

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CA (CAA)/48/MB-IV/2024

*In the matter of the Companies
Act, 2013;*

AND

In the matter of

*Sections 230 to Section 232 of the
Companies Act, 2013 and other
applicable provisions of the
Companies Act, 2013*

read with Companies

*(Compromises, Arrangements and
Amalgamation) Rules, 2016;*

AND

*In the matter of
The Scheme of Merger by Absorption
of*

***Athena Investment Holding
Limited***

("Transferor Company")

With

***Multiacre Investment Private
Limited***

("Transferee Company")

*And their respective
Shareholders and Creditors.*

Multiacre Investment
Private Limited

[CIN: U65900MH2021PTC368294]

... Applicant Company/
Transferee Company

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Order delivered on **12.07.2024**

Coram:

Smt. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant(s) : Mr. Ajit Singh Tawar i/b Ajit
Singh Tawar & Co.,
Advocates.

ORDER

1. Heard Ld. Counsel for the Applicant Companies.
2. Ld. Counsel for the Applicant Company submits that the present Scheme is a Merger by Absorption of **Athena Investment Holding Limited** which is a foreign limited liability company incorporated under the provisions of the International Business Companies Act, 2016 ('Transferor Company') with **Multiacre Investment Private Limited** which is a private limited company incorporated under the Companies Act, 2013 ('Transferee Company') and their respective shareholders ('Scheme') under Sections 230 to 232 read with section 234 other applicable provisions of the Companies Act, 2013 and rules framed thereunder.
3. Ld. Counsel for the Applicant submits that the registered office of the **Transferor Company** is at **Seychelles** whereas the registered office of the **Transferee Company** is situated in **Thane, Maharashtra**. Therefore, the territorial jurisdiction of only the Applicant Company/ Transferee Company falls within the Bench.

4. Ld. Counsel for the Applicant Company states that **Section 205 of the International Companies Act, 2016** as in force in Seychelles provides for the merger of Company incorporated in Seychelles to merge with foreign Companies and further list downs the documents that are required to be submitted along with the Application before the Authorities at Seychelles and one of documents required to be submitted along with the Application is certified copy of the certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated, the relevant extract of *Section 205* is reproduce hereunder for reference as follows:

(1) One or more companies may merge or consolidate with one or more foreign companies in accordance with this section, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of each jurisdictions in which each foreign company is incorporated.

(2) The following applies in respect of a merger or consolidation under this section —

(a) a company shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, and a foreign company shall comply with the laws of the jurisdiction in which it is incorporated; and

(b) if the surviving company or the consolidated company is

to be incorporated under the laws of a jurisdiction outside Seychelles, it shall file —

(iv) a certified copy of the certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger or consolidation is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

(4) If the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Seychelles, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 201 except in so far as the laws of the other jurisdiction otherwise provide.

(6) If the surviving company or the consolidated company is a company incorporated under the laws of a jurisdiction outside Seychelles, the merger or

consolidation is effective as provided by the laws of that other jurisdiction.”

5. The Applicant Company has filed the entire extract of **Section 205** of the International Business Companies Act, 2016 of Seychelles to the Additional Affidavit *dated 17th May 2024*. Upon perusal of the same, it is evident that Applicant Company is required to make the Scheme effective as per the Laws governing the Inbound Merger in India and the make a subsequent Application before the Authorities at Seychelles.
6. It is submitted that the Transferor Company is primarily an investment holding company. The Transferee Company is engaged in the business of investment and other allied activities.
7. It is stated that, the **Board of Directors** of the Transferor Company and of the Transferee Company at their respective Board meetings held on **March 4, 2024** approved. The Appointed date of the Scheme of Merger by Absorption is **1st April 2024**.
8. The Counsel for the Applicant Company submits that the **Rationale** for the Scheme of Merger are as follows:
 - a. *Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company.*
 - b. *Significant reduction in the compliances, administrative*

functions and other costs required to be incurred for maintaining the Transferor Company as a separate legal entity.

- c. The Boards of Transferor Company as well as Transferee Company believe that this merger will contribute to smooth integration of both the companies and would benefit the shareholders, and other stakeholders of both, the Transferor Company and the Transferee Company.*
- d. The amalgamation will enhance management focus and operational flexibility.*
- e. The Amalgamation will create a platform to enhance financial flexibility to pursue growth.*

9. The Learned Counsel for the Applicant Company submits that the consideration for the Scheme, as determined by the Valuation Report issued by Mr. Dinesh Kumar Deora, Registered Valuer IBBI/RV/07/2019/12711 dated 2nd March, 2024 is as follows:

“8.28 [Eight point twenty-eight] fully paid-up Compulsory Convertible Preference Shares (“CCPS”) of Rs. 10 each of Transferee Company shall be issued and allotted for every 1 [One] fully paid-up equity shares of USD 1 (United States Dollar one) each held in Transferor Company.”

10. The Authorized, Issued, Subscribed and Paid Up Capital of the Applicant Company;

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Particulars	Amount
Authorised Capital	
1,00,000 equity shares of face value of INR 10/- each	10,00,000
TOTAL	10,00,000
Issued Subscribed and Paid-up Capital	
10,000 equity shares of face value of INR 10/- each	1,00,000
TOTAL	1,00,000

11. Ld. Counsel for the Applicant Company submits that there are **3 (three) Equity Shareholders** in the **Applicant Company** as on 31st day of January, 2024 and all the Equity Shareholders have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the Applicant Company, the meeting of the Equity Shareholders of the Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby **dispensed with**.
12. Ld. Counsel for the Applicant Company submits that there are **no Secured Creditors in the Applicant Company** as on 31st day of January, 2024. The List of Secured Creditors of the Applicant Company certified by the Statutory Auditor. In view of the fact that there are no Secured creditors in the Applicant Company, the question of convening and holding of the meeting of Secured Creditors of the Applicant Company does not arise.

13. Ld. Counsel for the Applicant Company further submits that there are **2 (two) Unsecured Creditors** in the Applicant Company amounting to Rs. 60,000/- (Rupees Sixty Thousand only) as on 31st day of January, 2024. The list of Unsecured Creditors of the Transferor Company certified by the Statutory Auditor. It is submitted that all the Unsecured Creditors have given their consent to approval of the Scheme by way of affidavits which are annexed to the Company Scheme Application. In view of the consent affidavits provided by all the Unsecured Creditors of the Applicant Company, the meeting of the Unsecured Creditors of the Applicant Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby **dispensed with**.
14. As per **Rule 25A** of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 sub rule (1) *A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.* That the Reserve Bank of India (RBI) vide notification No. *FEMA.389/2018-RB dated 20th March 2018* prescribed *Foreign Exchange Management (Cross Border Merger) Regulations, 2018* which govern the cross-border mergers for inbound and outbound mergers. Ld. Counsel further state that the paragraph 9 of the said regulation provides for deemed approval, the extract of *paragraph 9* is reproduced herein below for reference:

9. Deemed approval

(1) Any transaction on account of a cross border merger undertaken in accordance with these Regulations shall be deemed to have prior approval of the Reserve Bank as required under Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016.

(2) A certificate from the Managing Director/ Whole Time Director and Company Secretary, if available, of the company(ies) concerned ensuring compliance to these Regulations shall be furnished along with the application made to the NCLT under the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.

15. Ld. Counsel further submits that paragraph 9 of the said notification provides for deemed approval if the cross-border merger regulations are undertaken in compliance of the said regulations and the Applicant Company is required to file a certificate to showcase how the scheme is in compliance with the said regulations and that such certificate shall be lodged with the Tribunal at the time of submitting the Company Scheme Application. Further the said certificate is required to be signed by the Managing Director/Whole Time Director and Company Secretary, if available, of the company(ies) concerned. The copy of certificate issued by the Managing Director of the Applicant Company ensuring compliance of the Foreign Exchange Management (Cross

Border Merger) Regulations, 2018 is annexed to the Additional Affidavit to Company Scheme Application.

16. The Applicant Companies are directed to serve notices along with a copy of the Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, upon the –
- i. Central Government through Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai;
 - ii. Registrar of Companies, Mumbai;
 - iii. Income Tax Authority within whose jurisdiction of the Applicant Companies assessments are made, bearing PAN - AAEC7575Q at Circle 1, Thane, Qureshi Mansion, Gokhale Road, Thane; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];
 - iv. Goods and Service Tax (GST) within whose jurisdiction the Applicant Company's GSIN is registered, clearly indicating the GSTIN of the Company concerned;
 - v. Reserve Bank of India;
 - vi. Ministry of Corporate Affairs; and
 - vii. Any other Sectoral/ Regulatory Authorities relevant to

the Applicant Companies or their business.

17. The Notice shall be served through by Registered Post-AD/Speed Post and through email along with copy of scheme and state that *“If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme”*. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the notice.
18. The Applicant Companies will submit –
- i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;
 - ii. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme;
 - iii. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.
19. The Applicant Companies to file Affidavits of Service, with the Registry proving service upon the regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

Sd/-
Anu Jagmohan Singh
Member (Technical)

/Dubey/

Sd/-
Kishore Vemulapalli
Member (Judicial)