

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I
KOLKATA**

Company Application (CAA) No. 131 / KB /2024

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

In the matter of:

1. **JITESH FINANCE PVT LTD**, (CIN NO:U67120WB1985PTC039626) a company incorporated under the Companies Act, 1956 and within the meaning of Companies Act, 2013 and having its Registered Office at 9, Mango Lane, 3rd Floor, Room No. 1, Kolkata, West Bengal, India, 700001, within the aforesaid Jurisdiction.

.... TRANSFEREE COMPANY

And

2. **GAR INFRAPROJECT PRIVATE LIMITED**, (CIN NO:U45400WB2009PTC135805) a company incorporated under the Companies Act, 1956 and within the meaning of Companies Act, 2013 and having its Registered Office at 9, Mango Lane, 3rd Floor, Room No. 1, Kolkata, West Bengal, India, 700001, within the aforesaid Jurisdiction.

.... TRANSFEROR COMPANY

And

In the matter of:

1. **JITESH FINANCE PVT LTD**
2. **GAR INFRAPROJECT PRIVATE LIMITED** APPLICANTS

Date of pronouncing the order:15.07.2024

Coram:

Bidisha Banerjee:
Balraj Joshi

Hon'ble Member (Judicial)
Hon'ble Member (Technical)

Counsels on Record for the Applicant(s);

1. Mrs. Manju Bhuteria Advocate
2. Mrs. Shobha Upadhyay , Advocate
3. Ms. Arundhati Burman Roy, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. The instant application has been filed in the first stage of the proceedings under Section 230 to 232 read with other applicable provisions of the Companies Act, 2013 (“Act”) for orders and directions with regard to holding meeting of the equity shareholders of the Applicant Company No. 1 and dispensation of the meeting of Equity Shareholders of the Applicant Company No. 2 and dispensation of meeting of the Secured and Unsecured Creditors of the Applicant Company Nos. 1 and 2 in connection with the Scheme of Amalgamation between JITESH FINANCE PRIVATE LIMITED being the “**Transferee Company**” and GAR INFRAPROJECT PRIVATE LIMITED being the “**Transferor Company**” whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company from the **Appointed date viz 1st April, 2024** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”). The copy of the Scheme of Amalgamation is annexed as Annexure- “A-5” at **Pg 148 to 163**, Volume II of the Application.
2. It is submitted by the Ld. Counsel appearing for the Applicant(s) that Transferee Company/ Applicant Company No.1, i.e. Jitesh Finance Private Limited is the only NBFC Company and is holding a valid Certificate of Registration issued by the RBI. By a letter dated May 21, 2024, RBI has given a “**No Objection**” to the Scheme of Amalgamation of the Transferor Company with the Transferee Company and the copy of the same is annexed as Annexure- “A-1” at **Pg 37 to 39**, Volume -I of the Application.
3. The Applicant has the following classes of shareholders and creditors: -

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Sl. No.	Name of Applicant Companies	Equity Shareholders	Secured Creditors	Unsecured Creditors
1	Jitesh Finance Private Limited	39	Nil	Nil
2	Gar Infraproject Private Limited	5	Nil	8

4. It is further submitted that meeting for Equity Shareholders of the Applicant Company No. 1 should be held and the meeting for Equity Shareholders of the Applicant Company No.2 should be dispensed with in view of the consent given by all the Equity Shareholders of the Applicant Company No. 2 and meeting for the Secured Creditors of the Applicant Companies are not required as there are nil Secured Creditors in the Applicant Companies. The meeting of the Unsecured Creditors in the Applicant Company No. 2 should be dispensed with in view of consent given and the meeting of the Unsecured Creditors in the Applicant Company No. 1 is not required as there are Nil Unsecured Creditors in the Applicant Company No. 1. Further, necessary directions should be given for the appointment of Chairman and Scrutinizer and publication of notices in newspapers. Copy of Chartered Accountant certificate as to Shareholding pattern of the Applicant Company No. 1 as on 31.03.2024 is at Annexure- A-6, **Pg 180 to 181**, Vol-II. Copy of the Chartered Accountant Certificate as to the Shareholding pattern of the Applicant Company No. 2 as on 31.03.2024 is at Annexure- A-6, **Pg 182**, Vol-II. Affidavit of Consent of the Equity Shareholders of the Applicant Company No. 2 is at Annexure- A-6, **Pg 183 to 188**, Vol-II.

Certificate of Statutory Auditor of the Applicant Company No. 1 certifying that there is Nil Secured Creditors and Unsecured Creditors in the Applicant Company No. 1 is at Annexure- A-7, **Pg 189**, Vol-II. Certificate of Statutory Auditor of the Applicant Company No. 2 certifying that there is Nil Secured Creditors in the Applicant Company No. 2 is at Annexure- A-7, **Pg 190**, Vol-II. Certificate of Statutory Auditor of the Applicant Company No. 2 certifying that there are 8 Unsecured Creditors in the Applicant Company No. 2 is at Annexure- A-7, **Pg 191**, Vol-II. Affidavit of consent given by the Unsecured Creditors of the Applicant Company No. 2 is at Annexure- A-7, **Pg 192 to 199**, Vol-II.

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5. 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 which are annexed as Pg 15 to 18, Vol-I.
6. The certificate under proviso to Section 230(7) certifying that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 is annexed to the application as Annexure A-5– at page nos. **178-179** (Vol II). Valuation Report prepared by Mr. Surendra Kumar Agarwal (IBBI Registered Valuer) is annexed as Annexure A-5 at pages **164-177** (Vol-II).
7. Learned Counsel of the Applicants submits that the aggregate assets of the Applicant Companies are more than sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any creditors of the Applicant Companies in any manner whatsoever and due provisions have been made for payment of all liabilities as and when the same fall due in usual course.
8. Learned Counsel of the Applicants also submits that the Scheme is not within the purview of the Competition Act, 2002.
9. Learned Counsel of the Applicants also submits that the Certificate of Statutory Auditor of the Applicant Company No. 1 certifying that there is Nil Secured Creditors and Unsecured Creditors in the Applicant Company No. 1 is at Annexure-A-7, **Pg 189**, Vol-II. Certificate of Statutory Auditor of the Applicant Company No. 2 certifying that there is Nil Secured Creditors in the Applicant Company No. 2 is at Annexure- A-7, **Pg 190**, Vol-II and in view of the same the meeting of the Secured Creditor of the Applicant Companies and the meeting of the Unsecured Creditor of the Applicant Company No.2 is not required.
10. Directions are sought accordingly for, (a) Holding meeting of the Equity Shareholders of the Applicant Company No. 1, (b) Dispensation of meeting of the Equity Shareholders of Applicant Company No. 2, (c) Dispensation of meeting of the Unsecured Creditors of the Applicant company No. 2.
11. 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 and make the following orders: -

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(a) **Meetings Dispensed:** In view of the fact that all the Equity Shareholders of the Applicant Company No. 2 have given their consent by way of affidavit to the proposed Scheme of Amalgamation, the meeting of the Equity Shareholders is hereby dispensed with. Further, as the Applicant Company nos. 1 and 2 have No Secured Creditors hence the meeting of the Secured Creditors is dispensed with. As there are No Unsecured Creditors in Applicant Company No. 1 and the Unsecured Creditors of the Applicant Company No. 2 have given their consent by way of an affidavit, the meeting of the Unsecured Creditors of the Applicant Company Nos. 1 and 2 are hence dispensed with.

(b) **Meetings to be Held:** Meetings of the Equity Shareholders of the Applicant Company no. 1.

(c) **Mode of meetings of Equity Shareholders of the First Applicant Company:**

The meeting of the Equity Shareholders of the Applicant Company No.1 shall be held physically on **04.09.2024** at **4 PM** at **5 K S Roy Road, Ground Floor, Kolkata-700001.**

(d) **Advertisement:** At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in the “Business Standard” in English and “Aajkaal” in Bengali as per Rule 7 of the Companies (Compromises, Amalgamations and Amalgamations) Rules, 2016.

(e) **Individual Notices:** At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the said Equity Shareholders of the Applicant Company Nos. 1 as per Rule 6 of the Companies (Compromises, Amalgamations and Amalgamations) Rules, 2016, by Courier / Registered Post / Speed Post / Hand delivery or through email (to those Equity Shareholders of the Applicant Company no. 1 whose email addresses are duly registered with the Applicant Company no. 1 as applicable for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company no. 1 at their last known address

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or email addresses as per the records of the Applicant Company no. 1 as applicable. The said notices along with accompanying documents shall also be posted on the website of the Applicant(s) if any.

- (f) **Chairperson: Ms. Shruti Singhania**, (Mobile No.9874847959) is appointed as the Chairperson of the meetings to be held as aforesaid. The Chairperson shall be paid a consolidated sum of **Rs. 75000/-** for conducting the aforesaid meeting(s) as Chairperson.
- (g) **Scrutinizer: Ms. Zeba Khan Adv.** (Mobile No.9681570833) is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid consolidated sum of **Rs. 60000/- [Rupees Sixty Thousand]** for acting as Scrutinizer.
- (h) **Quorum and Attendance**: That the quorum of the aforesaid meeting of the Equity Shareholders of the Applicant Company no. 1 shall be as prescribed under Section 103 of the Companies Act, 2013. In case the required quorum as stated above is not present at the commencement of the meeting(s), the meeting(s) shall be adjourned by 30 (thirty) minutes and thereafter the persons/shareholders present shall be deemed to constitute the quorum.
- (i) **Mode of Voting**: The meeting would be held physically and voting shall be conducted physically by polling paper/raising hand.
- (j) **Cut-off date**: The cutoff date for determining the eligibility to vote and value of votes shall be 06.08.2024 for Equity Shareholders of the Applicant Company nos. 1 and the value of the votes cast shall be reckoned and scrutinized with reference to the said date.
- (k) **Voting procedure**: For the meeting of the Equity Shareholders of the Applicant company no. 1 the procedure for voting by polling paper and conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) rules 2014 (“the said Rules”) and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
- (l) **Proxies & Board Resolutions**: The voting by Proxy is permitted in respect of the meeting of the Equity Shareholders of the Applicant Company no. 1.
- (m) That the Chairperson appointed for the said meeting(s) or any person authorized by the Chairperson do issue and send the notices of the aforesaid meeting(s).

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- (n) The votes cast shall be scrutinized by the Scrutinizer. Votes cast in all the modes shall be consolidated. The Scrutinizer shall prepare and submit the reports on the meeting along with all papers relating to the voting to the Chairperson of the meetings within 7 days of the conclusion of the meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer.
- (o) The value of each Equity shareholders of the Applicant Company no . 1 shall be in accordance with the books and records of the Applicant Company no. 1 as applicable, where entries in the books are disputed, the chairperson shall determine the value for purposes of the said meeting(s).
- (p) The resolution for approval of the Scheme put to a meeting shall, if passed by a majority in number representing three-fourths in value of Equity Shareholders of the Applicant Company no. 1 casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting(s) under Section 230(1) read with Section 232(1) of the Companies Act, 2013.
- (q) The Chairperson to report to the Tribunal the results of the said meeting(s) within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA4 of the Companies (Compromises, Amalgamations and Amalgamations) Rules, 2016, verified by affidavit.
12. 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 shall also be served on the following:
- i) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
 - ii) Registrar of Companies West Bengal,
 - iii) Income Tax Department and Goods and Service Tax Authorities having jurisdiction over the Applicants clearly indicating the PAN/ GST registration number of the company concerned and
 - iv) Official Liquidator, High Court of Calcutta
 - v) Reserve Bank of India, Kolkata

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- vi) Jurisdiction GST authorities and other sectoral regulators/authorities who may be affected by the scheme.

These notices shall be sent by hand delivery through special messenger or by speed post and also by email within two weeks from the date of receiving this order.

Such notices shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Amalgamations and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

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 Advocates / Authorized Representative of the said Applicant. 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.

13. The Applicant(s) to file an affidavit proving service of notices to all statutory /sectoral authorities and compliance of all directions contained herein within two weeks after such services.
14. The Applicants are at liberty to file second motion petition within two weeks from the date of filing of the report by the Chairperson of the meeting.
15. The application being **Company Application (CAA) No. 131/KB/2024** is disposed of accordingly.
16. Certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on this, the 15th Day of July, 2024.

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