

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

CA (CAA) No. 522/KB/2017

In the matter of:

Sections 230(1) read with Section 232(1) and  
233 of the Companies Act, 2013;

And

Magma Fincorp Limited, a company  
incorporated under the Companies Act, 1956  
and having its registered office at Magma  
House, 24, Park Street, Kolkata – 700 016, West  
Bengal within the aforesaid jurisdiction.

.....Applicant No-1/ Transferee Company

Magma ITL Finance Limited, a company  
incorporated under the Companies Act, 1956  
and having its registered office at Magma  
House, 24, Park Street, Kolkata – 700 016, West  
Bengal within the aforesaid jurisdiction.

..... Applicant No-2/ Transferor Company

And

In the matter for:

1. Magma Fincorp Limited
2. Magma ITL Finance Limited

.....  
Applicants

CORAM: Shri V.P. Singh, Member (Judi  
Shri Jinan K.R., Member(Judicial)

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For the Applicants:

1. D N Sharma, Advocate
2. Manoj Kumar Banthia, PCS
3. Raj Kumar Banthia, PCS
4. Neha Somani, PCS

Date of Pronouncing the Order: 10-1-18

Per V.P. Singh

ORDER

This is a joint application filed under Section 230(1) and 232(1) read with Section 233 of the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by the applicants namely Magma ITL Finance Limited (the Transferor Company) and Magma Fincorp Limited (the Transferee Company) in relation to the Scheme of Amalgamation proposed between them.

The aforesaid scheme is also annexed as Annexure "G" to the application.

The object of this application is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation to be made between the Transferor Company, Transferee Company and their respective shareholders whereby and where under the entire undertaking of the Transferor Company with all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in the Transferee Company.

The Boards of Directors of the Transferor Company and Transferee Company have, at their respective meetings held on 28<sup>th</sup> day of October, 2017 and 9<sup>th</sup> day of November, 2017 respectively, by resolutions passed unanimously, approved a Draft Scheme of Amalgamation of Transferor Company with Transferee Company whereby and where under the entire undertaking of the Transferor Company with

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all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in Transferee Company.

A copy of the Board resolution is annexed as Annexure "F" to the Application.

It is stated in the Application that the Transferor Company is unlisted public Company while Transferee Company is Listed Public Company.

The Shares of the Transferee Company is listed on BSE Limited and the National Stock Exchange of India Limited.

It is further submitted that in view of SEBI Notification No. SEBI/LAD/NRO/GN/2016-17/029 dated 15<sup>th</sup> February, 2017 and in terms of SEBI Circular No. CFD/DIL3/CIR/2017/21 dated 10<sup>th</sup> March, 2017, draft scheme of amalgamation of wholly owned subsidiary with its parent Company shall be filed with the Stock Exchange for the purpose of disclosure only and no prior written approval of the Stock Exchanges shall be required.

Magma Fincorp Limited, being a listed company has filed the draft Scheme of Amalgamation in terms of the aforesaid Circular to BSE Limited and National Stock Exchange of India Limited on 21st November, 2017, copy whereof annexed as Annexure "I" to the Application.

It is further stated that both the Transferor Company and Transferee Company are Non Banking Financial Companies.

In terms of Reserve Bank of India (RBI) Circular dated July 09, 2015, the Transferor Company is required to obtain prior approval of Reserve Bank of India and accordingly an application was made to Reserve Bank of India.

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The Reserve Bank of India, by its letter dated 17<sup>th</sup> November 2017, conveyed its "No Objection" to the proposed amalgamation to both the Applicant Companies.

A copy of the approval letter received from Reserve Bank of India is annexed as Annexure "J" to the Application.

It is stated in the Application that the Transferor Company is a wholly owned subsidiary of Transferee Company. The entire paid up share capital of the Transferor Company which is held by the Transferee Company shall stand cancelled on the Scheme becoming effective and no shares will be issued by Transferee Company pursuant to the Scheme. Hence, there is no need for valuation of the shares of the Applicant Companies.

It is stated in the Application that no investigations or proceedings are pending under sections 235 to 251 of the Companies Act, 1956 and/or applicable provisions of the Companies Act, 2013 against the Applicant Companies.

It is further stated in the Application that the accounting treatment, proposed in the Scheme of amalgamation in clause 14 is in conformity with the Accounting Standards prescribed under section 133 of the Companies Act, 2013.

A copy of the certificate issued by the Applicant Company's Auditor is annexed as Annexure "U" to the Application.

It is further submitted that Transferor Company is a wholly owned subsidiary of the Transferee Company and being the only shareholder of the Transferor Company has provided their written consent by way of affidavit to the proposed scheme of amalgamation.

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For the purpose of maintaining minimum number of members, the Transferor Company has 7 shareholders. However, all the other shareholders are only nominee of the Transferee Company and have filed the declaration of beneficial interest with the Registrar of Companies.

The Copy of declaration filed by the Company in respect of beneficial holder is annexed to this application and marked as Annexure "R".

It is prayed in the Application that inasmuch as the shareholders of the Transferor Company have duly consented in writing by way of affidavit and have agreed to the terms and conditions of the Scheme of Amalgamation, the requirement of convening and holding the meeting to ascertain the wishes of the shareholders of the Transferor Company be dispensed with.

The Shareholding Pattern of the Transferee Company is annexed as Annexure "M" and list of Secured and unsecured Creditor of the Transferee Company is annexed as Annexure "K" to the Application.

The Transferee Company has issued different classes of debentures. The list of Debenture holders of the Transferee Company is annexed as Annexure "B" to the Application.

The List of Shareholders of the Transferor Company is annexed as Annexure "S" and the list of Secured and unsecured Creditor of the Transferor Company is annexed as Annexure "O" to the Application.

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In view of the aforesaid submissions, the Applicants prayed for directions and orders under Sections 230(1) and 232(1) of the Companies Act, 2013 for convening of separate meetings of the Equity Shareholders, Secured Creditors, Unsecured Creditors and Debenture Holders of the Applicant Company-1, separate meetings of Secured Creditors and Unsecured Creditors of the Applicant Company-2 and dispensing with meetings of Equity Shareholders of Applicant No. 2.

Heard the submissions made on behalf of the Applicants.

Perused the documents annexed to the application and supplementary affidavit

Upon hearing the submissions and on perusal of the documents on record, the following orders are passed:

1. That separate meetings of Equity Shareholders, Secured Creditors, Unsecured Creditors and Debenture Holders of the Applicant No.-1, Magma Fincorp Limited, shall be convened and held on Saturday, the 17<sup>th</sup> day of February, 2018 at Sitaram Seksaria Auditorium, Bharatiya Bhasha Parishad, 36A Shakespeare Sarani, Kolkata- 700017, West Bengal at the following times for the purpose of considering, and if thought fit, approving, with or without modification, the said Scheme of Amalgamation:

- i. Meeting of Equity Shareholders of Applicant No. 1 at 11.00AM
- ii. Meeting of Secured Creditors of Applicant No. 1 at 12.00 Noon
- iii. Meeting of Unsecured Creditors of Applicant No. 1 at 1.00 PM
- iv. Meeting of Debenture Holders of Applicant No. 1 at 2.00 PM

In the event meeting of equity Shareholders of the Applicant No. -1 spills over and is concluded after the time fixed for commencement of the succeeding meetings of Secured Creditors, unsecured creditors and debenture holders of

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Applicant No -1 , such succeeding meetings shall be held immediately after such conclusion at the prior meeting.

2. That Meeting of the Equity shareholders of the Applicant Company-2, Magma ITL Finance Limited, is dispensed with in view of all shareholders having already considered and given their written consent to the Scheme in the form of Affidavit, as stated by the Applicant Companies vide their affidavit dated 23<sup>rd</sup> November, 2017.
3. That the separate meetings of Secured Creditors and Unsecured Creditors of the Applicant No.-2, Magma ITL Finance Limited, shall be convened and held on Saturday, the 17<sup>th</sup> day of February, 2018 at Sitaram Seksaria Auditorium, Bharatiya Bhasha Parishad, 36A Shakespeare Sarani, Kolkata- 700017, West Bengal at the following times for the purpose of considering, and if thought fit, approving with or without modification, the said scheme of Amalgamation:
  - i. Meeting of Secured Creditors of Applicant No.- 2 at 3.00 PM
  - ii. Meeting of Unsecured Creditors of Applicant No.-2 at 4.00PM

In the event meeting of debenture holders of the Applicant No.-1 spill over and is concluded after the time fixed for commencement of succeeding meetings of Secured Creditors and Unsecured Creditors of Applicant No.-2, such meetings shall be held immediately after the conclusion of the prior meeting.

4. That at least 30 (thirty) clear days before the said separate meeting of equity shareholders, secured creditors, unsecured creditors and debenture holders of the Applicant No.-1 and secured creditors and unsecured creditors of Applicant No.- 2, an advertisement convening the same and stating that copies of the said Scheme of the 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 &

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Amalgamations) Rules, 2016 and a prescribed form of proxy can be obtained free of charge at the Registered office of the concerned Applicant Companies or at the Office of their Authorised Representative, M/s. MKB & Associates, Practising Company Secretaries be inserted once each in the Bengali Newspaper and in English Newspaper as per requirements of section 230 of the Companies Act, 2013 in Form CAA 2 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

5. That at least 30 (thirty) clear days before the said separate meeting of equity shareholders, secured creditors, unsecured creditors and debenture holders of the Applicant No.-1 and secured creditors and unsecured creditors of Applicant No.- 2 at the place and the time to be held as aforesaid, notice convening the said meetings together with a copy of the said Scheme, copy of the statement required to be sent under the provisions of the Companies Act, 2013 disclosing necessary details and the prescribed form of proxy, shall be sent to each of the said shareholders, secured creditors, unsecured creditors and debenture holders of the Applicant No.-1 and secured creditors and unsecured creditors of Applicant No.- 2 by post or airmail or courier or email or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be placed on the website of the Applicant Companies, if any.
6. That notice as per requirements of sub-section (5) of Section 230 of Companies Act, 2013 along with all the documents including a copy of the scheme and the statement disclosing necessary details shall be served on the Central Government Through Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, the concerned Income Tax Assessing Officer alongwith the Chief Commissioner of Income Tax with PAN Number of the Applicant Companies, having jurisdiction over the Transferor and Transferee Companies and such other 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 post,

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through email and by Speed Post, both within 14 days from the date of this order for filling their representation, if any, within 30 days from the date of notice. The notice shall specify that representations, if any should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the applicants and/or their authorised representative. 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 said scheme of amalgamation. Such notice shall be sent pursuant to section 230 (5) of the Companies Act, 2013 in Form No. CAA.3 of the Companies (Compromise, Arrangements & Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

7. That Shri BL Sinha, CA (Mobile No. 9051084700) is appointed as the Chairperson of all the said meetings of the Applicant Companies to be called under this order and the relevant law.

The Chairperson shall be paid Rs. 50,000/- (Rupees Fifty thousand only) lump sum for his services as Chairperson.

8. Mr. Anil Murarka, CS (Mobile No. 9830051304) is appointed as the Scrutinizer of all the said meetings of the Applicant Companies to be called under this order and the relevant law.

The Scrutinizer shall be paid Rs. 40,000/- (Rupees Forty thousand only) lump sum for his services as Scrutinizer.

9. That Chairman appointed for the said meetings or any person authorized by him or any of them do issue and send out the notice of the said meetings referred to above.

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10. That the Quorum for the said meetings of the Applicant Companies shall be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
11. The 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 meeting, is filed with the concerned Applicant Companies at their Registered office not later than forty eight hours before the separate meetings. The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meetings as deemed necessary under the Act.
12. That the value of Secured Creditors, Unsecured Creditors and debenture Holders, as applicable, shall be in accordance with the respective books of the concerned applicant companies and where entries in the books are disputed, the chairperson concerned shall determine the value for the purpose of the meeting. The value of the Secured Creditors, Unsecured Creditors and Debenture Holders, as applicable, shall be considered as on 30<sup>th</sup> September, 2017 for the purpose of the meeting of the said Secured Creditors, Unsecured Creditors and Debenture Holders, as applicable, of the Applicant Companies.
13. That the Chairperson do report to this Tribunal, the results of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by his affidavit.
14. The Applicants to file affidavit of service of notice of meetings and publication of advertisement and compliance of all directions of this order.
15. The Equity shareholders of the Applicant No.-1 shall also be given the option of voting on the resolution for approval of the scheme by casting their votes, personally or by proxy at the venue of the meeting on 17<sup>th</sup> February, 2018 or by postal Ballot/remote e- voting during the period from 18<sup>th</sup> January, 2018 to 16<sup>th</sup> February, 2018. The facility for remote e-voting shall be disabled at 5.00 PM on

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16<sup>th</sup> February, 2018. It is clarified that such option for voting by remote e-voting shall not be required to be given to the Secured Creditors, Unsecured Creditors and Debenture holders of the Applicant No. -1 and Secured creditors and unsecured creditors of Applicant No-2.

16. The business of the meetings shall be transacted accordingly. The resolution for approval of the Scheme of Amalgamation shall, if passed by a majority in number representing three fourths in value of the Equity Shareholders, unsecured creditors, secured creditors and debenture holders, as the case may be, casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of the said meetings of such shareholders, creditors and debenture holders under section 230(1) read with Section 232(1) of the Companies Act, 2013.

17. Subject to the directions and matters dealt with herein, the procedure for postal ballot/ e-voting and conduct of voting at the venue of the meeting in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 ("the said Rules") and the forms there under shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the scheme.

18. The cut- off date in terms of the said Rules for determining the eligibility of shareholders to vote (hereinafter referred to as the "Relevant Date") shall be 29<sup>th</sup> December, 2017. The votes cast by the shareholders shall be reckoned and scrutinized for all modes with reference to such Relevant Date.

19. The equity Shareholders of the Applicant No.-1 may opt to exercise their votes only in one mode, i.e by (a) postal ballot, (b) remote e-voting or (c) by poll. In case they cast their votes by both, postal ballot and remote e-voting, then voting done through remote e-voting shall prevail and voting done by postal ballot will be treated as invalid. Further, if they cast their votes by postal ballot and/or remote e-voting, as aforesaid, they will not be entitled to vote again by

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poll/e-voting at the venue of the meeting, whether in person or by proxy. If they do so, the votes so cast by them at the venue of the meeting shall be treated as invalid.

20. It is clarified that equity shareholders of the Applicant No.-1 choosing to cast their votes by postal ballot/remote e-voting shall nevertheless be entitled to attend and participate in the discussion in the meeting but shall not be entitled to vote again at the meeting. At the venue of the meeting the votes shall be taken by polling papers/e-voting.

21. The Secured Creditors, Unsecured Creditors and Debenture Holders, as applicable, of the Applicant Companies may opt to exercise their votes only in one mode, i.e by (a) postal ballot or (b) by poll. In case they cast their votes by both, postal ballot and by poll, then voting done through postal ballot shall prevail and voting done by poll will be treated as invalid. Further, if they cast their votes by postal ballot as aforesaid, they will not be entitled to vote again by poll/e-voting at the venue of the meeting, whether in person or by proxy. If they do so, the votes so cast by them at the venue of the meeting shall be treated as invalid.

22. It is clarified that Secured Creditors, Unsecured Creditors and Debenture Holders, as applicable, of the Applicant Companies choosing to cast their votes by postal ballot shall nevertheless be entitled to attend and participate in the discussion in the meeting but shall not be entitled to vote again at the meeting. At the venue of the meeting the votes shall be taken by polling papers/e-voting.

23. Voting shall be allowed on the proposed scheme by proxy at the venue of the meetings of the equity shareholders, secured creditors, unsecured creditors and debenture holders of the Applicant No.-1 and secured creditors and unsecured creditors of the Applicant No.-2 provided that the proxies in the prescribed form duly signed by the person(s) entitled to attend and vote at the respective meetings is filed with the Applicant Companies at the registered office not later

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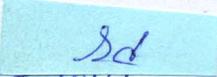
than 48 hours before the respective meetings. In case of a body Corporate, being an unsecured creditors, secured creditors, debenture holders or equity shareholders, as the case may be of the Applicant Companies opting to attend and vote at the venue of a meeting, as aforesaid through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at such meeting on its behalf is deposited at the Registered Office of the Applicant Companies not later than 48 hours before the time for holding such meeting.

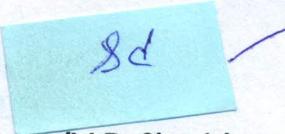
24. The votes cast at the meetings shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meetings along with all papers relating to the voting to the Chairperson of the meetings within 3 days of the conclusion of the meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer to him. The declaration of results by the Chairperson shall also be published in the same newspapers in which notice of the meetings is advertised. The Applicant Companies also appoint a person who shall be responsible for addressing the grievances of the shareholders, if any, in connection with the e-voting as required by the said Rules.

The application being CA (CAA) No. 522/KB/2017 is disposed off accordingly.

Parties and the Chairperson to act on the order.

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

  
(Jinan K. R.)  
Member(Judicial)

  
(V.P. Singh)  
Member(Judicial)

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