	<b>69,99,19,266</b>
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The Transferee Company was incorporated on 17<sup>th</sup> May, 2000 under the name, Ocwen Financial Solutions Private Limited with Registrar of Companies, Karnataka. The Registered office of the Transferee Company is situated at Pritech Park, Block 12, Unit 2,5 & 6 A Floors, Bellandur Village, Sarjapur, Marathahalli Ring Road, Bengaluru-560103.

The main objects of the Transferee Company is to engage in the business of transmission or export out of India any customized electronic data, product and services in all its forms including for running back office processing and support facilities, rendering accounting, data processing , Debt collections and customer support services through such facilities to clients in India or abroad. A Copy of Memorandum and Articles of Association of the Transferee Company is shown as **Annexure-D**.

The authorised share capital of the Transferee Company as on 31<sup>st</sup> March, 2016 is Rs.35,00,00,000/- divided into 35,00,00,000 equity shares of Rs.1/-. The issued, subscribed and paid-up share capital is Rs.1,79,00,418/- divided into 1,79,00,418 equity shares of Rs.1/- each. The Audited Balance Sheet of the Transferee Company is shown as **Annexure-E**.

As per audited balance sheet made up to 31<sup>st</sup> March, 2016 summarised position of assets and liabilities of the Petitioner Company as follows:

<b>Liabilities</b>	<b>Rs.(In Lakhs)</b>	<b>Assets</b>	<b>Rs.(In Lakhs)</b>
Share Capital	179	Non-Current Assets	10,342
Reserves and Surplus	24,295	Current Assets	22,184
Non-Current Liabilities	1,592		
Current Liabilities	6,460		
<b>Total</b>	<b>32,526</b>	<b>Total</b>	<b>32,526</b>

It is further averred that the proposed merger will benefit both the companies in the following manner:

- i) The facilities available with the Petitioner Company and the Transferee Company could be pooled together and the amalgamated company will be able to exploit the

facilities available as one single unit for the benefit of the amalgamated company and penetrate into the new markets.

- ii) The investments available with the Transferee Company and the Petitioner Company could be pooled together and the amalgamated company will be able to exploit the same as one single unit for the benefit of the amalgamated company and seek higher economic returns.
- iii) Administration and operational costs would be considerably reduced and the amalgamated company will be able to benefit from the same resulting in better revenues from operations and profits.

The Board of Directors of the Petitioner Company and Transferee Company at their Board Meetings held on 21<sup>st</sup> October, 2016 respectively adopted the scheme of Amalgamation. The Copy of Board Resolutions are shown as **Annexure F & G respectively**.

The Transferor Company had filed C.A.698/16 before the Hon'ble High Court of Karnataka to dispense with the convening of the meeting of Shareholders and Creditors of the company. Subsequently as per Notification No.GSR.1119(E) dated 7<sup>th</sup> December 2016 issued by Ministry of Corporate Affairs, New Delhi, the said case was transferred to this Tribunal and renumbered as T.P.No.256/17. The Tribunal vide separate orders dated 31<sup>st</sup> May, 2017 allowed the Application and dispensed with convening of meeting of the shareholders and creditors. Copy of order passed by this Tribunal in T.P.No.256/17 is shown as **Annexure-H**.

It is averred the Petitioner/Transferor Company filed petition bearing CP(CAA)No.30/BB/17 before this Tribunal on 8<sup>th</sup> June, 2017 for approving the scheme of Amalgamation.

This Tribunal vide order dated 8<sup>th</sup> August, 2017 in CP(CAA)No.30/BB/17 issued notice to Regional Director, Registrar of Companies, Income Tax Department and Official Liquidator and also directed to have advertisement be published in the "Financial Express" and "Udayavani" newspapers stating that the next date of hearing was on 29<sup>th</sup> September, 2017. A Memo dated 14<sup>th</sup> September, 2017 has been filed by the Counsel for Petitioner Company furnishing the newspaper publication in CP(CAA)No.30/BB/17 at Annexure-A1 and A2. The counsel for the Petitioner Company has filed the Postal receipts as proof of service of notice on Regional director, Registrar of Companies, Income Tax Department and Official Liquidator as **Annexure B, C, D, E**.

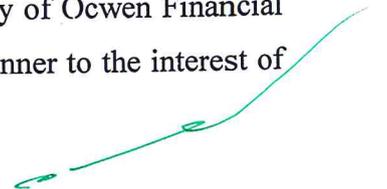


The counsel for Petitioner has filed synopsis and stated that the Petitioner Company is a wholly owned subsidiary of the Transferee Company. The Transferee Company is the parent company of the Petitioner Company. When a wholly owned subsidiary is proposed to be merged with its holding company then there is no need for the Transferee Company/ Holding Company to file separate application for sanction of the scheme. He relied on the decision of the Hon'ble High Court of Bombay in **M/s.Mahaamba Investments Ltd versus M/s.IDI Ltd., (2001) 105 Comp Cas 16** where in it was held, where no new shares are sought to be issued to the members of the transferor company by the transferee company, a separate new application need not be preferred. This scheme will not affect the members of the Transferee Company. The Hon'ble High Court further held that, when the financial position of the Transferor company and Transferee Company is in good condition, in other words where the value of assets are higher than the value of liability then there is no question of the creditors of Transferee Company being affected and thus, there is no need to file separate application by the Transferee Company.

The decision of Hon'ble High Court of Andhra Pradesh cited in M/s. Andhra Bank Housing Finance Limited, Hyderabad versus **M/s. Andhra Bank (2003) 3 ALD 654: (2004) 118 Comp Cas 295** is cited for the same proposition. In this decision, the Hon'ble High Court observed that where Transferor company is hundred percent subsidiary of the holding company, which is going to be merged under the scheme then there, is no need for the holding company to file a separate application for seeking sanction of the scheme.

Further reliance is placed on the decision of the Hon'ble High Court of Karnataka cited in **Nokia Siemens Network India Private Limited versus Nil, reported in (2009) 2 AIR Karnataka 414** is cited for same proposition wherein, it was observed when there is no reorganisation of share capital and when hundred percent subsidiary company is seeking to amalgamate with its holding company and the scheme is not detrimental in any manner to the interest of the members or creditors of the Transferee Company, then it is not necessary to examine the scheme by the court within whose territorial jurisdiction the Transferee Company is situated.

The Counsel for petitioner states that in the present case, the scheme does not provide for any reorganisation of capital and that there is no allotment of shares by the Transferee Company. In this connection, Petitioner Company is a 100% subsidiary of Ocwen Financial Solutions Private Limited and the scheme is not detrimental in any manner to the interest of



members or creditors of the Transferee Company. The Board of Directors of the Petitioner Company have approved the Scheme of Amalgamation on 21<sup>st</sup> October, 2016 by virtue of which the Petitioner Company is proposed to be merged with its parent company i.e., the Transferee Company subject to confirmation of this Tribunal within whose jurisdiction the registered office of the Petitioner Company is situated.

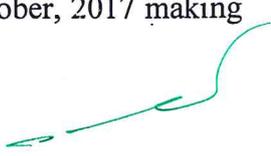
Even though the decisions were rendered under the Companies Act, 1956 yet the proposition of law laid down is applicable to the facts of this case. As the proceedings were originally initiated before the Hon'ble High Court of Karnataka and it was filed under the provisions of Companies Act, 1956 and it was subsequently transferred to this Tribunal. The practice followed by the various High Courts under the Companies Act, 1956 exempting transferee company in filing separate petition for approval of the scheme where the transferor company is its 100% subsidiary the proposition of law laid down in the decisions rendered under Companies Act, 1956 is applicable by virtue of provisions of Section 465 clause (2) sub clause (c) of Companies Act, 2013 which reads as follows:

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments:-

(c) Any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may been in any manner affirmed or recognised or derived by, in or from, the repeated enactments.

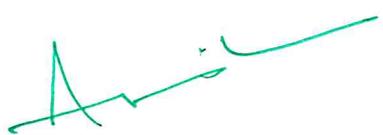
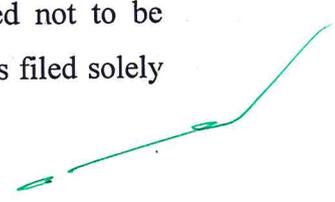
The Counsel for petitioner Company stated that in view of above decisions cited, where a 100 percent subsidiary is going to be merged with its holding company by virtue of the Scheme of Amalgamation and there is no restructuring of share capital of the holding company or issuing of any fresh shares pursuant to the scheme then there is no need for the Transferee Company to file separate application for sanction of the scheme. The Petitioner/Transferor Company is a wholly owned subsidiary of Ocwen Financial Solutions Private Limited (Transferee Company). Then there is no need for the Transferee Company to file a separate application for sanction of the scheme.

The Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad represented by Registrar of Companies has filed Affidavit dated 30<sup>th</sup> October, 2017 making some observations:



- a. As per Clause No.5, entire equity share capital of the Transferor Company is held by the Transferee Company but as per the MGT-7 of the Transferor Company, none of the shares held by Transferee Company as on 31.3.2016 and the Transferor Company has not submitted PAS-3. Hence, Transferor Company may be asked to clarify the discrepancy.
- b. Transferee Company has not filed Form GNL-1, which need to be complied with.
- c. As per the unaudited Balance sheet as at 31.3.2017 of the Transferor and Transferee Companies, the Transferor Company has become the wholly owned subsidiary of the Transferee Company with effect from 21.9.2016. Further, the Transferee Company has issued 35,11,2017 equity shares of Rs.10/- each to homeward Residential Mauritius Holdings Company during the year 2016-17. In view of the above, the appointed date of 1.4.2016 requires justification.
- d. In view of the above, this Directorate is unable to provide its conclusive representations/comments on the scheme. Hence, the Hon'ble Tribunal may be pleased to consider the above submissions and pass orders as deemed fit and proper in the circumstances.

The Director of the company has filed reply to the observations made by the Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad by way of **Affidavit dated 16<sup>th</sup> November, 2017** and stated as follows:

- a. For the first observation the Petitioner Company submits that as on financial year ending 31/3/2016, the Transferee Company did not hold any shares in the Transferor Company. However, subsequent to the financial year ending 31.3.2016, the Transferee Company acquired the shares of the Transferor Company by effecting Form SH-4 Share Transfer Certificate which is marked and produced hereunder as Annexure-1 Form PAS-3 is not applicable as the Transferor Company has not issued any shares after 31.3.2016.
  - b. For the second observation, the Petitioner Company submitted that Transferee Company has not filed GNL-1 which need not to be complied with. It is submitted that, the above petition is filed solely
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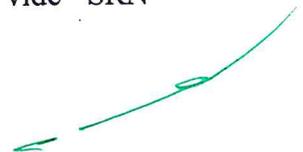
by the Transferor Company by initiating the company application proceedings before the High Court of Karnataka which was transferred to this Bench. As such the Transferee Company independently had not filed any separate petition, thus there is no requirement for filing of GNL-1 by the Transferee Company.

- c. For the third observation, the Petitioner Company submitted that, having the appointed date to be 1-4-2016, the same will not have material discrepancy in view of the share transfer done on 21-9-2016 in view of the fact that, the appointed date is for a limited purpose of accounting, and for fixing the cut-off date for amalgamation. Both the companies filed balance sheet up to 31-3-2016. Upon sanction of the scheme, the Transferee Company will file the consolidated accounts for the year ending 31-3-2017, after amalgamating all the book entries of the Transferor Company in the Transferee Company.

The Registrar of Companies has filed **affidavit dated 12<sup>th</sup> January, 2018** on behalf of Regional Director, Ministry of Corporate Affairs and stated as follows:

- a. This office has been communicated by the Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad vide letter No.F.No.3/B/Amal/787/RD(SER)/2017 dated 10.1.2018 stating therein that he being the competent authority on behalf of the Central Government has filed by the Petitioner Company stated that the contention of the Transferee Company that it need not file Form GNL-1 is not acceptable since all companies involved in amalgamation/arrangement need not file Form GNL-1 as all the stakeholders should be able to access the documents in whichever company's portal they want to inspect. In respect of the other observations, considering the reply of the company, the Directorate has no objection to the instant scheme.

The Counsel for Petitioner has filed **memo dated 16<sup>th</sup> January, 2018** furnishing Form GNL-1 filed on 15<sup>th</sup> January, 2018 vide SRN G73587974.



On the prayer made by the Official Liquidator in OLR No.132/2017 in CA(CAA)No.30/BB/2017, vide order dated 11<sup>th</sup> September, 2017 permitted Official Liquidator to appoint Chartered Accountant from among the panel maintained by his office to scrutinize the Books of Accounts and records of the Petitioner/Transferor Company. Upon scrutiny of Books & Records and other material made available by the Transferor Company M/s.T.Gandhi & Co., Chartered Accountants have submitted report dated 30<sup>th</sup> November, 2017. Pursuant to the same, the Official Liquidator has filed a report in OLR.No.198/17 in CP(CAA)No.30/BB/2017 stating that the Company has maintained proper books and records and that the affairs of the Company have not been conducted in a manner prejudicial to the interests of the members or to public interest.

Pursuant to the same the Official Liquidator has submitted his report on 12<sup>th</sup> December, 2017 stating that:

1. T.Gandhi & Co., Chartered Accountant was appointed to scrutinize the books of accounts and records of the Transferor Company, who submitted his report on 30<sup>th</sup> November, 2017 submitting that:
  - a. In our opinion proper books of accounts, documents, statutory Registers, minutes and other related records as required by law have been kept by the company so far it as appears from our examination except as reported in **Annexure-1** in our Appendix.
  - b. On scrutiny of books of accounts, papers, statutory Registers, minutes and other related records of the company subject to our observations as reported in **Annexure-1** of our Appendix of even dated 30.11.2017, we are of the opinion that the affairs of the company have not been conducted in a manner prejudicial to the interest of the members or public interest as per Section 232 of the Companies Act, 2013.
  - c. The meeting of Creditors was suspended on the basis of report given by a Certified Chartered Accountant that there are no secured & unsecured creditors as on 26.10.2016 in respect to the Homeward Residential Corporation India Private Limited (Transferor Company).  
However, the Total outstanding dues of creditors other than micro enterprises and small enterprises as on appointed dated i.e., 1.4.2016 is Rs.8,28,13,531/- and on 31.3.2017 the amount outstanding is Rs.31,025,927/-

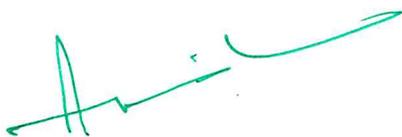
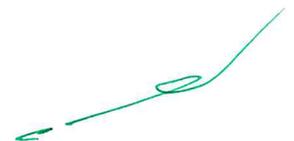
- d. In terms of Clause (a) under sub-section (2) of Section 232 of Companies Act, 2013 the scheme of amalgamation has been circulated by the directors of the Transferor Company.
- e. As per clause (c) under sub-section (2) of the companies act, 2013 Transferor Company needs to provide report of directors explaining the effect of compromise on each class of shareholder, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying and special valuation difficulties.
- However, since the entire share holding is held by the Transferee Company (Ocwen Financial Solutions Private Limited), no shares have been issued to the Transferor Company (Homeward Residential Corporation India Private Limited), the valuation of enterprise has not been considered.
- f. In terms of clause (d) under sub-section 232 of Companies Act, 2013 the company has not obtained any report of the expert with regard to valuation.

Copy of the report dated 20<sup>th</sup> November, 2017 is enclosed herewith and marked as "Annexure A".

2. In the circumstances explained above, Official Liquidator most respectfully submits that the petition may be disposed off on its own merit after hearing the objections if any by any other sectoral regulator and Transferor Company may be dissolved without winding up by this Hon'ble Tribunal and/or any further order/orders as may be deemed fit and proper in the facts and circumstances of the case may kindly be passed.

The Counsel for the Petitioner Companies has filed **Memo dated 23<sup>rd</sup> November, 2017** furnishing the certificate of the Chartered Accountant stating that the accounting treatment detailed in the aforesaid Scheme is in compliance with Accounting Standard-14 for Amalgamation as prescribed under Section 133 of the Act read with Rule 7 of the Companies (Account) Rules, 2014.

The Counsel for Petitioner has filed **memo dated 24<sup>th</sup> July, 2017** and stated that there are no other approvals required from sectoral regulators/authorities.

After hearing the counsel for the Petitioner Companies and also considering the materials on records the scheme appears to be fair, reasonable and is not detrimental against the Members or Creditors or contrary to public policy and the same can be approved.

**THIS TRIBUNAL DO FURTHER ORDER**

While Approving the Scheme as above, we further clarify that, this order should not be construed as an order in any way of granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specially required under any law.

The Whole of the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the state and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

All liabilities including taxes and charges and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

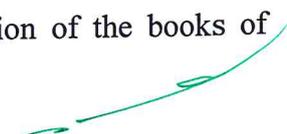
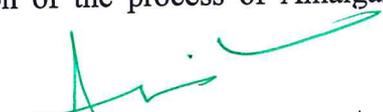
All proceedings now pending by or against the Transferor Company, if any, be continued by or against the Transferee Company; and

The tax implications, if any arising out of the scheme is subject to final decision of concerned Tax Authorities and the decision of the respective Tax Authority shall be binding.

The Transferee Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements And Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e., 1<sup>st</sup> April, 2016.

The Transferor Company or its authorised signatory is directed that after the completion of the process of Amalgamation to handover the possession of the books of



accounts and other relevant documents of the Petitioner/Transferor Company to the Transferee Company for the purpose of Section 239 of the Companies Act, 2013.

Any person shall be at the liberty to apply to this Tribunal in the above matter for any directions that may be necessary.



**(ASHOK KUMAR MISHRA)**  
**MEMBER (TECHNICAL)**



**(RATAKONDA MURALI)**  
**MEMBER (JUDICIAL)**