

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

**C. P. (CAA) NO. 148/KB/2023
connected with
C .A.(CAA) NO. 126/KB/2023**

A petition under section 230(6) read with section 232(3) 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:

(Scheme of Amalgamation)

(1) YUMA BUILDERS PRIVATE LIMITED (CIN: U70101WB2004PTC099159), a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having its registered office at G - 0404, office Tower No. 3, City Centre Uttorayon, Matigara, Darjeeling, Siliguri - 734010 in the State of West Bengal.

... Applicant Company No. 1/ Transferor Company No. 1

-And-

(2) PATLA COMMERCIAL PRIVATE LIMITED (CIN: U51909WB1993PTC058023), a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having its registered office at 5 Landela Road, Darjeeling - 734101 in the State of West Bengal.

... Applicant Company No. 2/Transferor Company No. 2

-And-

(3) YUMA SECURITIES PRIVATE LIMITED (CIN: U67110WB1995PTC067621), a company incorporated under the Companies Act, 1956 and being a company within the meaning of the Companies Act, 2013 and having its registered office at Unit No. CCSGG0404, Block G City Centre, Uttarayon, Matigara, Darjeeling, Siliguri -734010 in the State of West Bengal.

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... Applicant Company No. 3/Transferee Company

-And-

In the Matter of:

1. Yuma Builders Private Limited;
2. Patla Commercial Private Limited;
3. Yuma Securities Private Limited;

.... Applicant(s)

Date of pronouncing of the Order: 02/05/2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)
Shri D. Arvind : Member (Technical)

Appearances (via video conferencing/physically):

Mr. S. K. Tiwari, Adv. : For the Petitioners
Mr. Gopal Kumar Khetan, CA :
Mr. Sudhir Kapoor, JD : From the office of R.D.(E.R.), R.O.C

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. This Court is congregated through 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 **Yuma Builders Private Limited**, being the Applicant No. 1 above named (“Transferor Company” or “Applicant No. 1”), **Patla Commercial Private Limited**, being the Applicant No. 2 above named (“Transferor Company” or “Applicant No. 2”) with **Yuma Securities Private Limited**, being the Applicant

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No. 3 above named ("Transferee Company" or "Applicant No. 3") whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the **Appointed Date, viz 1st day of April, 2022** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("Scheme").

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

(a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 27th February, 2023.

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are inter alia as follows: -

- i. All the Transferor Companies and the Transferee Company are engaged in similar kind of businesses.
- ii. The Scheme of Amalgamation has been proposed to consolidate the group structure and provide advantages of synergies in business activities.
- iii. The business of the Transferor Companies and the Transferee Company can be combined and carried forward conveniently with the combined strength of all the Petitioner Companies.
- iv. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company.
- v. The amalgamation will result in usual economies of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various

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resources and the business of the companies can be conveniently and advantageously combined together and in general business of the Companies concerned will be carried on more economically and profitably under the said Scheme of Amalgamation.

- vi. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the Companies concerned. The aforesaid Scheme of Amalgamation will also enable the undertakings and business of the said Petitioner Companies to obtain greater facilities possessed and enjoyed by one large company compared with a number of small companies for raising capital, securing and conducting trade on favourable terms and other benefits.
- vii. The said Scheme of Amalgamation will contribute in furthering and fulfilling the objects of the companies concerned and, in the growth, and development of these businesses.
- viii. The said Scheme of Amalgamation will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability.
- ix. The said Scheme of Amalgamation will enable the undertakings concerned to pool their resources and to expand their activities.
- x. The said Scheme of Amalgamation will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages.
- xi. The said Scheme of Amalgamation will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.

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- (c) The Statutory Auditors of the Transferor Companies and Transferee Company have by their certificates dated 12th May, 2023 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- (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. Nikita, Registered Valuer.
- (f) The shares of any of the Petitioners are not listed on any stock exchanges.
- (g) By an order dated 14th July, 2023 in Company Application (CAA) No. 126/KB/2023, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:
- i. **Meeting dispensed:**
Meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of all the Applicant Companies are dispensed under sub-section (1) of Section 230 read with sub-section (1) of Section 232 of the Act.
- ii. **Meeting to be held:**
No meeting is required to be held.
- (h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 13th September, 2023, the instant petition was admitted

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by this Tribunal and fixed for hearing on 30th October, 2023 upon issuance of notices to the Statutory/Sectoral Authorities and advertisement of the date of hearing. In compliance with the said order, the Petitioner(s) have duly served such notices on the following authorities:

Sl. No.	Name of the Statutory Authority	Mode of Service	
		Hand Delivery/Speed Post	Email
1.	The Regional Director, Eastern Region, Kolkata.	12-10-2023	11-10-2023
2.	The Registrar of Companies, West Bengal	12-10-2023	11-10-2023
3.	The Official Liquidator, High Court, Calcutta	11-10-2023	11-10-2023
4.	The Reserve Bank of India, Kolkata	12-10-2023	13-10-2023
5.	Income Tax Officer having jurisdiction over Circle 3(1), Siliguri	09-10-2023 (Speed Post)	11-10-2023
6.	The Income Tax Officer having jurisdiction over Circle 1, Siliguri.	09-10-2023 (Speed Post)	11-10-2023
7.	The Income Tax Officer having jurisdiction over Ward 3(2), Darjeeling.	16-10-2023	11-10-2023
8.	The Chief Commissioner of Income Tax, Kolkata – 02.	11-10-2023	11-10-2023

That the Petitioners herein pursuant to the said Order also made newspaper

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publication in the newspapers “Statesman” in English and “Dainik Statesman” in Bengali on October 12, 2023. An affidavit of service in this regard has also been filed by them on 19th October, 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 and the Official Liquidator, High Court, Kolkata have filed their representations before this Tribunal.
5. The Official Liquidator has also filed a Report dated 05-12-2023 wherein it has been stated that on the basis of the information submitted by the Petitioner Companies, the Official Liquidator is of the view that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interests of its members or to public interest as per the provisions of the Companies Act, 2013. Further, the Official Liquidator stated that the Tribunal may be pleased to pass such further order or orders as may be deem fit and proper in the matter.
6. The Regional Director, Eastern Region, Ministry of Corporate Affairs (MCA), Kolkata *vide* his affidavit filed on 30th day of October, 2023 has reported certain observations in respect whereof the Petitioner Companies have filed their rejoinder dated 05th day of December, 2023. The said observations and the reply thereof is given underneath:

Query stated at Para 2(a) of the Regional Director’s Affidavit:

That it is submitted that on examination of report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, as per said report, all the

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petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year 31/03/2022. The ROC, WB has also reported that the Transferor Company, Yuma Builders Private Limited has an active charge amount of Rs.13,35,000/- (Copy of the said report of ROC, WB marked as Annexure -I is enclosed herewith for perusal and ready reference).

Para 3(a) of the Rejoinder:

It is hereby submitted that in the statement made in Para 2(a) of the Regional Director's affidavit are general statements, hence no comments are required to the said statement.

Query stated at Para 2(b) of the Regional Director's Affidavit:

It is further submitted that as per MCA BO portal, both the Transferor Companies have filed financial statement for the financial year ended on 31/03/2023. However, in Form AOC-4 filed in respect of Financial Statement for 2022-23 filed by the Transferor Company, Patla Commercial Private Limited, a wrong Balance Sheet of other company's name has been attached, thereby the filing of such Financial Statement made defective and incomplete. Hon'ble Tribunal may direct the Petitioner Company to first rectify the defect and to file correct set of Financial Statement of the year ended 31 /03/2023. This deponent further prays for direction to the petitioners to file Annual Return in respect of financial year ended 31/03/2023 before merger takes place.

Para 3(b) of the Rejoinder:

As directed the Transferor Company namely M/s Patla Commercial Private Limited has filed its corrected Financial Statement of the year ended 31/03/2023 in Form AOC-4 vide SRN No. F82501826 dated 22/11/2023. Further all petitioner companies have already filed its Annual Return in respect of financial year ended 31/03/2023.

Query stated at Para 2(c) of the Regional Director's Affidavit:

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It is submitted that the Petitioner Transferee Company namely M/s Yuma Securities Private Limited is registered with RBI as NBFC Company having its Certificate of Registration No. B-05.03770 dated 011 11/2006. But no 'NOC' from RBI has been provided yet in the matter.

Para 3(c) of the Rejoinder:

The Transferee Company M/s Yuma Securities Private Limited had submitted a copy of the Company Application being C.A. (CAA) No. 126/KB/2023 to the Reserve Bank of India (RBI) on 26th July, 2023 by way of email and on 27th July, 2023 by way of hand delivery and a copy of the Company Petition being C.P.(CAA) No. 148/KB/2023 on 13th October, 2023 by way of email and on 12th October, 2023 by way of hand delivery.

Further, there is no change of management in M/s Yuma Securities Private Limited contemplated or envisaged under the proposed Scheme of Amalgamation. Further, as per the Circular No. RBI/2015-16/122-DNBR(PD)CC. No. 065/03.10.001/2015-16 dated 09th July, 2015 issued by Reserve Bank of India, no prior approval is required as:

- (a) There is no takeover or acquisition of control of the Company.
- (b) The existing Directors of Yuma Securities Private Limited will continue to hold Directorship of the Company post amalgamation and there is no appointment of new Directors in the Company provided in the Scheme.

Query stated at Para 2(d) of the Regional Director's Affidavit:

The Petitioner Companies should be directed to provide list of details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

Para 3(d) of the Rejoinder:

The list/ details of Assets to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme of Amalgamation is enclosed herewith and marked as “ANNEXURE - A” to the rejoinder.

Query stated at Para 2(e) of the Regional Director’s Affidavit:

The Petitioner Companies should be directed to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Para 3(e) of the Rejoinder:

The Petitioner Companies undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013.

Query stated at Para 2(f) of the Regional Director’s Affidavit:

The Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Para 3(f) of the Rejoinder:

The Petitioners state that the Transferee Company shall, if applicable, pay the applicable stamp duty on transfer of the immovable properties from the Transferor Companies to it.

Query stated at Para 2(g) of the Regional Director’s Affidavit:

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy or no change is made.

Para 3(g) of the Rejoinder:

The Petitioners state that the Scheme enclosed to the Company Application and Company Petition are one and the same and that there is no discrepancy or change is made.

Query stated at Para 2(h) of the Regional Director’s Affidavit:

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 28/08/2023 for their views/observation in the matter. However, no such views/observation in the matter from the income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Para 3(h) of the Rejoinder:

The Petitioners state that as per instruction of the Ministry of Corporate Affairs, New Delhi a copy of the scheme was forwarded to Income Tax department on 21/07/2023. The Income Tax department is yet to submit their views/observation on the same.

7. Heard submissions made by the Ld. Counsel appearing for the Petitioner, Authorized Person from Regional Director, MCA. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:

(a) The Scheme of Amalgamation mentioned in Paragraph 1 of the Petition, being **Annexure "A"** hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from **01st April, 2022** (“**Appointed Date**”) **Yuma Builders Private Limited**, being the Applicant No. 1 above named ("Transferor Company" or “Applicant No. 1”), **Patla Commercial Private Limited**, being the Applicant No. 2 above named ("Transferor Company" or “Applicant No. 2”) with **Yuma Securities Private Limited**, being the Applicant No. 3 above named ("Transferee Company" or “Applicant No. 3”), their respective shareholders and creditors and all concerned;

(b) all the property, rights and powers of the Transferor Companies, including those

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described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

- (c) all the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the 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 the Transferee Company;
- (d) the employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme;
- (e) all proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;
- (f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;
- (g) Leave is granted to the Petitioner(s) to file the Schedule of Assets of the Transferor Companies in the form as prescribed in the Schedule to Form No. CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;
- (h) The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be

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delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved without winding up.

8. The Petitioner(s) shall supply a 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. Accordingly, **Company Petition (CAA) No. 148/KB/2023** is **disposed of**.
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)

Order signed on: 02nd of May, 2024.

Ar.