

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

CA (CAA) No. 03/KB/ 2018

In the matter of:

An application under Section 230 to 232  
of the Companies Act, 2013 ;

And

In the matter of:

1. AERIAL TOWER PRIVATE LIMITED, a  
company incorporated under the  
Companies Act, 1956 and having its  
registered Office at 8/5A, Jamir Lane  
near Bharat Seva Ashram, Ballygunge,  
Ground Floor, Kolkata – 700 019 within  
the aforesaid jurisdiction ;

.. Transferee  
Company/Applicant

And

2. LINKSTAR HOMES PRIVATE LIMITED,  
a company incorporated under the

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Companies Act, 1956 and having its registered Office at 9A & 9B, Sri Nath Roy Lane, 2<sup>nd</sup> Floor, Kolkata – 700 007 within the aforesaid jurisdiction ;

3. MUCHMORE HIRISE PRIVATE LIMITED, , a company incorporated under the Companies Act, 1956 and having its registered Office at 9A & 9B, Sri Nath Roy Lane, 2<sup>nd</sup> Floor, Kolkata – 700 007 within the aforesaid jurisdiction;

4. OPTIMAX HOMES PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered Office at GROUND FLOOR, 8/5A, Jamir Lane, near Bharat Seva Ashram, Ballygunge, Kolkata – 700 019 within the aforesaid jurisdiction ;

.. Transferor Companies/Applicants

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

For the Applicants:

Miss Sneha Khaitan, Pr. CS

Date of pronouncement of the order: 14-02-2018

ORDER

Per Jinan K.R.

By this application the Applicants jointly praying the sanction of this Tribunal to a Scheme of Amalgamation of M/s. Aerial Tower Private Limited, the Transferee Company and Applicant Company No.1, with Linkstar Homes Private Limited, the Transferor Company and the Applicant No.2, Muchmore Hirise Private Limited, the Transferor Company and the Applicant No.3 and Optimax Homes Private Limited, the Transferor Company and the Applicant No.4, and their respective shareholders and creditors, whereby and where under all the undertakings of the Transferor Companies, together with all the assets and liabilities relating thereto as going concern, is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, which is attached with the Application and marked as "Annexure A-43".

It is stated in the Petition that the Scheme of Amalgamation will be of benefit to all concerned and is not opposed to public policy. The respective Board of Directors of the Transferee and the Transferor Companies have passed the Scheme of Amalgamation at their meeting held on 09-10-2017.

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The Transferee and the Transferor Companies are under the same management group and the Directors and the shareholders are common also. Therefore, the amalgamation of the Transferor Companies with Aerial Tower Private Limited, will combine synergies and enable the amalgamated company to focus on its business of Real Estate-Development and Trading of Land and Building and other business.

Further, the Transferor Companies, namely, Linkstar Homes Private Limited, Muchmore Hirise Private Limited and Optimax Homes Private Limited, are closely held company being identical set of shareholders.

By the Scheme of Amalgamation, the financial resources of all the companies will be conveniently merged and pooled together, leading to a more effective and centralized management and reduction of administrative and manpower expenses and overheads which are presently being multiplied because of separate entities.

It has been stated in the Application that Aerial Tower Private Limited, the Transferee Company, has 3 (three) equity shareholders as on 09-10-2017, who have given their consent in affidavit form.

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Linkstar Homes Private Limited, the Transferor Company, has 2(two) equity shareholders as on 09-10-2017, who have given their consent in affidavit form.

Further, Muchmore Hirise Private Limited, the Transferor Company has 2 (two) equity shareholders as on 09-10-2017, who have given their consent in affidavit form.

Optimax Homes Private Limited, the Transferor Company, has 3 (three) equity shareholders as on 09-10-2017, who have given their consent in affidavit form.

It has been submitted in the Application that in view of the consent by way of affidavits received from all the shareholders of the Transferee Company and the Transferor Companies, which are common in nature to Scheme of Amalgamation and waiving of requirement to hold meeting of shareholders for approval of the Scheme of Amalgamation, the holding of separate meetings of the shareholders of the Transferee Company and the Transferor Company may be dispensed with.

It has also been stated in the Petition that Aerial Tower Private Limited, the Transferee Company has 1 Unsecured Creditor as on 09-10-2017 who has given consent by way of affidavit and there is NIL list of Secured Creditors of Aerial Tower Private Limited as on 09-10-2017, which is attached with the original application.

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Further, there are NIL secured and unsecured creditors of Linkstar Homes Private Limited, Muchmore Hirise Private Limited and Optimax Homes Private Limited, the Transferor Companies as on 09-10-2017.

The Auditor's certificates verifying the creditors is also attached with the Application.

In view of "No Objection" by way of affidavits received from all the unsecured creditors and in view of NIL list of Secured Creditors of the Transferee Company, along with the Auditor's certificate verifying the list of secured and unsecured creditors of the Transferee Company, convening and holding of separate meetings of the secured and the unsecured creditors of the Transferee Company, may be dispensed with.

It is further submitted in the Application that since there are no secured and unsecured creditors of the Transferor Companies, convening and holding of separate meetings of the secured and unsecured creditors of the Transferor Companies, may be dispensed with.

It has been stated in the Petition that no proceeding under Section 397 or 398 of the Companies Act of 1956 or applicable section under the Companies Act, 2013 has ever been launched against any of the Applicant Companies.

All the four companies are presently unlisted companies.

It is stated in the Application that the Transferee Company has been authorized by its Memorandum to enter into an Amalgamation including Amalgamation with another company.

Similarly, the Transferor Companies have also got similar power to transfer of business under their Memorandum of Association.

It is submitted in the Application that the assets of all the four Applicant Companies are sufficient to meet all its liabilities.

The Scheme of Amalgamation does not involve any compromise or composition or Arrangement with any of the creditors of the Applicant Companies in any manner whatsoever.

The said Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any Applicant Companies in whatever manner whatsoever and it is nowhere prejudicial to the interest of the creditors, if any, of the Applicant Companies.

It is also submitted in the application that the Applicant Companies have made due provisions for payment of all the liabilities as and when the same will fall due.

It has been further stated in the Application that the provisions of the Monopolies and Restrictive Trade Practice Act, 1969 are not

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applicable to the Scheme of Amalgamation. None of the applicant companies are registered under the provisions of the Monopolies and Restrictive Trade Practice Act, 1969 or are liable to be registered under the provisions of the said Act and the provisions of the said Act will not come into existence upon amalgamation of the Applicant Companies.

Heard the learned Counsel for the applicants, perused the records, documents annexed to the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed :

1. In view of the fact that all the equity shareholders of the Transferee Company and the Transferor Companies duly consented in writing by way of affidavits, to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the equity shareholders of the Transferee Company and the Transferor Companies, are dispensed with ;
2. In view of the fact that there are no secured creditor of the Transferee Company, as certified by the respective Auditors, convening and holding of separate meeting of the Secured Creditors of the Transferee Company, does not arise ;
3. In view of the written consents, by way of affidavits, given by the unsecured Creditor of the Transferee Company, convening

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and holding of separate meeting of the Unsecured creditors of the Transferee Company, is dispensed with ;

4. In view of the fact that there are no secured and the unsecured creditor of the Transferor Companies, as certified by the respective Auditors, convening and holding of separate meeting of the secured and the unsecured creditors of the Transferor Companies, does not arise ;
5. Let the notice be served by the Applicant Companies, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the Application and all other documents including the copy of the Scheme of Amalgamation 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 on the Official Liquidator, having jurisdiction over the Applicant 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 by Speed Post, by E-Mail, both, within seven days from the date of this order for filing

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their representation, if any, on the Application within 30 days from the date of the notice ;

6. The Applicants shall file affidavit within 7 days of serving the notice regarding the service of notice ;
  
7. The Applicants are further directed to send notice through e-mail also and file 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 Applicants and/or their Advocates, in advance ;
  
8. 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 ;
  
9. Objections, if any, to the scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Amalgamation on the part of the authorities, subject

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to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder ;

The Company Application bearing No. CA(CAA) No. 03/KB/2018 is, accordingly, disposed of.

Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.



(Jihān K.R.)  
Member(Judicial)

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