

भारतीय गैर न्यायिक



INDIA NON JUDICIAL

पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

CP(CAA) No.175/KB/2018

CA(CAA) No. 509/KB/2017

In the matter of the Company Act, 2013, Section – 230-232

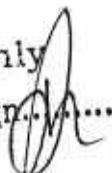
AND

In the matter of: Emami Infrastructure Ltd. & Anr.

Certified Copy of the Order dated 04.05.2018 passed by this Bench.



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**30 JAN 2018**

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CP(CAA) No.175/KB/2018  
CA (CAA) NO.509/KB/2017

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

In the matter of:

An application under 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 :

EMAMI INFRASTRUCTURE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at Emami Tower, 2<sup>nd</sup> Floor, 687, Anandapur, E.M. Bypass, Kolkata 700 107, West Bengal within the aforesaid jurisdiction,

And

In the matter of:

ZANDU REALTY LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at Emami Tower, 2<sup>nd</sup> Floor, 687, Anandapur, E.M. Bypass, Kolkata 700107, in the state of West Bengal within the aforesaid jurisdiction;

Counsel on Record :

Ms. Tianla, Dy. Director, O/of RD (ER), Ministry of Corporate Affairs.

- |                                  |   |            |
|----------------------------------|---|------------|
| 1. Mr. D.N. Sharma, Advocate     | ] | For the    |
| 2. Mr. Raj Kr. Banthia, Pc. C.S. | ] | Applicants |
| 3. Ms. Neha Somani, Pr. C.S.     | ] |            |

Date of pronouncement of order: 4th May, 2018.



## ORDER

Per Shri Jinan K.R., Member (Judicial)

1. The object of this petition is to obtain the sanction of the Tribunal of a Scheme of Amalgamation proposed to be made between Emami Infrastructure Limited, Transferee Company, Zandu Reality Limited, Transferor Company and their respective shareholders and creditors whereby the entire undertaking of the Transferor Company with all its assets and liabilities relating thereto as a going concern is proposed to be transferred in the Transferee Company with effect from 1<sup>st</sup> April, 2017. The Scheme of Amalgamation has been annexed with the petition and marked as **Annexure-A**.

2. The petitioner stated that the Transferee Company and the Transferor Company both are engaged in real estate business and are listed Companies. The Transferor Company is an associate of the Transferee Company and both are Companies under the same management. Thus, the proposed amalgamation may result in efficiency in management and maximizing overall shareholder value, the petitioner claimed.

3. The petitioner stated that the proposed merger will bring in advantages of synergy in operations and economies of scale. It will also lead to more efficient utilization of capital and create a consolidated base for future growth of the amalgamated entity. Petitioner further stated that the amalgamated entity will result in administrative and operational



rationalization and dedicated management to focus and accelerate growth of the amalgamated entity. The petitioner stated that the proposed amalgamation will be in the larger interest of the public shareholder of the transferor Company and Transferee Company as amalgamation of the two Companies will lead to cancellation of 2,86,329 equity shares of the Transferor Company held by the Transferee Company, which constitutes 35.51% of the paid-up share capital of the Transferor Company. These will result into reduced combined paid-up capital leading to higher earnings per share.

4. The Board of Director of the Petitioner Companies have at their respective meeting held on 01.07.2017, by resolution passed unanimously, approved the Scheme of Amalgamation of Zandu Reality Limited with Emami Infrastructure Limited.

5. In compliance with Section 230(7) of the Act, Statutory Auditors of the petitioner companies has certified that the Accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards under Section 133 of the Act. A copy of the said certificate is attached with the petition and marked as **Annexure-M**.

6. By an order dated 11.12.2017 of the Tribunal in CA(CAA) No.509(KB)/2017 it was directed to convene separate meetings of the equity shareholders, secured creditors, unsecured creditors and debenture holders of the petitioner No.1 and convening of separate meetings of equity shareholders and unsecured creditors of petitioner No.2 for the purpose of considering and approving with or without modification the proposed scheme of amalgamation.



7. On 20.01.2018, the said meetings of the Equity Shareholders, Secured Creditors, Unsecured Creditors and Debenture Holders of the Petitioner No.1 company and meetings of Equity Shareholders and Unsecured Creditors of the Petitioner No.2 Company had been duly convened in accordance with the said Order of this Tribunal dated 11.12.17. The Equity Shareholders of both the transferee and transferor company approved the Scheme of Amalgamation by requisite majority without any modification.

8. The Secured Creditors, Unsecured Creditors and Debenture holders of the petitioner No.1 Company and Unsecured Creditors of the Petitioner No.2 Company unanimously passed the resolution approving the Scheme of Amalgamation without any modification. The Chairperson of the said meetings, as appointed by this Tribunal vide order dated 11.12.17, has reported the results of the said meetings before this Tribunal. A copy of such reports is annexed with the petition and marked as **Annexure-I**.

9. In compliance of Section 230(5) of the Companies Act, 2013 and the Tribunal's Order dated 11.12.2017, Notice in Form CAA.3 was duly served upon the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Registrar of Companies, West Bengal, the Official Liquidator attached to the Hon'ble High Court, Calcutta, the Income Tax Assessing Officer along with Chief Commissioner having jurisdiction over the Petitioner Companies, Securities and Exchange Board of India, BSE Limited, National Stock Exchange of India Limited and Calcutta Stock Exchange Limited, as applicable.





10. The notice of the aforesaid meetings were also published in the "Aajkal" Bengali newspaper and in "Financial Express" English newspaper on 20.12.2017. In compliance with Rule 12, also the Petitioner Companies filed an affidavit of service in this regard with this Hon'ble Tribunal on 12.01.2018.

11. Further, upon filing of this Petition being CP (CAA) No.175/KB/2018, this Tribunal had passed an order dated 09.03.2018, directing the petitioner companies for publication to be effected at the time of hearing of the petition and issuance of notices of this petition to the concerned statutory authorities for the representations / objections, if any.

12. It has been stated by the Petitioner Companies vide their Affidavit dated 23.03.2018 that notice was served upon the concerned statutory authorities on 16.03.2018, pursuant to the direction of this Hon'ble Tribunal order dated 09.03.2018 made in CP (CAA) No.175/KB/2018.

13. Further, vide the Affidavit dated 23.03.2018, the petitioner companies have stated that the publications of notice were made one in English daily "Financial Express" and another in Bengali daily "Aajkal" on 20.03.2018, pursuant to the direction of this Hon'ble Tribunal order dated 09.03.2018.

14. The Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata vide its affidavit dated 20.04.2018 on behalf of the Central Government, has observed that no complaint and / or representation has been received against the proposed Scheme of Amalgamation and the proposed Scheme is no prejudicial to the interest of the members / shareholders and / or public. As such, the Central



Government has decided that the instant petition / scheme need not be opposed.

15. The Official Liquidator vide his report dated 02.04.2018 has observed that after scrutiny of the report submitted by SBAV & Associates, Chartered Accountant, the Official Liquidator is of the opinion that the affairs of the Transferor Company namely Zandu Reality Limited have not been conducted in a manner prejudicial to the interest of their members or to public.

16. In view thereof, we have pursued the documents annexed to the petition and have heard the submissions made of the petitioners, authorized representative of the Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata. In view of the facts stated above we pass the following orders: -

a) That the said Scheme of Amalgamation is sanctioned and to be binding with effect from the appointed date i.e. w.e.f. 1<sup>st</sup> April, 2017 on the Transferee Company, the Transferor Companies, their shareholders, and all concerned;

(b) That the Transferor Companies with all their respective assets, properties, rights, titles and interest thereof be transferred to and vested without any further act or deed in the Transferee Company and accordingly the same shall pursuant to section 230 of the Companies Act 2013 be Transferred to and vested in the Transferee company for all the estates and interests of the said Transferor Companies but subject nevertheless to all charges, now affecting the same;

c) That all the liabilities and duties of the Transferor Companies be transferred without any further act or deed to the Transferee Company





and accordingly the same shall pursuant to Section 230 of the Companies Act 2013 be transferred to and become the liabilities and duties of the Transferee Company.

d) All employees of the Transferor Company be transferred to the Transferee Company;

e) That all proceedings and/or suits and/or appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company.

f) That the Transferor Companies and the Transferee Company shall within 30 days after the date of the receipt of the certified copy of the order to be made herein to be delivered to the Registrar of Companies, West Bengal for registration respectively.

g) The Transferee Company to allot shares to the shareholders of the Transferor Company post amalgamation.

f) That leave be given to the Transferee Company to apply for dissolution without winding up of the Transferor Companies upon filing of the said report by the Official Liquidator;

g) That any person interested shall be a liberty to apply to this Tribunal in the above matter for any directions that may be necessary;


h) That the schedule of assets in respect of the Transferor Companies be filed in this Tribunal within a period of 60 days from the date of the order to be made herein.



- i) Dissolution without winding up of the Transferor Company.
- j) After dissolution of the Transferor Company, only such amount of Authorized Capital of the Transferor Company be allowed to be added to the Authorized Share Capital of the Transferee Company as can be raised by the Transferee Company by utilizing the fees paid by the Transferor Company on its Authorized Share Capital which is available for set-off against any fees payable by the Transferee Company for increase of Authorized Share Capital subsequent to the amalgamation.

Accordingly, CP (CAA) No.175/KB/2018 connected with CA(CAA) No.509/KB/2017 stand disposed of.

Urgent Photostat copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

  
(Madan B. Gosavi)  
Member (J)

  
(Jinan K.R.)  
Member (J)

*Signed this day of 4th May 2018.*

PS\_Aloke





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KOLKATA

*[Signature]*  
8/5/18