

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH – COURT-II

Company Petition (CAA) No. 94/(KB)/2023

Connected with

Company Application (CAA) No. 54/(KB)/2023

A petition 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:

Crazy Carriers 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. U60230WB2009PTC136342 and its registered office at Room No-758, 32-Ezra Street, 7th. Floor, KOLKATA-700001, West Bengal, India.

..... Petitioner Company No. 1/ Transferor Company. 1

AND

Gravity Computech 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. U72900WB2009PTC136451 and its registered office at Room No-758, 32-Ezra Street, 7th. Floor, KOLKATA-700001, West Bengal, India.

..... Petitioner Company No. 2/ Transferor Company No. 2

AND

Khushi Commotrade 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. U51909WB2009PTC139213 and its registered office at Room No-758, 32-Ezra Street, 7th. Floor, KOLKATA-700001, West Bengal, India.

..... Petitioner Company No. 3/ Transferor Company No. 3

AND

R. S. Coalmines Private Limited, a company incorporated under the Companies Act, 2013, having Corporate Identification No. U10300WB2020PTC238274 and its registered office at Clive- SQ- Flat No- 307, 3rd. Floor, 34 Indra Kumar Karnani Street, Kolkata-700001, West Bengal, India.

..... Petitioner Company No. 4/ Transferee Company

IN THE MATTER OF:

- 1.Crazy Carriers Private Limited
- 2.Gravity Computech Private Limited
- 3.Khushi Commotrade Private Limited
- 4.R. S. Coalmines Private Limited

...Petitioners

Date of pronouncing the order: 7/02/2024

Coram:

Smt. Bidisha Banerjee: Hon'ble Member (Judicial)

Shri. D. Arvind: Hon'ble Member (Technical)

Authorised Representative on Record for the Petitioner(s):

Mr. Rantu Kumar Das, PCS

ORDER

Per: Bidisha Banerjee, Hon'ble Member (Judicial)

1. The Court convened by hybrid mode.
2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of **Crazy Carriers Private Limited**, being the Petitioner No. 1 abovenamed (“Transferor Company No. 1”); **Gravity Computech Private Limited** being the Petitioner No. 2 abovenamed (“Transferor Company No. 2”) and **Khushi Commotrade Private Limited**; being the Petitioner No. 3 abovenamed (“Transferor Company No. 3”) with **R. S. Coalmines Private Limited**, being the Petitioner No. 4 abovenamed (“Transferee Company”), whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the **Appointed Date 01.04.2022** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”) and the same is marked as “A-1” from **Page No. 38 to 71 of the Petition.**

3. The Petition has now come up for final hearing. Counsel for the Applicants submits as follows: -

- (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner No.1; Petitioner No-2; Petitioner No-3 and Petitioner No.-4 at their meetings held on **15.02.2023** respectively and the same is marked as **“A-13” from Page No. 336 to 339 of the Petition.**
- (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows: -
 - i) The proposed amalgamation of the Transferor Company 1; Transferor Company- 2 and Transferor Company 3 and the Transferee Company in accordance with this Scheme would enable the companies to realize benefits of greater synergies between their businesses and availing of the financial resources as well as the managerial, technical and other resources of each other in the interest of maximizing shareholders’ and stakeholders’ value.
 - ii) The proposed amalgamation will also help the companies in achieving integration and consolidation of the business, resulting in greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder’s and stakeholder’s value.
 - iii) For the purpose of better, efficient and economical management, control and running of the business of the undertaking concerned and/or administrative convenience and to obtain advantages of economies of scale the present scheme is proposed to amalgamate the Transferor Company 1 and Transferor Company 2 and Transferor company 3 with the Transferee Company.
 - iv) The amalgamated entity shall be able to act better to coordinate the group activities.
 - v) The said scheme will enable the said Companies to pool their resources to their advantages also more over the said scheme has been proposed inter alia, to

consolidate the group structure and provide business efficiency to continue their management and marketing strength, to streamline administration, to build a wider capital and financial base and to promote and secure the overall growth and economics of all the Companies concerned.

- vi)** The scheme would ensure higher retained earning leading to enhanced intrinsic value of shareholding to the investors and will contribute in furthering and fulfilling the objects of the companies concerned and, in the growth, and development of their business.
- vii)** The proposed amalgamation resulting from the scheme will integrate all the activities leading increased opportunities in all areas of business and the transferee company will have strong fundamentals which will enhance its credit rating and resource raising ability in the financial markets.
- viii)** The business of the said companies can be conveniently and advantageously combined together and in general the business of both the companies concerned will be carried on more economically and profitably if the scheme is implemented.
- ix)** The said amalgamation will enable the companies concerned to diversify and expand their activities without restricting their existing activities.
- x)** The business of the said Companies can be conveniently and advantageously combined together and in general the business of all the Companies concerned will be more economical and profitable if the Scheme is implemented.
- xi)** The said Scheme will contribute to furthering and fulfilling the objects of all the Companies concerned and, in the growth, and development of their business.
- xii)** The said Scheme will consolidate and stabilize the business of the said Companies and the resulting amalgamated Company will be able to participate more vigorously and profitably in a competitive market.

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KOLKATA BENCH – COURT-II

Company Petition (CAA) No. 94/(KB)/2023
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- xiii)** The Scheme will have beneficial result for all the Petitioner Companies concerned, their shareholders, employees and all concerned.
- (c) The Statutory Auditors of the Petitioner Nos.1, 2 and 3 have by their certificates dated **28.02.2023; 28.02.2023 and 28.02.2023** respectively confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 and the same is marked as **“A-14” from Page No. 340 to 343 of the Petition.**
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
- (e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of **Ms. Khusbu Agrawal, Company Secretary in Practice, IBBI Valuer**, have also confirmed that the said ratio is fair and proper by their fairness opinion thereon and the same is marked as **“A-10” from Page No. 241 to 261 of the Petition.**
- (f) The shares of the Petitioner No.1; Petitioner No.2; Petitioner No.3 and Petitioner No. 4 are not listed with any stock exchange.
- (g) By an order dated **19/05/2023** in Company Application (CAA) No. **54/(KB)/2023**, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act. and the same is marked as **“A-15” from Page No. 344 to 349 of the Petition.**
- (i) **Meetings of Equity Shareholders dispensed:** Meetings of the Equity Shareholders of the **Petitioner No.1; Petitioner No-2; Petitioner No-3 and Petitioner No-4**, for considering the Scheme were dispensed with in view of all such shareholders having respectively given their consent to the Scheme by way of affidavits.

- (ii) **Meeting of Creditors dispensed:** Meeting of the Unsecured Creditors of **Petitioner No- 1, Petitioner No-2, Petitioner No-3 and Petitioner No-4** considering the Scheme were dispensed with in view of all such creditors having respectively given their consent to the Scheme by way of affidavits.
- (h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an Order dated **14.07.2023** the instant petition was admitted by this Tribunal and fixed for hearing on **22.08.2023** upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated **14.07.2023**, the Petitioner(s) have duly served Notice of Petition to the Regulatory Authorities under Section 230(5) of Companies Act.,2013 in Form-CAA-3, to the **Regional Director, Eastern Region;** to the **Registrar of Companies, West Bengal** and to the **Official Liquidator, Calcutta High Court** delivered on **31.07.2023** and same delivered by email dated **31.07.2023** and to the Income Tax Department of the Office having jurisdiction over the respective Petitioners Companies delivered by Speed post on **01.08.2023** and same delivered by email dated **02.08.2023**. The Petitioner(s) have also published such advertisements once each in the “**The Statesman**” in English language and “**Dainik Statesman**” in Bengali language in their respective issues on **Monday 31st July ’2023**. An affidavit of compliance in this regard has also been filed **Original Copy** of affidavit of compliance submitted to the office of NCLT, Kolkata Bench by hand delivery on **22.08.2023**.
- (i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”) and Official Liquidator, Calcutta High Court have filed their representations before this Tribunal.

5. The Official Liquidator has filed his report **dated 27.09.2023** and concluded as under: -
“That in view of the submissions made above the Hon’ble National Company Law Tribunal may like to pass such order/orders as may deem fit and proper in the facts and circumstance of the case.”
6. The RD has filed his reply affidavit **dated 04.10.2023** (“**RD affidavit**”) and the observations of the RD and responses of the Petitioner(s) are summarized as under: -
- (i) The contents of **Paragraph No- 2 (a)** of the said Affidavit are matters of record and Ld. Regional Director, Eastern Region stated that no complaint and / or representation regarding the proposed Scheme of Amalgamation has been received against Petitioners Company and also stated that Financial Statements and Annual Return for the financial year 31.03.2022 has been complied and updated.
 - (ii) With reference to the observation made by Regional Director vide **Paragraph No- 2 (b)** of the affidavit regarding list of assets to be transferred from the Transferor Companies to the Transferred Companies upon sanctioning of the Proposed Scheme. Accordingly, it is matter of record and does not require any explanation.
 - (iii) With reference to the observation made by Regional Director vide **Paragraph No. 2 (c)** of the affidavit regarding the undertaking to comply with provisions of Section 232 (3) (i) of the Companies Act.,2013, it is affirm on behalf of all the petitioners Company, that Section 232 (3) (i) will be complied accordingly.
 - (iv) With reference to the observation made by Regional Director vide **Paragraph No-2 (d)** of the affidavit regarding payment of applicable stamp duty on the transfer of the immovable properties from the Transferor Company to be paid by the transferee Company, it is matter of record and does not require any explanation.
 - (v) With reference to the observation made by Regional Director vide **Paragraph No. 2 (e)** of the affidavit regarding the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy

of no change is made, it is affirmed that Scheme enclosed in the Company Application and Company Petition are same and no discrepancy of no change is made and it is matter of record and does not require any explanation.

(vi) With reference to the observation made by Regional Director vides **Paragraph No. 2 (f)** of the affidavit regarding copy of the Scheme was forwarded to Income Tax department on 02/06/2023 by Petitioners Company as and when directed by Hon'ble NCLT, Kolkata Bench and same has been submitted through affidavit of service to the NCLT, Kolkata Bench, it is matter of record and giving explanation following observation from Income Tax Department as below;

- a) *One demand notice is received from the Income Tax Department in relation with M/s. Crazy Carriers Private Limited (Transferor Company) of Rs.1620/- vide Letter No-ITO,WARD-9(1), KOLKATA /NOC/NCLT/2023-24/187 dated 15.06.2023, accordingly said Company paid the demand of **Rs.1620/-** vide Challan no-40683 dated 27.06.2023 and intimation of payment has already been sent the by speed post on 04.07.2023 and same has been attached in **Annexure-I**.*
- b) *Another demand notice is received from the Income Tax Department in relation with M/s. Crazy Carriers Private Limited (Transferor Company) of **Rs.672/-** vide Letter No-ITO,WARD-9(1), KOLKATA /NOC/NCLT/2023-24/248 dated 14.07.2023, accordingly said Company paid the demand of Rs.672/- vide Challan no-55318 dated 19.07.2023 and intimation of payment has already been sent the by speed post on 14.10.2023 and same has been attached in **Annexure-II**.*
- c) *The Income Tax department vide letter No- ITBA/COM/F/17/2023-24/1053659715(1) dated 12.06.2023 asked some clarification on the Scheme of arrangement of CA(CAA) No-54/KB/2023 in relation with M/s. Gravity Computech Private Limited (Transferor Company), accordingly said company given reply dated 25.08.2023 and same sent*

by speed post dated 25.08.2023 and same has been attached in Annexure-III.

7. Heard submissions made by the Ld. Counsel appearing for the Petitioner and Regional Director, Eastern Region, who appeared and were heard. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -

- (i) the Scheme of Arrangement mentioned in **Paragraph-1** of this petition, being **Annexure- "A-1"** hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from the **01.04.2022** ("Appointed Date") on **Crazy Carriers Private Limited** ("Transferor Company No. 1"); **Gravity Computech Private Limited** ("Transferor Company No. 2"); **Khushi Commotrade Private Limited**; ("Transferor Company No. 3") and **R. S. Coalmines Private Limited** ("Transferee Company") and their respective shareholders and creditors and all concerned;
- (ii) all the property, rights and powers of **Crazy Carriers Private Limited; Gravity Computech Private Limited** and **Khushi Commotrade Private Limited**; ("Transferor Companies) relating to the Specified Undertaking, as defined in the Scheme, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to **R. S. Coalmines Private Limited** and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and vest in **R. S. Coalmines Private Limited** for all the estate and interest **Crazy Carriers Private Limited; Gravity Computech Private Limited** and **Khushi Commotrade Private Limited**; ("Transferor Companies) therein but subject, nevertheless, to the charges affecting the same, as provided in the Scheme;
- (iii) All the debts, liabilities, duties and obligations of **Crazy Carriers Private Limited; Gravity Computech Private Limited** and **Khushi Commotrade Private Limited**; ("Transferor Companies) relating to the Specified Undertaking be transferred from the said Appointed Date, without further act or deed, to **R. S. Coalmines Private Limited** (Transferee Company) and, accordingly, the same shall pursuant to Section 232(4) of the

Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of **R. S. Coalmines Private Limited**;

- (iv) All the employees of **Crazy Carriers Private Limited; Gravity Computech Private Limited** and **Khushi Commotrade Private Limited**; ("Transferor Companies) relating to the Specified Undertaking shall be engaged by **R. S. Coalmines Private Limited** as provided in the Scheme;
- (v) All proceedings and/or suits and/or appeals pending by or against **Crazy Carriers Private Limited; Gravity Computech Private Limited** and **Khushi Commotrade Private Limited**; ("Transferor Companies) in respect of the Specified Undertaking be continued by or against **R. S. Coalmines Private Limited**, as provided in the Scheme;
- (vi) **R. S. Coalmines Private Limited** shall issue and allot to the shareholders of **Crazy Carriers Private Limited; Gravity Computech Private Limited** and **Khushi Commotrade Private Limited**; ("Transferor Companies), the shares in **R. S. Coalmines Private Limited** in accordance with Clause-7 of the Scheme;
- (vii) Leave be granted to the Petitioner to file the Schedule of Assets of the Specified Undertaking of the Transferor Company in the form as prescribed in the Schedule to **Form No.CAA-7** of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of the order to be made herein;
- (viii) **Crazy Carriers Private Limited; Gravity Computech Private Limited; Khushi Commotrade Private Limited** and **R. S. Coalmines Private Limited** do each within thirty days of the date of the receipt of this order, cause a certified copy to be delivered to the Registrar of Companies for registration.
8. The Petitioner(s) shall supply legible print out of the Scheme and Schedule of Assets in acceptable form to the Registry and the Registry will append such printout, after verification, to the certified copy of the order.
9. Company Petition (CAA) No. 94/(KB)/2023 is **disposed of** accordingly.

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10. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

(D. Arvind)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

This order is signed on this, the 7th day of February, 2024.

NKS(LRA)