

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO.II
KOLKATA**

Company Application (CAA) No. 18/KB/2024

An application under Section 230(1) read with Section 232(1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable Provisions of the law.

IN THE MATTER OF:

**A Scheme of Demerger of Real Estate and Investment Division of
(First Motion)**

Ethelwold Estate Private Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of the Companies Act, 2013, having Corporate Identification No. U15491WB1947PTC015132 and its registered office at 41A, A.J.C. Bose Road, 2nd Floor Room No. 210 Kolkata, 700017, West Bengal, India.

**.....Applicant Company No.1/Demerged Company
AND**

Ethelwold Communita Private Limited, a company incorporated under the Companies Act, 2013 and being a company within the meaning of the Companies Act, 2013, having Corporate Identification No. U46909WB2023PTC261681 and its registered office at 41A, A.J.C. Bose Road, 2nd Floor Room No.209 and 210 Kolkata, 700017, West Bengal, India.

..... Applicant Company No.2/Transferee Company

AND

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IN THE MATTER OF:

- 1. Ethelwold Estate Private Limited**
- 2. Ethelwold Communita Private Limited**

.... Applicants

Date of Pronouncement: 26th July,2024

CORAM:

**SMT. BIDISHA BANJERJEE, MEMBER (JUDICIAL)
SRI D. ARVIND, MEMBER (TECHNICAL)**

APPEARANCES :

FOR THE APLICANT: Babu Lal Patni, PCS

ORDER

Per: D. Arvind, Member (Technical)

1. The court congregated through hybrid mode.

2. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 ("Act") for dispensation of meetings of shareholders and Secured Creditors and Convening of Meeting of Unsecured Creditors in connection with the Scheme of Demerger of Real Estate and Investment Division of Ethelwold Estate Private Limited being the Applicant Company No. 1/ Demerged Company with Ethelwold Communita Private Limited being the Applicant Company No. 2/ Transferee Company whereby and where under the Real Estate

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and Investment Division of the Demerged Company is proposed to be transferred to the Transferee Company.

- 3.** The Board of Directors of the Applicant Companies at their Board Meetings, held on 6th November, 2023 approved and resolved to carry out the said Scheme of Demerger. The copies of the resolution passed by the applicant companies are annexed with the Company Application being- Annexure- L at Page No. 187-190.
- 4.** It is further submitted by the Ld. Counsel appearing for the Applicants that the shares of all the Applicants are not listed on the stock exchanges. Further, the applicants have the following classes of shareholders and creditors:

Sl. No	Name of the Applicant Companies	Equity Shareholders	Secured Creditors	Unsecured Creditors
1	Ethelwold Estate Private Limited	4	1	88
2	Ethelwold Communitia Private Limited	2	NIL	2

- 5.** Ld. Counsel appearing for the Applicants submits that the Equity Shareholders of Applicant Company No. 1 and 2 have given their consent in writing by the way of affidavits for the approval of the proposed Scheme of Demerger which is annexed with the Company Application being-Annexure- G at Page No. 152-173.

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- 6.** Ld. Counsel appearing for the Applicants further submits that the Applicant Company No. 1 has only 1 (one) Secured Creditors i.e. Punjab National Bank. List of Secured Creditors of Applicant Company No. 1 is annexed with the Company Application being Annexure 'H' page 174. The Ld. Counsel further submits that Punjab National Bank, 11, Hemanta Basu Sarani, Kolkata- 700001 has given its consent vide letter dated 30.03.2024. which has been filed on NCLT portal on 02.04.2024 and hard copy has been submitted on 25.04.2024.
- 7.** The Ld. Counsel appearing for the Applicant further submits that the Applicant Company No. 1 has 88 Unsecured Creditors and the Applicant Company No. 2 has 2 Unsecured Creditors. List of Unsecured Creditors of Applicant Companies is annexed with the Company Application being Annexure 'H' Page No. 175 to 178.
- 8.** The Ld. Counsel appearing for the Applicant further submits that all the shareholder of both Applicant Companies have given their consent in writing by the way of affidavit for the approval of the proposed Scheme of Demerger, meeting of all shareholders of both the Companies be dispensed with.
- 9.** The Ld. Counsel appearing for the Applicant Companies further submits that all the Secured Creditor of Applicant Company No. 1 Punjab National Bank has already given No Objection Certificate, meeting of Secured Creditor of Applicant No. 1 be dispensed with. The Ld. Counsel further submits that the Applicant Company No. 2 has no Secured Creditors.
- 10.** The Ld. Counsel appearing on behalf of the Applicant Companies further submits that the necessary directions may be given for holding

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separate meeting(s) of the unsecured creditors of the Applicant Companies at their registered office address or such other places as this Hon'ble Tribunal may deem fit and proper for the purpose of considering, and if thought fit, approving Scheme of Amalgamation, with or without modification and direction be given to serve the notices to the creditors of the applicant companies under speed post or registered post or courier or hand delivery or electronic means and direction be given for publication in the newspaper for convening and holding meeting of the creditors of the Applicant companies aforesaid.

- 11.** The certificate by the Chartered Accountant in respect of the Transferee Company verifying conformity with Accounting Standard under Section 133 of the Companies Act 2013 is annexed with the Company Application being- Annexure- J at Page No. 181.
- 12.** The Ld. Counsel for the Applicant Companies further submits that the Applicants now seek admission of the instant petition presented by them for sanction of the Scheme.
- 13.** The Ld. Counsel for the Applicants further submits that the present Scheme is an arrangement between the Applicant Companies and none of the members, shareholders, and creditors will be affected by the Scheme.
- 14.** It is submitted that no one will be prejudiced if any order is made and/or directions are given as prayed for and this application is made bona fide and for the ends of justice. Unless orders are made as prayed for, the applicant companies will suffer irreparable loss and injury.

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- 15.** (i). The Petitioners have suggested the following names of the Directors of both the Transferor and the Transferee Companies who is to be appointed as the Chairperson for convening the meeting of the Unsecured Creditors of both the Applicant Companies. The names are
- a. Manoj Jain, (DIN 00182169), or
 - b. Vineeta Jain, (DIN: 00187767)
- (ii). The Petitioner have suggested the name of the Mr. Subhash Mal Nahata, Practicing Chartered Accountant as Scrutinizer of the meeting of Unsecured Creditor of both the applicant Companies.
- 16.** The Applicant Companies further submit that no prejudice would be caused to any one, if an order is made and/or directions are given as prayed for hereinabove and hence, appropriate orders/ directions be passed by this Tribunal for serving notice upto:
1. Regional Director, Eastern region, Ministry of Corporate Affairs, Kolkata;
 2. The Registrar of Companies, West Bengal;
 3. The Income Tax Authorities, having jurisdiction over the affairs of the Company.
- 17.** Heard the Ld. Counsel for the Applicants and upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application with certain directions and make the following orders: -
- a) In view of the consents given through affidavit by all the equity shareholders of the Applicant Companies and NOC given by the only Secured Creditors of the Applicant Company No. 1 the meeting of equity shareholders of the Applicant Companies and Secured

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creditors of Applicant Company No.1 are hereby dispensed with Companies, Applicant Company No. 2 has no Secured Creditors. Therefore, the meeting of Secured Creditors of Applicant Company No. 2 does not arise.

b) The applicants to serve a notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 on:

- i. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- ii. Registrar of Companies, West Bengal, Kolkata with whom the Applicants are registered;
- iii. Income Tax Department having jurisdiction over the Applicants.
- iv. The Official Liquidator, High Court, Calcutta.
- v. Other Sectorial Regulators that are likely to be affected by the Scheme.

These notices shall be sent by hand delivery through special messenger or by post or by email within two weeks from the date of receiving this order. The notice shall specify that representation, 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 Counsel of the said Applicants. If no such representation is received by the Tribunal within such 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

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the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

- c)** The Meeting of the Unsecured Creditors of the Transferee Company i.e. Ethelwold Estate Private Limited be convened and held at the registered office at 41A, A.J.C. Bose Road, 2nd Floor Room No. 210 Kolkata, 700017 on **Monday, the 2nd Day of September, 2024** at **10:00 A.M.** for the purpose of considering the proposed Scheme of Demerger of Real Estate and Investment Division of Ethelwold Estate Private Limited (Demerged Company) with Ethelwold Communita Private Limited (Transferee Company).
- d)** The Meeting of the Unsecured Creditors of the Transferee Company i.e. Ethelwold Communita Private Limited be convened and held at the registered office at 41A, A.J.C. Bose Road, 2nd Floor Room No. 210 Kolkata, 700017 on **Monday, the 2nd Day of September, 2024** at **11:30 A.M.** for the purpose of considering the proposed Scheme of Demerger of Real Estate and Investment Division of Ethelwold Estate Private Limited (Demerged Company) with Ethelwold Communita Private Limited (Transferee Company).
- e)** At least 30 clear days before the Meetings of the Unsecured Creditors of the Applicant Companies to be held as aforesaid, a Notice convening the said Meeting at the place, day and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery to each of the Unsecured Creditors of

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the Applicant Companies at their respective registered or last known addresses or by e- mail to the registered e-mail address of the Unsecured Creditors as per the records of the Applicant Companies.

f) At least 30 clear days before the Meetings of the Unsecured Creditors of the Applicant Companies to be held as aforesaid, a Notice convening the said Meeting at the place, day and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the registered office of the Applicant Companies as aforesaid and shall also be published once each Business Standard, Kolkata in English Edition and in Aajkal (Kolkata) in Bengali Edition.

g) The Applicant Companies undertake to:

- i. Issue Notice convening Meeting of the Unsecured Creditors as per Form No. CAA.2 (Rule 6) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013.
- iii. Issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
- iv. Advertise the Notice convening Meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

h) **Advocate Simran More, Mobile No. 9903171330, Email-id: simranmore.2111@gmail.com** is appointed as the **Chairperson** of the meetings to be held, as aforesaid. The Chairperson shall be paid a

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consolidated sum of **Rs. 70,000/-** for conducting the aforesaid meeting as Chairperson.

- i)** The **Scrutinizer** for the Meetings shall be **Ms. Madhumita Karar, FCA , e-mail: madhumita@kgrs.in, Mobile No. 9007064060/ 7980658238.**

The Scrutinizer shall be paid a consolidated sum of **Rs. 60,000/-** for acting as the Scrutinizer.

- j)** The Chairpersons appointed for the aforesaid Meeting(s) to issue the Notices of the Meeting(s) referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the Meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the Meeting(s) by any person(s).

- k)** The quorum for the aforesaid Meeting(s) of the Unsecured Creditors shall be as prescribed under Section 103 of the Companies Act, 2013.

- l)** In case if the Quorum as noted above is not present at the Meeting(s), then the Meeting(s) shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of quorum valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the persons entitled to attend and vote at the Meeting is filed with the registered office of the Applicant Companies at least 48 hours before the Meeting(s).

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- m)** The voting by proxy or Counsel in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the Meeting(s), is filed with the Applicant Companies at its Registered Office and by email to the Scrutinizer, not later than 48 hours before the aforesaid Meeting(s) as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- n)** The votes cast 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 of the Chairperson of the meeting within 3 days from the conclusion of the meeting. The Chairperson shall declare the result of the meeting after submission of the report of the Scrutinizer.
- o)** The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Companies and where the entries in the books/ register are disputed, the Chairperson of the Meeting(s) shall determine the value for the purpose of the aforesaid Meeting(s) and his decision in that behalf would be final.
- p)** The Chairpersons of the Meeting(s) of all the Applicant Companies to report to this Tribunal, the result of the Meeting(s) within four weeks of the conclusion of the Meeting(s), and the said report shall be filed as per Form CAA 4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- q)** The Bench hereby directs the Applicant Companies to issue Notice to all their Unsecured Creditors to whom the amount is due and payable, as on 30th September, 2023. The Notice shall be sent via Courier/ Air

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Mail/ Registered Post/ Speed Post/ Hand Delivery/ Email as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies. It shall be the duty of the Applicant Companies to ensure that every creditor is put on notice as regards the present Scheme.

- r)** The Applicant Companies to serve the notice upon (i) the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata (II) Registrar of Companies, Kolkata (iii) the Income tax Authority within whose jurisdiction the Applicant Companies are assessed to tax (iv) The Official liquidator, High Court of Calcutta (v) other sectoral regulators or authorities which are likely to be affected by the scheme clearly indicating the PAN of the company concerned pursuant to section 230(5) of the Companies Act, 2013 and as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the authorities within 60 (Sixty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.
- s)** The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.
- t)** The Applicant Companies shall file a compliance report with the Registry in regard to the directions given in this order by way of affidavit of service. That leave is granted to the Applicant Companies to file an application under sub-rule (2) of Rule 3 of the Rules by the Applicant companies to sanction the proposed Scheme of

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Amalgamation within 4 weeks from the date when Chairperson files its report.

- u)** The Applicant Companies shall also serve notice upon other Sectoral regulators as may be applicable to the Applicant Companies pursuant to the section 230(5) of the Companies Act, 2013 and as per the rule 8 of the Companies (Compromises, Arrangement & Amalgamation Rules, 2016. If no response is received by the Tribunal from such regulators within 60 (Sixty) days of receipt of the notice it will be presumed that such regulators have no objection to the proposed scheme.

- v)** The Applicant Companies shall file an affidavit of service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.

18. The application being **C.A.(CAA) No.18/(KB)/2024** is **disposed of** accordingly.

19. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 26th July, 2024

Oindrila, K. (LRA)