

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CA(CAA)No.368/KB/2017

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

In the matter of :

An application under Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013.

IN THE MATTER OF:

THE AKSHARA ESTATES PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.1.

And

ALBATROSS BHUMI AGENTS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.2.

And

ANANDASWARUP LAND DEVELOPER PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.3.

And

ANANYA HEIGHTS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.4.

And

ARYAN HI-RISE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.5.

And

BALGOPAL VYAPAAR PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.6.

And

BANSHIDHAR VINIMAY PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.7.

And

BENGAL BAY INFRAPORT PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.8.

And

BENGAL BHUMI AGENT PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.9.

And

BENGAL GREENERY HOUSE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.10.

And

BENGAL LAND CONGLOMERATE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.11.

And

BENGAL PORTLAND INFRA DEVELOPERS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.12.

And

BRAHMA BHUMI AGENTS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.13.

And

CACTUS LAND DEVELOPERS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.14.

And

CREATIVE DEALTRADE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.15.

And

DAZZLE REALTORS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.16.

And

GANGA TRADELINK PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.17.

And

GENIUS COMMODEAL PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.18.

And

JAI PAHADIMATA BARTER PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.19.

And

KAILASH PARVAT COMMOTRADE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.20.

Sd

And

LAKSH ESTATES PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.21.

And

LEGEND EARTH MOVERS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.22.

And

MAKHANCHOR VINIMAY PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

....Transferor Company No.23.

Sd

And

ORCHID LAND CONGLOMERATE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.24.

And

PASHUPATI VINIMAY PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.25.

And

QUEST EARTH MOVERS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.26.

And

RANTHAMBHOR TRADELINK PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.27.

And

RANTHAMBHOR TRADING PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.28.

And

RATNAGIRI LAND AGENTS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.29.

And

SANSKRITI LAND CONGLOMERATE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.30.

And

SAWARIYA TRADELINK PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.31.

And

SUNSHINE COMMODEAL PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.32.

And

SWASTIC LAND CONGLOMERATE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having

its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.33.

And

BENGAL HEAVY ENGINEERING PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.... Transferor Company No.34

In the matter of :

BENGAL SHIPYARD LIMITED, Company incorporated under the provisions of the Indian Companies Act, 2013 and being a Company within the meaning of the Companies Act, 2013 having its registered office at Apeejay House, 15, Park Street, Kolkata 700 016 in the State of West Bengal.

.....Transferee Company.

And

In the matter of :

Akshara Estates Private Limited

Albatross Bhumi Agents Private Limited

Anandaswarup Land Developer Private Limited

Ananya Heights Private Limited
Aryan Hi-Rise Private Limited
BalgopalVyapaar Private Limited
BanshidharVinimay Private Limited
Bengal Bay Infracore Private Limited
Bengal Bhumi Agents Private Limited
Bengal Greenery House Private Limited
Bengal Land Conglomerate Private Limited
Bengal Portland Infra Developers Private Limited
Brahma Bhumi Agents Private Limited
Cactus Land Developers Private Limited
Creative Dealtrade Private Limited
Dazzle Realtors Private Limited
Ganga Tradelink Private Limited
Genius Commodeal Private Limited
Jai Pahadimata Barter Private Limited
Kailash ParvatCommotrade Private Limited
Laksh Estates Private Limited
Legend Earth Movers Private Limited
MakhanchorVinimay Private Limited

Orchid Land Conglomerate Private Limited
PashupatiVinimay Private Limited
Quest Earth Movers Private Limited
RanthambhorTradelink Private Limited
Ranthambhor Trading Private Limited
Ratnagiri Landagents Private Limited
Sanskriti Land Conglomerate Private Limited
SawariyaTradelink Private Limited
Sunshine Commodeal Private Limited
Swastic Land Conglomerate Private Limited
Bengal Heavy Engineering Private Limited
Bengal Shipyard Limited

Applicants

Counsels on Record:

1. Mr. Abhrajit Mitra, Senior Advocate
2. Mr. Satadeep Bhattacharya, Advocate
3. Ms. Iram Hassan, Advocate
4. Mr. Debayan Sen, Advocate

Date of pronouncement of order: 02 /02/2018

Sd

ORDER

Shri Jinan K.R., Member (J)

1. This application has been filed by the Applicant Companies, namely, Akshara Estates Private Limited, Albatross Bhumi Agents Private Limited, Anandaswarup Land Developer Private Limited, Ananya Heights Private Limited, Aryan Hi-Rise Private Limited, BalgopalVyapaar Private Limited, BanshidharVinimay Private Limited, Bengal Bay Infraport Private Limited, Bengal Bhumi Agents Private Limited, Bengal Greenery House Private Limited, Bengal Land Conglomerate Private Limited, Bengal Portland Infra Developers Private Limited, Brahma Bhumi Agents Private Limited, Cactus Land Developers Private Limited, Creative Dealtrade Private Limited, Dazzle Realtors Private Limited, Ganga Tradelink Private Limited, Genius Commodeal Private Limited, Jai Pahadimata Barter Private Limited, Kailash ParvatCommotrade Private Limited, Laksh Estates Private Limited, Legend Earth Movers Private Limited, MakhanchorVinimay Private Limited, Orchid Land Conglomerate Private Limited, PashupatiVinimay Private Limited, Quest Earth Movers Private Limited, RanthambhorTradelink Private Limited, Ranthambhor Trading Private Limited, Ratnagiri Landagents Private Limited, Sanskriti Land Conglomerate Private Limited, SawariyaTradelink Private Limited, Sunshine Commodeal Private Limited, Swastic Land Conglomerate Private Limited and Bengal Heavy Engineering Private Limited (hereinafter referred to as the "Transferor Companies") with Bengal Shipyard Limited (hereinafter referred to as the "Transferee Company")

for obtaining sanction of this Tribunal regarding Scheme of Amalgamation of the above mentioned companies.

2. The instant application has been filed under Section 230 read with Section 232 of the Companies Act, 2013 for dispensation of the meeting of the equity shareholders of the Transferor Companies, directions to call a meeting of the equity shareholders of the Transferee Company, and for dispensation of meeting of unsecured creditors of all the applicant companies. The applicant companies do not have any secured creditors.

3. Applicants submitted that the Board of Directors of the applicant companies have, at their respective Board Meetings by a resolution passed unanimously approved the said Scheme of Amalgamation to merge/amalgamate the Transferor Companies with the Transferee Company.

4. All the applicant companies have submitted that the unsecured creditors having 90% in value of the respective companies have given their consent in the form of affidavit for dispensing with unsecured creditors meeting. As per the list of creditors of the applicant companies, there is no secured creditors. A certificate to that effect issued by the Chartered Accountant has not been furnished.

5. All the applicant companies have also submitted that all the equity shareholders of the respective companies, except that of the Transferee Company, have given their consent to the proposed scheme of amalgamation and have prayed for dispensation of meeting of the shareholders of the Transferor Companies.
6. Perused the documents annexed to the application and have heard the submissions made on behalf of the applicants and pass the following orders:
1. In view that all the shareholders of the Transferor Companies have given their consent in the form of affidavit to the proposed Scheme of Amalgamation, the meeting of the shareholders of the Transferor Companies is hereby dispensed with.
 2. A meeting of the equity shareholders of the Transferee Company, i.e. Bengal Shipyard Limited, shall be convened and held at Registered Office of the Company at Apeejay House, 15 Park Street, Kolkata 700 016 at 10.00 a.m. on Thursday 22nd March, 2018 for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Amalgamation of the Transferor Companies with the Transferee Company.

That at least 30 (thirty) clear days before the date of the said meeting an advertisement convening the same and stating that copies of the said Scheme of Amalgamation and the Statement containing necessary details required to be filed pursuant to Section

230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and a prescribed form of proxy can be obtained free of charge at the registered office of the Transferee Company or at the office of their advocates, Fox & Mandal, 12, Old Post Office Street, Kolkata – 700 001, be inserted once each in the “Pratidin” Bengali newspaper and in “The Business Standard” 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.

7. That in addition, at least 30 (thirty) clear days before the meeting to be held as aforesaid, a notice convening the said meeting at the place and time as aforesaid together with a copy of the said Scheme, the Statement disclosing necessary details required to be filed pursuant to Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and the prescribed form of proxy be sent by Registered Post or by Speed Post or by hand through Personal Messenger addressed to each of the shareholders of the Transferee Company at their respective or last known addresses.

8. Smt. Manju Bhuteria, (Mobile No.9830128869) shall be the chairperson for the said meeting of the shareholders of the Transferee Company to be held as aforesaid. The consolidated remuneration of Smt. Manju Bhuteria for conducting the

aforementioned meeting of the Transferee Company is fixed at Rs.50,000/- (Rupees Fifty Thousands only).

9. The chairperson appointed for the said meeting or any person authorised by him do issue and send out notice of the said meeting referred to above.

10. That the quorum for meeting of the equity shareholders of the Transferee Company be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.

11. That 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 Transferee Company at its registered office not later than 48 (forty eight) hours prior to the meeting. The chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.

12. That the value of each member shall be in accordance with the books of the Transferee Company and where entries in books are disputed, the chairperson concerned shall determine the value for the purpose of the meeting.

13. That the chairperson do report to this Tribunal the results of the said meeting within 4 (four) weeks from the date of the conclusion of the meeting and the report shall be in Form CAA 4

pursuant to Rule 13(2) and 14 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016, verified by his/her affidavit.

14. Since the unsecured creditors of all the applicant companies having 90 % in value of the total credit values of the respective companies have given their consent in the form of affidavit, unsecured creditors meeting is dispensed with.

15. Notice as per requirement of Sub-Section 5 of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme and the Statement disclosing necessary details on the Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, Kolkata, Income Tax Authorities and Official Liquidator and such other sectoral regulators/authorities, if applicable within 7 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. 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. 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 notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No. CAA.3 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

16. The application being C.A.A No.368/KB/ 2017 is disposed of directing the applicant Companies to submit a certificate issued by the Chartered Accountant of the Companies certifying that there are no secured creditors in respect of the Companies as shown in the List of Creditors as on the date of filing of the application within one week of the date of this order.

17. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

Sd

(K R Jinan)
Member (J)

Signed on 2nd day of February 2018.

PS_Aloke