

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT No-I,
KOLKATA**

Company Application (CAA) No. 27/ KB /2024

Application under section 230 read with section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.

In the matter of:

A Scheme of Amalgamation(First Motion):

APPOLLANE AGENCIES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U51109WB2005PTC105284) and having its Registered Office at Suit No. 1006A, Diamond Heritage, 10th Floor, 16, Strand Road Kolkata - 700001, in the State of West Bengal.

***** Transferor Company No.1/Applicant No.1.
-And-

MARKAYAAGENCIES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956(CIN: U51109WB2005PTC104100) and having its registered office at Suit No. 1006A, Diamond Heritage, 10th Floor,16 Strand Road, Kolkata – 700001in the State of West Bengal.

***** Transferor Company No.2/Applicant No.2.
-And-

SHOSHANNA MERCANTILES PRIVATE LIMITED,a company incorporated under the provisions of the Companies Act, 1956 (CIN: U51109WB2005PTC105282) and having its Registered Office at Suit No. 1006A, Diamond Heritage, 10th Floor,16 Strand Road, Kolkata - 700001in the State of West Bengal.

-***** Transferor Company No.3/Applicant No.3.
-And-

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HAMILTON TECHNOLOGIES (INDIA) PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U72200WB1998PTC267102) and having its Registered Office at Suit No. 1006A, Diamond Heritage, 10th Floor, 16, Strand Road Kolkata - 700001, in the State of West Bengal.

******* Transferee Company /Applicant No.4.**

-And-

In the Matter of:

1. APPOLLANE AGENCIES PRIVATE LIMITED
2. MARKAYA AGENCIES PRIVATE LIMITED
3. SHOSHANNA MERCANTILES PRIVATE LIMITED
4. **HAMILTON TECHNOLOGIES (INDIA) PRIVATE LIMITED**

.... **APPLICANTS**

Date of pronouncing the order:23/04/2024

Coram:

Rohit Kapoor : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

For the Applicants : 1. Ms. Manju Bhuteria, Advocate
2. Ms. Aisha Amin, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. 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

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orders and directions with regard to dispensation of the meetings of shareholders and creditors in connection with the Scheme of Amalgamation of

Appollane Agencies Private Limited	Transferor Company No 1 / Applicant No.1
Markaya Agencies Private Limited	Transferor Company No 2 / Applicant No.2
Shoshanna Mercantiles Private Limited	Transferor Company No 3 / Applicant No.3

With Hamilton Technologies (India) Private Limited- Transferee Company / Applicant No 4, from the **Appointed Date 01st April, 2023** as defined in the Scheme, in the manner and on the terms and conditions stated in the said **Scheme of Amalgamation** (“Scheme”). A copy of the said Scheme is annexed to the Company Application marked – **Annexure –I** in VOL II at Page No 183 to 209.

2. It is submitted by Ld. counsel appearing for the Applicant(s) that as per the Scheme the **Appointed Date is 01st April, 2023**.
3. It is submitted by Ld. Counsel appearing for the Applicant(s) that none of the Applicant Companies involved in the Scheme are NBFC Company.
4. It is submitted by Ld. counsel appearing for the Applicant(s) that the Board of Directors of the Applicant Companies have at their respective meeting held on 01st January, 2024 have passed resolution adopting the proposed Scheme of Amalgamation . A copy of the Resolution passed by the Board of Directors of the Applicant Companies are all collectively annexed to the Company Application marked – **Annexure – J** in VOL II at Page No 210 to 213.
5. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation Report dated 28th December,2023 recommending the Swap Ratio has been prepared by CA Mukesh Banka, having Registration No.-IBBI/RV/06/2020/12905, a Registered Valuer. A copy of the said Report is annexed to the Company Application marked – **Annexure – Kin** VOL II at Page No 214 to 231.
6. It is submitted by Ld. counsel appearing for the Applicant(s) that the statutory auditors of the Transferee Company / Applicant No 4 have all by their certificate dated 02-01-2024 , and the statutory auditors of the Applicant No 1 , Applicant No 2 and Applicant No.3 have all by their certificate dated 09-01-2024 confirmed that the Accounting

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Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 and Rules made there under. A copy of the said Certificate issued by Statutory Auditor of the Applicant Companies are all collectively annexed to the Company Application marked – **Annexure – N** in VOL II at Page No 325 to 335.

7. It is submitted by Ld. counsel appearing for the Applicant(s) that the Applicant(s) have the following classes of shareholders and creditors:-

PARTICULARS	AS ON 31 ST DECEMBER, 2023			
	EQUITY SHARE HOLDERS	PREFERENCE SHARE HOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY NO 1 / APPLICANT NO.1	4	NIL	NIL	1
TRANSFEROR COMPANY NO 2 / APPLICANT NO.2	5	NIL	NIL	NIL
TRANSFEROR COMPANY NO 3 / APPLICANT NO.3	4	NIL	NIL	NIL
TRANSFEREE COMPANY / APPLICANT NO.4	4	NIL	NIL	NIL

8. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Auditors Certificate, the Affidavit of Consents, the calculation of percentage of consents are as below :

	Nos	% of Consent	Annexure	Auditors Certificate Page no	Affidavit Of Consent Page no
EQUITY SHAREHOLDERS					
TRANSFEROR COMPANY NO 1 / APPLICANT NO.1	4	100	L1	VOL II PAGE NO 256 TO 257	VOL II PAGE NO 258 TO 276
TRANSFEROR COMPANY NO 2 / APPLICANT NO.2	5	100	L2	VOL II PAGE NO 232 TO 233	VOL II PAGE NO 234 TO 255
TRANSFEROR COMPANY NO 3 / APPLICANT NO.3	4	100	L3	VOL II PAGE NO 277 TO 278	VOL II PAGE NO 279 TO 298
TRANSFEREE COMPANY / APPLICANT NO.4	4	100	L4	VOL II PAGE NO 299	VOL II PAGE NO 300 TO 317

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	Nos	% of Consent	Annexure	Auditors Certificate Page no	Affidavit Of Consent Page no
SECURED CREDITORS					
TRANSFEROR COMPANY NO 1 / APPLICANT NO.1	NIL	N.A	M1	VOL II PAGE NO 318 TO 318A	N.A
TRANSFEROR COMPANY NO 2 / APPLICANT NO.2	NIL	N.A	M2	VOL II PAGE NO 320 TO 321	N.A
TRANSFEROR COMPANY NO 3 / APPLICANT NO.3	NIL	N.A	M3	VOL II PAGE NO 322 TO 323	N.A
TRANSFEREE COMPANY / APPLICANT NO.4	NIL	N.A	M4	VOL II PAGE NO 324	N.A
UNSECURED CREDITORS					
TRANSFEROR COMPANY NO 1 / APPLICANT NO.1	NIL	N.A	M1	VOL II PAGE NO 318 TO 318A	VOL II PAGE NO 318B TO 319
TRANSFEROR COMPANY NO 2 / APPLICANT NO.2	NIL	N.A	M2	VOL II PAGE NO 320 TO 321	N.A
TRANSFEROR COMPANY NO 3 / APPLICANT NO.3	NIL	N.A	M3	VOL II PAGE NO 322 TO 323	N.A
TRANSFEREE COMPANY / APPLICANT NO.4	NIL	N.A	M4	VOL II PAGE NO 324	N.A

9. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

a. Meetings dispensed:

Equity Shareholders

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of shareholder representing 100% in value of shares of Applicant Companies having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

Unsecured Creditors

Meeting of Unsecured Creditors of Applicant No 1 for considering the Scheme are dispensed with in view of consent by Unsecured Creditors representing 100% in value of Unsecured Debt of Applicant No 1 having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

b. No requirement of Meetings

Secured Creditors

No requirement of Meeting of Secured Creditors of Applicant Companies – NIL Creditors duly verified by auditors certificate.

Unsecured Creditors

No requirement of Meeting of Unsecured Creditors of Applicant No 2 , Applicant No 3 and Applicant No 4 – NIL Creditors duly verified by auditors certificate.

c. Meetings to be held

No meeting is required to be held

10. 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 :

- a. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- b. Registrar of Companies , West Bengal ,Kolkata
- c. Official Liquidator; High Court Calcutta
- d. Income Tax Department having jurisdiction over the Applicant(s)
- e. Other Sectoral authorities that may be affected by the scheme like GST etc.

These notices shall be sent by hand delivery through special messenger, by Speed post & also 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

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simultaneously sent to the Authorized Representative of the said Applicant(s). 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 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.

11. The Applicant(s) to file an affidavit proving service of notice and compliance of all directions contained herein along with the connected petitions, which should be filed expeditiously so as to avoid jeopardizing the scheme.
12. The application being **Company Application CA (CAA) No. 27/KB/2024** is disposed of accordingly.
13. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

Balraj Joshi
Member(Technical)

Rohit Kapoor
Member(Judicial)

Signed on this, the 23rd Day of April , 2024.

BD