

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **09.05.2024** THROUGH VIDEO CONFERENCING

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**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**APPLICATION NUMBER** : CA(CAA)/27(CHE)/2022  
**PETITION NUMBER** : CP(CAA)/45(CHE)/2023  
**NAME OF THE PETITIONER(S)** : Rajgharana Housing Ltd and Others  
**NAME OF THE RESPONDENTS** :  
**UNDER SECTION** : Sec 230-232 of CA, 2013

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**ORDER**

Present: None for the Applicant.

Vide separate order announced in Open Court, the scheme is approved.

File be consigned to records.

**Sd/-**

**(VENKATARAMAN SUBRAMANIAM)**  
MEMBER (TECHNICAL)

MG

**Sd/-**

**(SANJIV JAIN)**  
MEMBER (JUDICIAL)

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

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Amalgamation* of Rajgharana Housing Limited &  
Rajshree Foundations Limited and their respective Shareholders and Creditors

**CP(CAA)/45(CHE)2023 in CA(CAA)/27(CHE)2023**

**RAJGHARANA HOUSING LIMITED**

CIN No.: U45201TN1997PLC039193

Having its registered office at

Old No.31/3, New No. 66/3,

South Usman Road, T. Nagar,

Chennai 600017,

Represented by its Director,

Mr. Vikash Jain

*... Petitioner/Transferor Company*

**RAJSHREE FOUNDATIONS LIMITED**

CIN NO: U70101TN2009PLC065513

Having its registered office at

Shop No 6, Rainbow Arcade First Floor,

Old Nos 21-23, New No. 37,

Thyagaraya Road, T.Nagar, Chennai-600017,

Represented by its Director,

Mr. Prakash Kamal Golecha

*...Petitioner /Transferee Company*

*And*

Their Respective Shareholders and Creditors

*Order Pronounced on 09<sup>th</sup> May, 2024*

**CORAM**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Applicant(s) : Krishna Sharan Mishra, PCS  
For Regional Director : Avinash Krishnan Ravi, Advocate  
For Official Liquidator: B.Palani along with Sreekumari*

## **ORDER**

The hearing of this Company Petition has been conducted through hybrid mode.

2. This Joint Company Petition has been filed by the Petitioner Companies above named for the purpose of the approval of the Scheme of Amalgamation of **RAJGHARANA HOUSING LIMITED** (for brevity "Transferor Company") and **RAJSHREE FOUNDATIONS LIMITED** (for brevity "Transferee Company") under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules'), in pursuant to the Scheme proposed by the Petitioner Companies (hereinafter referred to as the 'SCHEME'). The said Scheme is annexed as **Annexure 6** at "**Page Nos. 168-189**" of the Joint Company Petition typeset i.e., **CP/CAA/45/CHE/2023**.

3. **1<sup>ST</sup> MOTION APPLICATION – IN BRIEF**

3.1. The Transferor Company and Transferee Company had filed First Motion Application vide CA(CAA)/45/(CHE)/2023 seeking directions as follows:

	EQUITY SHAREHOLDERS	PREFERENCE SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
<b>TRANSFEROR COMPANY</b>	Convening of meeting	Not Applicable as no Preference Shareholders	Not Applicable as no Secured Creditors	To Dispense with
<b>TRANSFEEE COMPANY</b>	Convening of meeting	Not Applicable as no Preference Shareholders	Dispense with	To Dispense with

3.2. Based on such application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, vide order dated *19<sup>th</sup> June, 2023* dispensing the meetings of the Secured Creditors and Unsecured Creditors of Transferor and Transferee Company. Further, the Transferor Company and Transferee Company were to convene meeting for Equity Shareholders on **09.08.2023 at 11:00 A.M. & 12.30 P.M.** respectively at the Registered Office of the Transferee Company.

3.3. Accordingly the Tribunal vide Order dated 19.06.2023, appointed Ms. R.Sucharitha as Chairperson and Mr. Jerin Asher Sojan as the Scrutinizer for the above said meetings. Subsequently, the second motion petition was filed before this Tribunal by the Petitioner Companies on **18.08.2023** for sanction of the Scheme of Amalgamation by this Tribunal.

3.5. The Chairperson has submitted his Report of the above said meetings on **11.08.2023** with the Tribunal. From the Chairperson's report, it is observed that the Secured Creditors of Transferee Company, Unsecured Creditors of the Transferor and Transferee Company consented in favour of the Scheme. The said Chairperson's report is annexed along with this Petition typeset of documents in **Page nos 427-444**.

#### 4. **RATIONALE OF THE SCHEME**

4.1. The rationale and benefits of the Scheme as submitted by the Petitioner Companies would *inter alia* result in the following benefits;

- (i) The amalgamation would result in economies of scale, effective coordination and better control.
- (ii) The amalgamation will enable consolidation of the business of the two entities into one entity which will facilitate in focused growth, operational efficiency, integration synergies and better supervision of the business of the group.
- (iii) To increase the efficiency of combined business by pooling of resources and their optimum utilisation, thereby availing synergies from combined resources which would be beneficial to all stakeholders.
- (iv) The amalgamation would facilitate scaling of operations, reduce administrative costs and garner greater visibility in the market.
- (v) The amalgamation will result in reduction of multiplicity of entities, thereby reducing compliance cost of multiple entities viz., statutory filings, regulatory compliances, labour law/ establishment related compliances
- (vi) The amalgamation will also enable smoother implementation of policy changes at a higher level from a management perspective and shall also help enhance the efficiency and control of the entities. There is no likelihood that interests of any shareholder or creditor of either the Transferor Company or the Transferee

Company would be prejudiced as a result of the Scheme. The Amalgamation will not impose any additional burden on the members of the Transferor Company or the Transferee Company.

(vii) The banks, creditors and institutions, if any, are not affected by the proposed amalgamation as their security is maintained.

(viii) The combined managerial and technical expertise would enable the Transferee Company to develop a business model that would be competitive and cogent.

5. In the Second Motion Petition filed by the Petitioner Companies, this Tribunal vide order dated 13.09.2023 directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities viz.

(i) Regional Director (Southern Region), Chennai (ii) RoC, Chennai, (iii) Official Liquidator and (iv) Commissioner of Income Tax, and other sectoral regulators, who may govern the working of the respective companies, as well as for paper publication to be made in “The New Indian Express”, English (All India Edition) and “Dina Malar” Tamil (Tamil Nadu Edition).

6. In compliance to the said directions issued by this Tribunal, the Petitioner Companies filed an affidavit of service before the Registry of

this Tribunal on **16.10.2023** vide **SR No.2383**. A perusal of the same discloses that the Petitioner Companies effected the paper publications as directed by the Tribunal in “The New Indian Express” (All India Edition) in English and “Dina Malar” (Tamil Nadu Edition) in Tamil on 27.03.2023. It is also seen that notices were also served to (i) Regional Director, Southern Region, Chennai on 22.09.2023, (ii) Registrar of Companies, Chennai on 22.09.2023, (iii) Official Liquidator on 22.09.2023 (iv) Commissioner of Income Tax on 22.09.2023, and the proof of the same by way of affidavits have been enclosed with the typed set. Pursuant to the service of notice of the petition following statutory authorities have responded as follows:

## **7. STATUTORY AUTHORITIES**

### **7.1. REGIONAL DIRECTOR**

The Regional Director, Southern Region (*hereinafter referred to as 'RD'*) Chennai has filed his Report before this Tribunal on **01.02.2024** vide **S.R.No.576** and has stated in Para 9 of the RD Report that as per Clause 4.1 of Part II of the Scheme states about the protection to the staff, workmen and employees of the Transferor Company. It is stated that all staff, workmen and

employees of the Transferor Company shall stand transferred to the Transferee Company on the terms and Conditions not less beneficial to such employees than those subsisting with reference to the Transferor Company.

7.2. It is stated in para 10 of the Report that as per Clause 8.1 of Part B of the Scheme, the equity shareholders of the Transferor Company will be allotted as follows: “every one hundred equity shares having a face value of Rs.10/- each in the Transferor Company viz., Rajgharana Housing Limited, 63 (Sixty Three ) fully paid up equity shares having a face value of Rs.10/- each of the Transferee Company viz., Rajshree Foundations limited.

7.3. It is stated in para 7 of the Report that, as per Auditor Certification dated 15.03.2023 of the Transferee Company that there are three charges pending against the Transferee Company. But, the said charges are not reflected in the MCA Portal. Hence the RD Report prays that, this Tribunal may direct

the Transferee Company to file necessary e-form CHG-1 for creation of the said charges.

7.4 It is stated in para 14 of the RD Report that as per the report dated 16.01.2024 of ROC, Chennai, the transferor Company and Transferee Company are regular in filing their statutory returns and filed upto financial year ending 31<sup>st</sup> March 2023. It is further stated that as per the ROC report, there is no prosecution/ complaint/ inspection or investigation pending against the Transferor Company.

7.5. It is stated in para 12 of RD Report that as per Clause 10.1 of Part II of the Scheme, upon the Scheme becoming effective, the authorised share capital of the Transferor Company shall stand combined with the authorised share capital of Transferee Company; filing fees and stamp duty, if any, paid by the Transferor Company on their respective authorised share capital, shall be deemed to have been so paid by the Transferee company on the combined share capital and accordingly, the Transferee Company shall not be required to pay any fee/ stamp duty for its increased authorised share capital. RD report stated

that this clause is non-tenable and further pray that Tribunal may direct the Petitioner to make the payment of difference fee/stamp duty if any arises on proposed increase of authorised share capital and file the amended MOA and AOA with the RoC.

7.6. Thus, after examining the Scheme, except the observations made in para 7,12 of the Report, the Regional Director in his Report has submitted that they have decided not to make any objection to the Scheme.

7.7. In relation to the objections raised by the RD, the Learned Counsel for the Petitioner Companies has filed a Reply vide *S.R.No. 759* dated *13.02.2024* wherein, it is stated that in respect to para 7 of RD Report, the Transferee Company has undertaken to comply with the observations raised in the RD Report by filing the Appropriate Charge Form CHG-1. Further, in relation to para 12 of the RD Report, the Transferee Company undertakes to comply with the observations raised and it shall file the amended MOA and AOA of the Transferee Company with the Registrar of Companies. Further, the Transferee Company

undertakes to pay any amount as fees towards the enhanced Authorised Capital if applicable, in an appropriate manner.

## 8. OFFICIAL LIQUIDATOR

8.1. In relation to the Official Liquidator, (*hereinafter referred to as 'OL'*) to whom the notice was issued, he has filed the Report before this Tribunal stating that they have appointed M/s. Venkat & Ranga LLP Chartered Accountants from the panel maintained by their office to verify into the affairs of the Transferor Company. It is stated that the said Chartered Accountant firm has verified the books and accounts and other records of the above-mentioned Transferor Company and submitted its report. Copy of the same is enclosed herewith and marked as **Annexure**. It is reported from the Scrutiny/inspection that:-

- i. The Company is maintaining proper books of account as per the requirements of the Companies Act, 2013 and has prepared them in accordance with the General accepted accounting principles.
- ii. The Transferor company does not have any secured loans. However, there is 1 unsecured creditor as on the date of filing application. Consent Affidavits from the Creditors were obtained.
- iii. The Valuation Report for the purpose of the proposed amalgamation of the Transferor Company with the Transferee company was issued by Mr. Sandeep Kothari, an IBBI Registered Valuer vide report dated 15.03.2023.

- iv. All entries have been made in the Statutory Registers in accordance with the requirements of the Companies Act, 2013.
- v. Inspection of Records maintained by the RoC, Chennai relating to the Transferor Company as on 04.10.2023 does not reveal anything to draw an adverse inference relating to the conduct of the affairs of the company.
- vi. The Transferor Company have filed income tax returns up to the Assessment year 2022-2023.
- vii. As regards to the employees of the Transferor Company as on the effective date shall as from such date, become employees of the Transferee Company in such position, rank and designation as may be determined by the Transferee Company with the benefit of continuity of service and such that the terms and conditions of their employment with the Transferee Company are not less favourable than those applicable to them as employees of the Transferor Company on such date.
- viii. With regard to Provident Fund, Gratuity Fund, Superannuation Fund or any other Special Fund created or existing for the benefit of such employees of the Transferor Company , from the effective date, the Transferee Company shall stand substituted for the Transferor Company for all whatsoever in relation to the administration or operation of such fund or purposes funds and the obligations to make contributions to the said fund or funds in accordance with the provisions thereof as per the terms provided in the respective trust deeds or other documents provided that if the Transferee company considers it desirable for the smooth administration, management, operation and uniformity of such funds the same may be merged with similar funds of the Transferee Company.

- ix. That as per the scheme of Transferee Company shall pay the difference of fee and stamp duty, if any, payable on the increased authorized Capital after setting off the filing fees and stamp duty already paid by the Transferor Company on its Authorized Share Capital prior to this Scheme.
- x. The Transferor Company have not accepted deposits from public and there are no secured creditors
- xi. There is no demand or dispute subsisting under ESI or PF or under any other Statutory Act on the case of the Transferor Company.
- xii. The Transferor Company have no unpaid or unclaimed dividends.

8.2. Further in Para 4 of the OL report, it is stated that on scrutiny of the records of the Transferor Company viz. Rajgharana Housing Limited, the Chartered Accountant has not come across any act of misfeasance by the Directors which would attract the provisions of Section 339 of the Companies Act, 2013. The Chartered Accountants are also of the opinion that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest. Neither has any person or Officer or Director of the company misapplied or diverted or retained or become liable or accountable for any money property of the company or has been found guilty of any misappropriation, breach of trust in relation to the Company under Section 340 of the Companies Act, 2013.

8.3. From the above observations made by the Chartered Accountant, the Official Liquidator has sought to take on record and consider the report of the Chartered Accountant and fix the remuneration payable to the Auditor who has investigated into the affairs of Transferor Company. In this regard, this Tribunal hereby directs the Transferor Company to pay a sum of **₹ 50,000+ GST** (*Rupees Fifty Thousand Plus GST*) to the Official Liquidator for the payment of fees payable towards the Auditor who has investigated into the affairs of the Transferor Company.

## **9. VALUATION REPORT**

The Learned Counsel for the Petitioner Companies has invited the attention of this Tribunal to the Valuation Report obtained from one Sandeep Kothari, Registered Valuer dated 15.03.2023, wherein the valuer states that, in his opinion the fair equity share exchange ratio for the proposed amalgamation of Rajgharana Housing Limited with Rajshree Foundation Limited is 63(sixty three) equity shares of Rajshree Foundations Limited (of INR 10/- each fully paid up) for

every 100 (Hundred) equity shares of Rajgharana Housing Limited (of INR 10/- each fully paid up).

#### **10. ACCOUNTING TREATMENT**

The Learned Counsel for the Petitioner Companies has stated that the Statutory Auditors of the Petitioner Companies have examined the Scheme and certified that the Petitioner Companies have complied with proviso to Section 230 (7) / Section 232 (3) and the Accounting Treatment contained in the proposed Scheme of Amalgamation is in compliance with the Applicable Indian Accounting Standards. The Certificates issued by the Statutory Auditors certifying the Accounting Treatment of the Transferor and Transferee Company are annexed as *Annexure 15 at pages 463-464* of this Petition.

#### **11. OTHER STATUTORY AUTHORITIES**

11.1 Despite notice having been served on 17.07.2023 and paper publication made on 06.07.2023 in The New Indian Express (All India Edition) in English and Dina Malar (Tamil Nadu Edition) in Tamil on 07.07.2023, there is no representation from the other statutory Authorities viz, Department of Income Tax. Under such circumstances this Tribunal in terms of Section 230(5) of the Companies Act, 2013

presumes that the Department of Income Tax does not have any objection to the sanction of the Scheme.

11.2. In Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

*“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned.”*

## **12. OBSERVATIONS OF THIS TRIBUNAL**

12.1. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst

the petitioner companies seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Company. In view of the absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended at "*Pages 168-189*" of the Joint Company Petition typeset filed in CP/CAA/45/CHE/2023 as well as the prayer made therein.

12.2. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

12.3. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any

other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

**13. THIS TRIBUNAL DO FURTHER ORDER:**

- (i) That all properties, rights and powers of Transferor undertaking be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 be transferred to and vested in the Transferee Company for all intents, purposes and interest of the Transferor undertaking subject nevertheless to all changes now affecting the same; and
- (ii) That all the liabilities, (if any) and powers, engagements, obligations and duties of the Transferor undertaking shall pursuant to Section 232 (3) of the Companies Act, 2013 without further act or deed be transferred to the Transferee Company and accordingly the same shall become the liabilities and duties of the Transferee Company; and
- (iii) That all proceedings now pending by or against the Transferor undertaking shall be continued by or against the Transferee Company; and
- (iv) That all the services of all the employees of the Transferor Company employed in the Transferor undertaking shall stand

transferred to the Transferee Company on the same terms and conditions at which these employees are engaged by the Transferor Company without any interruption of service as a result of the transfer; and

- (v) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by *Clause 8.1 of Part II the SCHEME* herein the shares in the Transferee Company to which they are entitled under the said SCHEME.
- (vi) That the Transferee Company shall file the revised Memorandum and Articles of Association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company.
- (vii) That the Appointed date for the Scheme shall be **01.04.2023**.
- (viii) That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor undertaking shall be deemed to be transferred; and
- (ix) That any person interested in the Scheme, shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary;

14. Accordingly, the Company Petition stands **allowed** on the  
aforementioned terms.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Kishore P*